ASA Monographs 40

Human Rights in Global Perspective

Anthropological studies of rights, claims and entitlements

Edited by

Richard Ashby Wilson

and

Jon P. Mitchell

Human Rights in Global Perspective

The liberal modern West often pays lip-service to universal notions of human rights without considering how these work in local contexts and across moral, ethical and legal codes. Do human rights agendas helpfully address the problems people face, or are they better understood as a regimental imposition of Western values onto largely non-Western communities?

The aim of this volume is to understand, from an anthropological perspective, the consequences of the rise of rights discussions and institutions in both local and global politics. Its chapters develop what could be termed a social critique of rights agendas and the legal process, examining how these construct certain types of subjects, such as victims and perpetrators, and certain types of act, such as common crimes versus crimes against humanity. This framing of the social world often unjustly neglects the complex range of perspectives involved in rights processes, and elides the inherent ambiguity of social life. Bringing together ethnographic perspectives from Europe, North America, India and South Africa, this volume restores the social dimension to rights processes, and suggests some ethical alternatives to current practice. It will be a valuable addition to recent anthropologies of human rights and citizenship.

Richard Ashby Wilson is Reader in Anthropology at the University of Sussex. He has written and edited numerous works on political violence and human rights, including *Human Rights, Culture and Context* (1997), *Culture and Rights* (2001) and *The Politics of Truth and Reconciliation in South Africa* (2001). **Jon P. Mitchell** is Reader in Anthropology at the University of Sussex. His books include *Ambivalent Europeans* (Routledge, 2001).

ASA Monographs (vol. no. 40)

Titles available:

24 Reason and Morality
Edited by Joanna Overing

29 Anthropology and Autobiography
Edited by Judith Okely and Helen Callaway

30 Contemporary Futures: Perspectives from Social Anthropology
Edited by Sandra Wallman

31 Socialism: Ideals, Ideologies, and Local Practice
Edited by C.M. Hann

32 Environmentalism: The View from Anthropology
Edited by Kay Milton

33 Questions of Consciousness
Edited by Anthony P. Cohen and Nigel Rapport

34 After Writing Culture
Edited by Allison James, Jenny Hockey and Andrew Dawson

35 Ritual, Performance, Media
Edited by Felicia Hughes-Freeland

36 The Anthropology of Power
Edited by Angela Cheater

37 An Anthropology of Indirect Communication
Edited by Joy Hendry and C.W. Watson

38 Elite Cultures
Edited by Cris Shore and Stephen Nugent

39 Participating in Development
Edited by Paul Sillitoe, Alan Bicker and Johan Pottier

40 Human Rights in Global Perspective
Edited by Richard Ashby Wilson and Jon P. Mitchell

Human Rights in Global Perspective

Anthropological studies of rights, claims and entitlements

Edited by Richard Ashby Wilson and Jon P. Mitchell

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2003
by Routledge
11 New Fetter Lane, London EC4P 4EE

Simultaneously published in the USA and Canada
by Routledge
29 West 35th Street, New York, NY 10001

Routledge is an imprint of the Taylor & Francis Group

This edition published in the Taylor & Francis e-Library, 2004.

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging in Publication Data
Human rights in global perspective: anthropological studies of rights, claims and entitlements / edited by Richard A. Wilson and Jon P. Mitchell.
p. cm. – (ASA monographs; 49)
Includes bibliographical references and index.
1. Human rights. I. Wilson, Richard A., 1964– II. Mitchell, Jon P. III. A.S.A. monographs; 49.
JC 571.H769523 2003
323–dc21 2002036976

ISBN 0-203-50627-8 Master e-book ISBN

ISBN 0-203-34578-9 (Adobe eReader Format)
ISBN 0–415–30409–1 (hbk)
ISBN 0–415–30410–5 (pbk)

In memoriam, Richard Ashby Wilson, 1920–2001

Contents

Contributors

John R. Bowen is Dunbar-Van Cleve Professor in Arts and Sciences at the Washington University, St Louis.

Richard W.J. Clarke received a Ph.D. in Social Anthropology from the University of Cambridge and now works for the UK Government.

Jane K. Cowan is Senior Lecturer in Anthropology at the University of Sussex.

John Gledhill is Max Gluckman Professor of Social Anthropology at the University of Manchester.

Anthony Good is Senior Lecturer in Social Anthropology at the University of Edinburgh.

Kirsten Hastrup is Professor of Anthropology at the Institute of Anthropology, Copenhagen University.

Lisette Josephides is Lecturer in Anthropology at Queen's University Belfast.

Martin A. Mills is Lecturer in Divinity and Religious Studies at the University of Aberdeen.

Jon P. Mitchell is Reader in Anthropology at the University of Sussex.

Yael Navaro-Yashin is Lecturer in Social Anthropology at the University of Cambridge.

Fiona C. Ross is Lecturer in Social Anthropology at the University of Cape Town.

Maya Unnithan-Kumar is Senior Lecturer in Anthropology at the University of Sussex.

Richard Ashby Wilson is Reader in Anthropology at the University of Sussex.

Acknowledgements

This volume came out of the Annual Conference of the Association of Social Anthropologists of Great Britain and the Commonwealth (ASA) held at the University of Sussex in April 2001. We would like to thank all those who attended the Conference, and particularly those participants whose papers made it through to publication, for their participation and enthusiasm. Thanks are due to the ASA chair Pat Caplan for her support and encouragement. We would also like to thank the following institutions who provided funding for the project: ASA, The British Academy, The Cunliffe Foundation, The Graduate Research Centre into Culture, Development and Environment at the University of Sussex, Routledge and The Wenner Gren Foundation for Anthropological Research. Finally, we would like to thank Roger Manktelow, Sarah Neil and Rosa Weeks for all their help in bringing this publication to completion.

Introduction

The social life of rights

Richard Ashby Wilson and Jon P. Mitchell

Global justice and the rise of rights talk

This volume contains selected chapters from the proceedings of the annual conference of the Association of Social Anthropologists of the UK and Commonwealth, held at the University of Sussex in March 2001. The title of the conference was 'Rights, Claims and Entitlements' and its aim was to understand, from an anthropological perspective, the consequences of the recent rise of rights talk and rights institutions in both global and local politics. The anthropology of human rights and citizenship has been a growing field of anthropological enquiry since the mid- to late 1990s, and the conference represented an attempt to bring together and consolidate the research of social and cultural anthropologists from around the world, including contributors from Europe, North America, India and South Africa.

The conference demonstrated that there has been a shift in the discussions about rights that anthropologists are now having and not having. One surprising absence in the conference was the universalism vs. relativism debate that dominated anthropological deliberations on rights in the latter half of the twentieth century.[1] During that epoch, anthropologists tended to side with relativists and to view with critical disdain many basic conceptions of the international human rights framework, such as notions of human nature, universal human dignity and conceptions such as 'crimes against humanity'. These highly abstracted formulations of humanity and morality were seen as the products of an international order dominated by western institutions and as far removed from the basic cultural conceptions of justice and morality found in non-western locales.

In retrospect, we could say that the early 1990s were the high point of cultural relativism, just before the unexpected denouement. At this time, the writings of relativist social scientists held sway,[2] and US cultural anthropology was strongly influenced by the 'cultural turn' with its emphasis on representation, cultural difference and identity politics. Relativist discourse was also more prevalent in the global political arena than it is now, replacing as it did the opposition between capitalism and socialism.

In 1993, a collection of Asian states (such as Indonesia, Thailand, Singapore and Malaysia) issued the Bangkok Declaration to the UN Conference on Human Rights held in Vienna. In the Declaration, a number of Asian political leaders stated that westerners should not try to interfere in their internal political affairs since 'Asian values' provide a superior basis for social and political regulation. The communitarian proclamation provoked a hostile reaction from grass-roots human rights activists in Asian countries and elsewhere, and prompted a growing awareness of the extent to which political elites used the ideology of relativism to legitimate their own mendacity.[3] One of those leaders, the corrupt and nepotistic Suharto of Indonesia, has since been swept from power by protesters who appealed to, amongst other things, international human rights principles.

Since the mid-1990s, however, there has been a sea change in the terrain of global politics. The rise of a 'new humanitarianism' and a shift towards global justice has profoundly shaped how anthropologists approach rights. At this juncture, new global justice institutions with universal jurisdiction have given substance to hitherto unenforceable human rights ideals. From the UN Declaration on Human Rights in 1948 until the early 1990s, international human rights law had been a marginal, even fanciful topic, with little intellectual purchase outside a small community of utopian academic lawyers. In the 1960s, 1970s and 1980s, the UN issued one convention after another, and these were signed in some cases by states that had no intention of ever implementing them. These conventions were diplomatic, paper exercises with no mechanisms of enforcement.

The end of the cold war and the ethnocidal conflicts in the former Yugoslavia and Rwanda changed all that. For all the failings of the UN Security Council to protect civilians from slaughter in Rwanda and Bosnia, one ground-breaking initiative involved the setting up of two UN war crimes tribunals; one for the former Yugoslavia (ICTY, established in 1993) and one for Rwanda (ICTR, established in 1994). The conviction of Duško Tadić in 1997 by the ICTY was the first successful prosecution for crimes against humanity by an international tribunal since the Nuremberg trials, some 50 years earlier. The ICTR has secured the first successful prosecution for genocide since the UN Genocide Convention was written in the 1940s. At the time of writing, the ICTY trial of Slobodan Milošević for genocide is under way, an historical precedent since he is the first head of state to be prosecuted for genocide by an international human rights tribunal.

In the late 1990s, a number of other developments gave more credence to the idea of an enforceable international rights regime. Between 1990–2000, there were twice as many UN humanitarian missions, often based on human rights grounds as in East Timor in 1999, as there had been in the entire 1948–1990 period. In October 1998, General Augusto Pinochet was placed under house arrest by Scotland Yard while the Chief Justice and then the British Law Lords considered the request for extradition by the Spanish

magistrate Baltasar Garzón. Pinochet was eventually released but not before two important legal precedents had been created: the Spanish Audiencia Nacional court decided that it had universal jurisdiction to try cases of genocide which had occurred to non-nationals outside of its territorial boundaries; and in Britain the Law Lords decided that a head of state does not enjoy immunity for criminal actions (such as torture) that are outside the normal and legitimate state functions of a head of state. Finally, in Rome in 1998, 120 countries adopted the statute to set up an International Criminal Court that would be administered by the UN system and would have universal jurisdiction to try crimes against humanity, genocide, war crimes and aggression. The International Criminal Court was established in July 2002 when 60 countries (although not the US, an original supporter of the Court) formally signed up to the Court's jurisdiction.

The above discussion refers to the development of a global human rights machinery, but a more diffused rights talk simultaneously expanded into other areas in the 1990s. Long-standing concerns over gender inequality became reconceptualized as 'women's human rights' at international conferences such as the UN Conference on Women at Beijing in 1995. In the world of economic development, key agencies such as the World Bank and government development ministries became converts to a 'rights-based' approach to development.[4] Indigenous groups increasingly make land claims and political demands for self-determination with reference to rights charters such as the International Labor Organization's Convention 169 of 1989. Attempts to prevent discrimination on grounds of sexuality have found their way into a national Bill of Rights for the first time in the South African Constitution of 1996. The ethical dilemmas created by new developments in reproductive technology have been framed increasingly in terms of the rights held by individuals involved. With the expansion of rights beyond the narrow sphere of civil and political rights has come a proliferation in their manifestations, conceptualizations and implications.

The rise of rights talk and institutions of global justice had its impact on intellectuals in Europe, America, India and elsewhere, and some have seen in this historical moment the chance to create a more expansive and inclusive approach to democracy, citizenship and justice. Throughout the 1990s, some writers in political philosophy, international relations and social theory sought to revive Kant's ideas on cosmopolitan justice and world citizenship and created a widespread cosmopolitan movement.[5] Advocates of cosmopolitan law challenge the view that state sovereignty is inviolable and they applaud the emergence of a 'universal constitutional order' which will protect basic standards and moral values around the world, regardless of culture, through intergovernmental institutions such as the International Criminal Court. This movement for moral universalism even found some supporters in that most Narodnik of disciplines, anthropology.[6]

In this mercurial moral and political landscape, there is ample scope for anthropologists to evaluate both sympathetically and critically the consequences of the rise in rights language and mechanisms. How this is to be done is another question. To be sure, the culture concept and its accompanying discourse of relativism no longer seems appropriate to the task. Clearly, there are problems in translating a global rights language to the local level, and there are slippages between how officials use rights and how people understand them in their everyday lives, but the old relativist vision of a 'clash of cultures', or the polarities of tradition vs. modernity, or western vs. non-western are too crude to generate much insight. The 'clash of cultures' view has taken on new political connotations in the aftermath of the Gulf War, September 11 and subsequent demonization of Islam, as it has been reformulated as a 'clash of civilizations' by thinkers of the American Right such as Samuel Huntingdon (1996).

Where anthropologists take a critical view of the definition or operation of rights, this critique now seems more based in analyses of power, discipline and social regulation, rather than the inherent logic of cultures. The criticisms that rights fix social categories that are in reality unbounded and permeable, or that rights isolate out acts that are embedded in wider contexts are more criticisms of state legality than cultural difference. States all operate, at least formally, through law and law has a propensity to essentialize social practices. So there is plenty to speak about in terms of the unintended consequences of rights, but anthropological commentaries are less about 'culture' and ideational systems than they are the regulating and disciplining practices of nation-state and intergovernmental bureaucracies.

In trying to understand rights processes, one long-established anthropological distinction – theory and practice – can still provide us with insights since it is found in law and legality itself. This has been central to both anthropological theory and ethnographic method since the development of the modern discipline – from Malinowski's methodological aphorism that we reflect on both what people say, and what people do, and the systematic divergence between the two,[7] to the more complex outlines and developments of a theory of practice that attempts to show how theories are produced and reproduced *through* social practice.[8]

In a legal framework this polarity signals a distinction between the letter of the law – in theory – and legal practice, and in the anthropology of law is perhaps best exemplified by Sally Falk Moore's theorization of a move from typologies of legal system to ethnographies of legal process.[9] Inherent in this move is the acknowledgement that just as legal processes essentialize or hypostasize the social practices they discuss, so too do they essentialize legal practices themselves, producing a coherent theory out of the less coherent practice of everyday legal process. 'Legal systems', then, or 'legal cultures' are themselves products of social practices – the practices of the state.

To acknowledge this is to shift the task of anthropological inquiry away from one of 'describing' or 'translating' different legal cultures or rights regimes, towards examining the relationship between orders of power – enshrined in both nation-state and transnational institutions – and their constitution in everyday settings. Hence, the chapters in this volume explore rights at the level of social practice: how are rights applied – and what are they applied *for* – in everyday legal processes?

The social consequences of rights

Many chapters in this volume develop what could be termed a social critique of rights and the legal process. This critique is, in part, implicated in the sub-title, where 'rights' mostly refer to the types of entitlements backed by the coercive apparatus of the state, whereas 'claims' are more social in nature and may not be expressed as legal entitlements.[10] The approach which looks at rights from the view of the fluidity of social life and focuses on the 'living law' derives ultimately from early twentieth-century legal realism, but in anthropology was influentially articulated by Clifford Geertz. Geertz's (1983) reflections on law and rights are now well known: that law is a distinct form of imagining the real, and that law skeletonizes social narratives, since whatever the law is after, it is not the 'whole story'. This approach has been combined more recently with Foucauldian approaches to legal discourse which examine how law and rights operate a particular regime of truth with its accepted rules of evidence. Law, in this view, produces silences as well as generating and authorizing certain types of speech.[11]

Chapters working within this social critique of rights examine how a rights regime creates certain types of subjectivities (victims, perpetrators) and certain types of acts (e.g. common crimes versus crimes against humanity). This framing of the social world often does an injustice to the complex range of subjectivities in a social or historical setting. Human rights reports tend to bifurcate individuals into either victims or perpetrators, but these same individuals might wish to assert another alternative identity (e.g. survivors, freedom fighters). The South African Communist Party intellectual Jeremy Cronin publicly criticized the Truth and Reconciliation Commission *Report* of 1998 by saying that he was neither a victim nor a perpetrator but instead a communist and a trade unionist who struggled against apartheid.[12] In Cronin's view, the human rights account contained in the TRC *Report* was a poor historical document of the political struggles of the apartheid era. In Jane Cowan's chapter in this volume, we see how the same paring down and bifurcating of subjectivity occurs when minority rights conventions refer to members of minority groups as only pertaining to that one group, but individuals, say, in Macedonia may wish to be both Macedonians and Greeks simultaneously.

Definitions of rights can elide the ambiguity of social life. For instance, the whole idea of human rights requires that a distinction be made between

human rights violations (which are committed by an agent of the state authorized to carry out the act) and criminal acts (where the state or political organization is not a party to the action). Yet in many scenarios, criminal and political networks are intertwined and perpetrators are both criminals and political agents, and their violent acts are *both* criminal acts *and* human rights violations.

The social critique of rights along these lines is part of a wider anthropological critique of the epistemological inclinations of modern states, and of positivism in particular.[13] The anthropological critique of the convergence of sociological and legal positivism in rights discourses expresses a scepticism of the manner in which positivism relies upon categorizing and counting a social reality that is complex, fluid and in motion, as well as the ways in which positivism cannot seem to account for human subjectivity and intentionality.[14] A number of authors in the volume draw our attention not only to the epistemological consequences of legal positivist claims to truth, but also their political and ethical implications as well.

One consequence of the reliance of human rights institutions on positivist accounts of social life is the depoliticizing of ideological conflicts. It is clear that rights regimes delineate the boundaries within which political contestation can take place. In Fiona Ross's chapter on the South African Truth and Reconciliation Commission, we see that the Commission focused on the spectacular, measurable acts of physical violence such as torture and killing, thus flattening out the complex moral terrain of everyday life during the apartheid period of 1948–94. This obstructed a clear vision of the subjective and gendered aspects of people's experiences of life under apartheid.

A number of chapters in the volume go beyond the social critique of rights to provide a clear indication of the ethical alternatives to rights talk. Both Hastrup and Josephides seek to ground human rights in shared social and moral spaces of the everyday. Josephides seeks to create a human ontology which is based not upon western principles, but emerges out of ethnographic observations which reveal moral attitudes towards human dignity that are shared across cultures. She rejects cultural relativism using MacIntyre's ideas of 'epistemological crisis' and indicates how Martha Nussbaum's emphasis on 'grounding experiences' could be applied in Papua New Guinea in order to reinforce a pan-cultural conception of what being human entails. Kirsten Hastrup urges us to eschew the atomized individualism of the rights regime and to give more attention to moral agency within a shared social space. To the extent that people's lives are rule-governed at all, rules and norms are not expressed in legal language but in social practice. She goes on to elaborate a criticism of the disengaged self of human rights and speak of a more socially embedded and dialogical understanding of self.

In a similar vein, but with a more ethnographic emphasis, Fiona Ross focuses not on the passivity of 'victims' but on everyday resistance and on the struggle to be 'ordinary'. She wants to view apartheid not only through

the lenses of victims and perpetrators, and gross human rights violations, but through an understanding of the transformation of values in the social practice of those resisting apartheid. Both Hastrup and Ross focus on the body as a site of integration of thought and action, as a site of experience and knowledge. The body is also central for Maya Unnithan-Kumar, as a locus of claims and entitlements over reproductive health provision in India. Using theoretical material from the anthropology of emotion, she emphasizes – echoing Ross – the need to see claimants as both subjects *to* the external agency of the state and of the moral force of kinship, and subjects *of* their own framing of claims to reproductive health. Her chapter highlights the extent to which rights and claims depend on the play of subjectivity and objectivity inherent in the relationship between body and self.

These anthropological formulations of human rights indicate what anthropology can offer to discussions about human rights in political philosophy and social theory insofar as they stress human *sociality* as opposed to the foundations for human rights found in conventional liberal accounts. Liberalism has produced many different philosophical foundations for natural or human rights, but they tend to congregate at two poles, humanity as a 'full vessel' and humanity as an 'empty vessel', one which stresses a definable and rational content to human nature and one which operates with an empty vision of 'bare life'.

First, we will deal with the 'strong' view of a human nature based upon rationality and reason which derives ultimately from Aristotle's statement that man is a rational animal. Central to this dominant strand of human rights foundationalism is the view that the 'essential human being' has needs and attributes which override any cultural variations in practice. Within the Kantian tradition in particular, moral universalism is underpinned by Reason and the capacity to abstract and generate general propositions using symbols in speech and writing. The ability to reason serves a double function within natural rights thinking: it is both what makes us human and is also the mechanism through which human rights are discovered though self-conscious rational reflection. Not all humans reason with equal skill, accepts Margaret MacDonald (1984), a modern defender of the neo-Kantian paradigm, but we all have equal rights regardless, since we all belong to the category of 'reasoning human being'. For MacDonald (ibid.: 32), human rights facilitate the realization of human potential as they are constituted on the Kantian premise that 'to treat another human being as a person of intrinsic worth, an end in himself, is just to treat him in accordance with the moral law applicable to all rational beings on account of their having reason'.

Central to the liberal project has been another, contrary, conception of humanness which Giorgio Agamben (1998) identifies as a stripped-down view of 'bare life', a term which Agamben borrows from Benjamin and Arendt. The refugee is the paragon of this forlorn, barren figure of humanness, and Agamben quotes Hannah Arendt in the *Origins of Totalitarianism* thus:

> The conception of human rights based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships – except that they were still human.
>
> (Ibid.: 126)

Within the modern liberal constitutional order, argues Agamben, bare life (*zoē*) is opposed to political life (*bios*) as an exception upon which the system of judicial sovereignty rests and relies. The distinction between bare life and political life becomes the basis for state sovereignty and legitimacy. This distinction is found in the French 1789 Declaration of the Rights of Man and the Citizen, where 'man' is defined as bare life and the 'citizen' as man who holds rights and acts politically within the *polis*. Agamben, drawing heavily from Foucault and Derrida, argues that this vision of judicial sovereignty also contains an ontology and a vision of life, and that through the image of bare life a new biopolitics of modernity emerged which legitimated the functions of the emergent nation-state. Humanitarian organizations can only apprehend the figure of bare life, for instance in the figure of the Rwandan refugee, and are therefore condemned to reinforce the sovereign authority of nation-states. Whatever the merits of the overall argument, and Agamben (ibid.: 10) makes some questionable assertions about the 'inner solidarity' between democracy and fascism, this line of reasoning at least identifies one significant coincidence between ideas of bare, naked humanity, human rights and the sovereign power of nation-states.

From reviewing the kind of accounts that anthropologists have produced, a pattern emerges and it is our contention that anthropological studies tend to lie between the rationalism of strong theories of human nature and rights, and liberalism's view of bare life as identified by Agamben and Benjamin. Anthropological accounts do not generally posit a strong theory of human universals and certainly do not exalt Reason within them. Rational thought is certainly a potentiality of humans, but very few anthropologists have made it the distinguishing attribute upon which an entire political and social theory could be constructed. Human rights are a property of relationships and interconnections between social persons who exercise moral agency, rather than a consequence of the essential capacities of asocial individuals. Nor do anthropological accounts commence with the individual who is stripped of everything bar their essential humanity, as with Shakespeare's 'poor, bare forked animal' who is, like the character of Edgar in *King Lear*, cast out naked into the wild by the scheming Edmund, without any social bonds for protection.[15]

In contrast, anthropologists portray human rights as embodied in social persons and embedded in social networks. Networks of mutuality and reciprocity exist even among refugees and the dispossessed. King Lear's Edgar

is an early modern figure of dispossession and exile caused by political conflict that might serve as the precursor of the modern refugee who lacks citizenship rights, a passport and protection within a system of state authority. The wandering and forlorn Edgar is a powerful literary figure who represents the way in which the marginalized and dispossessed challenge the authority and legitimacy of rulers. Yet he is not an entirely accurate figure, empirically speaking. Even among those most exposed to the horrors of war and political violence, people enter into relationships of reciprocity and exchange, and they collectively create narratives about trauma.[16] Some trust and confidence must exist as a precondition for these other social activities. If we are looking for foundations for human rights, then one anthropological approach would say that abstracted and universal forms of human solidarity must arise from these everyday forms of compassion and empathy which necessarily involve a recognition of the other.

Questions of scale and context: or reconceptualizing universalism and relativism

> Anthropology can prosper without a global concept of culture or without any concept of culture.
>
> (Fox and King 2002: 5)

Part of the explanation for the shift away from relativism in recent anthropological thinking must be due to the recognition that there are no isolated and bounded cultures and societies to reinforce an 'archipelago' view of culture. This observation comes at a point when some voices in the discipline are arguing that we live in a post-cultural world with greater emancipatory potential for individual autonomy and agency.[17]

The desire to go 'beyond culture' in some quarters of anthropology has led to a variety of attempts to construct new forms of anthropological inquiry – new types of ethnographic research – that transcend notions of isolated, bounded cultures.[18] In some cases, this has provoked an interest in transnational, diasporic populations who are explored through multi-locale fieldwork.[19] In other cases, it has led to an ethnography that focuses on global institutions and global processes themselves.[20] Such a move displaces the universalism–relativism polarity, opening space for new – or rehabilitated – forms of critical evaluation based on an analysis of power and agency.

For John Gledhill, to give one example of this new thinking, the problem is not about relativism or universalism, but access to global justice and the lack of accountability of rights institutions. Newer debates on power, globalization and transnationalism seem to have displaced the terms of the relativist–universalist polarity. The discussion has been reframed in terms of interconnections, networks and movements of people, ideas and things

rather than static and discrete cultures in conflict. Nevertheless, the problem remains of how to steer a path between the rarified and decontextualized ethics of neo-Kantian political philosophers such as Gewirth (1978) and the radical populism of simply reinforcing what informants say about justice, rights and political claims. Even more challenging is how to make that path meet the requirements of being ethical, empirically informed and conceptually sophisticated.

Several chapters within the volume effectively deal with the relationship between human rights and transnational processes and institutions. Martin Mills looks at the furore over the suppression of the Shugden sectarian movement within Tibetan Buddhism to illustrate the limitations of human rights when dealing with a state that is transnational and in exile. Mills critiques liberal human rights theory for its reliance on a particular version of the state which is territorially bounded and centrally command-based, a version which is not applicable to the Dalai Lama's government in exile (the Central Tibetan Administration) and other transnational political institutions like it. This argument could also be extended to transnational religious states which do not fit the liberal secular mould, and this discussion is pursued in Mills's chapter as well as that of John Bowen, who writes of the various strategies of being a Muslim in France. How do we deal with claims of Muslims in situations as similar and different as France and Quebec? How do different versions of Buddhism, Christianity or Islam shape the ways in which rights struggles take place within nation-states?

Good and Navaro-Yashin focus on the processing of asylum claims in UK and European contexts, a political issue which has moved centre stage with the rise of anti-immigration right-wing parties in European elections in 2002. These two authors raise significant questions both about the transnational processes of asylum and about the legal process more generally. In both cases, they chronicle the paradoxes of claims caught between the letter of the law and its interpretation in specific contexts.

Good addresses the status of expert witnesses in asylum cases, examining the relationships between the UK authorities', the United Nations High Commissioner for Refugees' and the expert witnesses' interpretations of both the international conventions relating to refugees, and the evidence about human rights abuses in Sri Lanka. His chapter raises questions not only about anthropological advocacy, but also more generally about the nature and status of witness and evidence in legal procedures. For Navaro-Yashin, the focus is not the witness but the document, and particularly the status of documents that invoke contentious regimes – or 'non-regimes' – such as northern Cyprus. Her analysis shows the practical consequences of legal documentary fetishism, when asylum claims are rejected because they refer to rights abuses in states that are not legally recognized. Just as asylum seekers are transnational, so too are the legal processes surrounding their claims.

The question of rights, and the influence of debates about transnationalism within the social sciences more generally, have increasingly pushed

social anthropologists into thinking harder about the problem of comparison. Social anthropology since the 1980s (excepting the Marxian political economy tradition of Sidney Mintz, Eric Wolf and others) has largely eschewed large-scale comparison in favour of fine-grained description and analyses of local social practices and beliefs.[21] It has been asked, what is to be compared, when the meaning of elements being compared (religion, ethical values or political structures) not only varies enormously, but is highly dependent on local context? The expansion of rights makes rights discussions more ubiquitous but at the same time it makes comparison more difficult since social researchers must always ask themselves if they are comparing the same kinds of social processes and, if so, then what characteristics do they share? We have already seen one example of a valuable comparison in the preceding discussion, where one could compare case studies of how rights relate in different locales to transnational religious traditions such as Islam and Buddhism.

Another possibility might be to compare those political institutions of the modern bureaucratic state which are widespread, though in different forms and with different powers. Along these lines, one possible avenue might be to distinguish, as Anthony Giddens (1985) does in *The Nation-State and Violence*, between 'weak' states and 'strong' states. Strong states are those which carry out social regulation through building influential and extensive state institutions delivering education, health care and social welfare services. Strong states are able to exercise legal domination through their jurisdiction in the adjudication of social conflict, as well as operating significant surveillance capabilities and disciplinary powers. Strong states tend to be more receptive to the demands of rights organizations and social movements in so far as they possess a legal infrastructure with the capacity to expand access to justice and to respect due process.

Weak states in places such as Guatemala or Sierra Leone, on the other hand, have only a minimal capacity in this regard. Power and authority are fragmented, good governance is undermined by corruption and nepotism, legal jurisdiction is weak or non-existent and fairness and equality before the law is a slender hope. These states are therefore more reliant upon violence as a means of symbolically communicating their power and materially attempting to build their authority. The distinction between strong and weak states would facilitate certain types of comparison and impede others – but for the right reasons. For example, comparing indigenous rights in Bangladesh and Canada, even though the rights talk may sound similar, is unlikely to yield a great deal of insight into either the causes or consequences of human rights in the political arena. However, comparisons of the treatment of asylum seekers in Britain, Canada and the US, or rights claims around Islam in Macedonia, Indonesia and South Africa are more sociologically defensible since they are based upon comparable state infrastructures, disciplinary power and relative positions within a global economy.

In addition, the contrast between states of different capacity must be theorized in the context of the globalization of a mobile capitalist political economy which generates weak states which are characterized by their inability to create consent, legitimacy and strong institutions. Such 'failed states' do not collapse solely as a result of their own internal discord, ethnic or otherwise. They are also produced by their position within a global market characterized by flexible forms of capital accumulation which structurally marginalize whole swathes of humanity, most noticeably in Africa. The ability of the state to generate legitimacy through providing stability, security and social services is further undermined by neoliberal structural adjustment policies insisted upon by intergovernmental institutions such as the World Bank. The internalization of war since 1989 has to be understood in this light – not as the re-emergence of ancient loyalties and primordial identities, but as the consequence of the collapse of weak states. As Ignatieff writes:

> Even the long-standing, apparently adamantine antipathies of the ethnic war zones turn out, on closer examination, to be expressions of fear created by the collapse or absence of institutions that enable individuals to form civic identities strong enough to counteract their ethnic allegiances. . . . It is the disintegration of states, and the Hobbesian fear that results, that produces ethnic fragmentation and war.
>
> (1999: 7)

In their structurally weakened position, failed states are more beholden to international intergovernmental organizations such as the United Nations which then extend forms of global regulation through insisting upon the implementation of international human rights standards. In a positive sense, this linking up of intergovernmental organizations and national social movements can empower local human rights and civil society groups and make citizenship more participatory. For some victims in Sierra Leone, for instance, the UN-administered Special Court and Truth and Reconciliation Commission are their only chance for some semblance of 'justice'. More negatively, interventions are often cases of the international community clearing away debris of the disaster which it either fomented in the first place, or failed to prevent. Also, international humanitarian intervention risks generating a new type of legitimacy crisis for post-conflict state institutions, since human rights standards are introduced in a context where the state infrastructure is often devastated by political conflict and economic collapse.

In this global context, anthropologists should not shrink from making bolder assertions to policy makers and liberal theorists alike regarding the outcome of rights-based policies in the areas of development, health and criminal justice reform. First, there is a need to point out the unintended consequences of humanitarian policies and their impact upon people's lives,

consequences that are seldom envisaged by the decision makers in bureaucratic institutions. Second, there is a need to transform the very practices of rights institutions, whether they are transnational institutions such as the UN Human Rights Commission, state bodies such as the South African Truth and Reconciliation Commission or non-governmental organizations such as Amnesty International.

These institutions must provide greater access and accountability and openness to views of human rights based in the shared moral spaces of everyday life as well as respond to claims and entitlements not made in the language of legality. Large-scale humanitarian interventions must be more sensitive to historical context and local practices and needs, and less beholden to the agendas created in New York, London or Geneva. Another clear message from anthropological studies of these institutions is the need to move away from positivist epistemologies and forms of social classification and for rights institutions to incorporate in their history-writing more socially embedded forms of narrative and moral recognition.

Notes

1 See Herskovits (1947), Messer (1993), Renteln (1985, 1988), Washburn (1987) and Wilson (1997).
2 See Pollis and Schwab (1980) and Pollis (1992).
3 Asian Charter for Human Rights, 1999.
4 Amartya Sen's (1999: 231) hugely influential book *Development as Freedom* bases development primarily in ideas of freedom, but sees rights as a necessary supplement, and the book includes a significant discussion of human rights.
5 See Held (1995), O'Neill (2000) and Pogge (2001).
6 See Kuper (1994).
7 See Kuper (1973: 30).
8 Bourdieu (1977, 1990) and Ortner (1984).
9 See Moore (1986).
10 In his summing up of the multiculturalism panel, Ralph Grillo distinguished between rights and claims by making the analogy of the *realpolitik* distinction between a language and a dialect, where 'a language is a dialect with an army'. Thus rights are claims with the backing of the coercive apparatus of a state or transnational institution (such as the International Criminal Court). Rights are, in this formulation, hegemonic claims.
11 See, for instance, Hunt (1993), and Hunt and Wickam (1994). On the use of language in courts, see Conley and O'Barr (1990).
12 'Review of the TRC report' by Jeremy Cronin, *The Star* (Johannesburg), 31 October 1998.
13 For a critique of positivism in human rights reporting, see Wilson (1997) and chapter 2 of Wilson (2001).
14 See also Tamanaha (1997).
15 On encountering Edgar on the wild heath, Lear fumes 'Is man no more than this? Consider him well. Thou owest the worm no silk, the beast no hide, the sheep no wool, the cat no perfume. Ha! Here's three on's are sophisticated. Thou art the thing itself! Unaccommodated man is no more but such a poor, bare, forked animal as thou art' (*King Lear,* Act 3, Scene 4).

16 On collective narrative-making among refugees see chapter 7 of Wilson (1995) and pp. 162–5 of Declich (2001). On how victims remake their world through narrative see Das *et al.* (1997, 2001).
17 See Rapport (1998).
18 See Abu-Lughod (1991), Fog Olwig and Hastrup (1996) and Gupta and Ferguson (1992, 1997).
19 See Marcus and Fischer (1986).
20 As exemplified by the recent issue of *Ethnography* dedicated to Global Ethnography (Burawoy 2001).
21 See Fardon (1987) for one oppositional view to the idea of comparison. More recent discussions have taken place, for instance in Adam Kuper's (1992) European Association of Social Anthropologists volume and the special issue on comparison of the journal *Anthropological Theory* (2002, issue 2.1).

Bibliography

Abu-Lughod, L. (1991) 'Writing Against Culture', in Richard G. Fox (ed.) *Recapturing Anthropology,* Santa Fe: SAR Press.

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

Bourdieu, P. (1977) *Outline of a Theory of Practice*, Cambridge: Cambridge University Press.

Bourdieu, P. (1990) *The Logic of Practice*, Cambridge: Polity Press.

Burawoy, M. (ed.) (2001) 'Global Ethnography', special issue of *Ethnography* 2(2).

Conley, J.M. and O'Barr, W. (1990) *Rules Versus Relationships: The Ethnography of Legal Discourse*, Chicago: University of Chicago Press.

Cowan, J., Dembour, M. and Wilson, R. (eds) (2001) *Culture and Rights: Anthropological Perspectives*, Cambridge: Cambridge University Press.

Das, V.A.K., Ramphele, M. and Reynolds, P. (eds) (1997) *Violence and Subjectivity*, Berkeley: University of California Press.

Das, V.A.K., Lock, M., Ramphele, M. and Reynolds, P. (eds) (2001) *Remaking a World: Violence, Social Suffering and Recovery*, Berkeley: University of California Press.

Declich, F. (2001) 'When Silence Makes History: Gender and Memories of War Violence from Somalia', in B. Schmidt and I. Schroeder (eds) *Anthropology of Violence and Conflict*, London: Routledge.

Fardon, R. (1987) '"African Ethnogenesis": Limits to the Comparability of Ethnic Phenomena', in L. Holy (ed.) *Comparative Anthropology*, Oxford: Blackwell.

Fog Olwig, K. and Hastrup, K. (eds) (1996) *Siting Culture*, London: Routledge.

Fox, R.G. and King, B.J. (2002) *Beyond Culture*, Oxford: Berg.

Geertz, C. (1983) 'Fact and Law in Comparative Perspective', in *Local Knowledge: Further Essays in Interpretative Anthropology*, New York: Basic Books.

Gewirth, A. (1978) *Reason and Morality*, Chicago: University of Chicago Press.

Giddens, A. (1985) *The Nation-State and Violence*, Cambridge: Polity Press.

Gupta, A. and Ferguson, J. (1992) 'Beyond Culture', *Cultural Anthropology* 7(1): 6–23.

Gupta, A. and Ferguson, J. (eds) (1997) *Culture, Power, Place*, Durham: Duke University Press.

Held, D. (1995) *Democracy and the Global Order: From the Modern Nation-state to Cosmopolitan Governance*, Cambridge: Cambridge University Press.

Herskovits, M. (1947) 'Statement on Human Rights', *American Anthropologist* 49(4): 539–43.
Hunt, A. (1993) *Explorations in Law and Society: Towards a Constitutive Theory of Law*, London: Routledge.
Hunt, A. and Wickham, G. (1994) *Foucault and Law*, London: Pluto Press.
Huntingdon, S. (1996) *The Clash of Civilizations and the Remaking of World Order*, New York: Simon and Schuster.
Ignatieff, M. (1999) *The Warrior's Honor*, London: Vintage.
Kuper, A. (1973) *Anthropologists and Anthropology: The British School*, London: Allen Lane.
Kuper, A. (1992) *Conceptualizing Society*, London: Routledge.
Kuper, A. (1994) 'Culture, Identity and the Project of a Cosmopolitan Anthropology', *Man* 29: 537–54.
Macdonald, M. (1984) 'Natural Rights', in J. Waldron (ed.) *Theories of Rights*, Oxford: Oxford University Press.
Marcus, G. and Fischer, M.J. (1986) *Anthropology as Cultural Critique*, Chicago: Chicago University Press.
Messer, E. (1993) 'Anthropology and Human Rights', *Annual Review of Anthropology* 22: 221–49.
Moore, S.F. (1986) *Social Facts and Fabrications*, Cambridge: Cambridge University Press.
O'Neill, O. (2000) *Bounds of Justice*, Cambridge: Cambridge University Press.
Ortner, S.B. (1984) 'Theory in Anthropology Since the Sixties', *Comparative Studies in Society and History* 28: 126–66.
Pogge, T. (ed.) (2001) *Global Justice*, Oxford: Blackwell.
Pollis, A. (1992) 'Human Rights in Liberal, Socialist and Third World Perspective, in R.P. Claude and B.H. Weston (eds) *Human Rights in the World Community: Issues and Action*, Philadelphia: University of Pennsylvania Press.
Pollis, A. and Schwab, P. (eds) (1980) *Human Rights: Cultural and Ideological Perspectives*, New York: Praeger.
Rapport, N. (1998) 'The Potential of Human Rights in a Post-cultural World', *Social Anthropology* 6(3): 381–8.
Renteln, A.D. (1985) 'The Unanswered Challenge of Relativism and the Consequences for Human Rights', *Human Rights Quarterly* 7: 514–40.
Renteln, A.D. (1988) 'Relativism and the Search for Human Rights', *American Anthropologist* 90: 64.
Sen, A. (1999) *Development as Freedom*, Oxford: Oxford University Press.
Shakespeare, W. (1972) *King Lear*, ed. G.K. Hunter, London: Penguin Books.
Tamanaha, B.Z. (1997) *Realistic Social-Legal Theory: Pragmatism and a Social Theory of Law*, New York: Oxford University Press.
Washburn, W. (1987) 'Cultural Relativism, Human Rights and the AAA', *American Anthropologist* 89: 939–43.
Wilson, R.A. (1995) *Maya Resurgence in Guatemala: Q'eqchi' Experiences*, Norman, Oklahoma: University of Oklahoma Press.
Wilson, R.A. (ed.) (1997) *Human Rights, Culture and Context: Anthropological Approaches*, London, Chicago: Pluto Press.
Wilson, R.A. (2001) *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-apartheid State*, Cambridge: Cambridge University Press.

Chapter 1

Representing the common good

The limits of legal language

Kirsten Hastrup

The last decade has witnessed an intensification of a global process that might best be termed a 'legalization of culture', implying that the law is becoming the predominant and most articulate standard of value in many societies. Consequently, ever more social, political and cultural values are expressed in or measured by legal terms at the expense of other normative systems and public moral debates. The US, of course, is in the lead here. The law has become the centre of gravity in the American sense of 'belonging'; it has replaced culture(s) as the means of inclusion or exclusion par excellence (Karst 1989). What is more, in the US the law literally has become soap opera, fuelling popular culture to an unprecedented extent (Porsdam 1999).

At an international level, this trend is also gaining momentum; public international law is now a standard by which one may measure the relative 'quality' of particular nation-states. Among other things, 'belonging' to the international community (of states) means endorsing human rights; human rights, therefore, are illustrative of the (global) process of legalization, and the inherent schisms between morality and law. They also demonstrate that, for all the power at addressing issues of right and wrong, the explication of justice and ethics in legal terms leaves out vast areas of moral agency. The aim of this contribution is to investigate some of the implications of legalizing the moral discourse with a view to a larger question of how to represent the 'common good', and how to link representation with practice. If the argument is of a rather general or abstract nature, other chapters in this volume (notably by Cowan and Ross) add ethnographic substance to my claims.

A global culture of human rights?

It has been claimed that we are now living in an 'age of rights' (Bobbio 1996); with this claim goes an image of a 'global culture of rights'. We encounter this increasingly strongly articulated notion of a culture of rights in most recent statements made by the UN High Commissioner for Human Rights (1997–2001), Mary Robinson, as well as by academics of various kinds (e.g. Rorty 1993). From an anthropological perspective it is a peculiar

culture in the sense that it is declared rather than lived, and that it is future-oriented rather than based in tradition (see Hastrup 2001c).

Attempts have been made at establishing a tradition by tracing the history of international human rights standards through a series of (western) declarations (e.g. Winston 1989; Hufton 1994). Allegedly, the human rights were in the making for centuries as 'natural rights', 'rights of man' and 'rights of citizens'; this genealogical construction has a remarkably western bias that is not only counter-productive but also to some extent seems to belie the nature of the actual drafting of the Universal Declaration of Human Rights in 1948 (see Lindholm 1999). This declaration has been hailed as the first truly *international* document on human rights; as Vaclav Havel has said:

> A number of diverse texts have played fundamental roles in human history. The Universal Declaration of Human Rights differs from all the others primarily in one respect: its impact has not been meant to remain confined within one culture or one civilization. From the very outset, it has been envisaged as a universal, so to speak planetary, set of principles to govern human coexistence, and it has gradually become the point of departure for countless successive guidelines defining the rules of a worthy life together for the people and nations of this Earth. Texts of such fundamental nature are not easily born.
>
> (Havel 1999: 331)

In this particular case, the text was born out of the Second World War and, like all later documents, was deeply embedded *in* history. Even claims to universality are historical in this sense (see Hastrup 2001a). This also applies to a recent attempt at constructing a global genealogy for the Universal Declaration by way of insisting that human rights have multiple sources. As Mary Robinson had it in 1998:

> Today the Universal Declaration of Human Rights stands as . . . one of the great documents in world history. The *travaux préparatoires* are there to remind us that the authors sought to reflect in their work the differing cultural traditions in the world. The result is a distillation of many of the values inherent in the world's major legal systems and religious beliefs including the Buddhist, Christian, Hindu, Islamic and Jewish traditions.
>
> (Symposium on Human Rights in the Asia-Pacific Region, January 1998)

We might want to argue that the 'distillation' of religious beliefs cannot be sustained historically, and that it simply sidesteps the issue of cultural diversity. Even so, it points to an ever present tension in human rights thinking between transcendent and historically embedded values; this tension should not simply be glossed over in a pragmatic insistence on the impossibility of

grounding human rights philosophically and, therefore, to eschew their universality by reference to anything but their practical and sentimental value (e.g. Rorty 1993). Rather, the tension itself should be explored for the insight it provides about human life itself, likewise unfolding between a sense of shared knowledge and individual experiences. From our own discipline, anthropology, we know that the only way to make sense of cultural difference is to assume a shared humanity and a basic intelligibility (Hastrup 2002c). Instead of being trapped in the stale discussion between universalism and relativism as logically opposed and mutually exclusive, we have moved on to seeing universality and relativity as mutually implicated. This also goes for human rights.

It is no coincidence, therefore, that anthropologists do not feel the need to take a stand for or against human rights, as they used to do, favouring either universalism (often interpreted as Eurocentrism) or cultural relativism (seen as solidarity with the weaker populations of the globe). Anthropology itself, by insisting on and substantiating the fundamental intelligibility of all humans across cultures, has contributed immensely to paving the way for a universal standard of morality. In a recent discussion of the creation of a universal morality, Zygmunt Bauman draws the attention to the point once raised by Roland Barthes that the substance of myth is to represent history as nature, that is to cast the human-made as the unquestionable, and Bauman suggests that 'the myth of universal human rights is no exception' (Bauman 1999: 9).

This particular myth is very much a symptom of the historical process of globalization that has itself become naturalized along with the general diagnosis of a postmodern time–space compression. Allegedly, due to this compression people have come to experience worldwide suffering at close range; this has not led to more compassion for fellow humans, however. This apparent paradox is related to the creation of new techniques of distancing; as we know distance always carries its own moral implications (see Ginzburg 1995; Hastrup 2002b). In actual fact, globalization not only connects but also disconnects people from each other. Somewhat paradoxically, the satellite-borne images of sufferers elsewhere on the globe tend to fix them as eternal 'others' rather than 'like us', to take an example that is partly explicable in terms of the contrast between visual and textual representation (Hastrup 1992).

Intellectuals likewise contribute to the dehumanization of the global space by repeatedly referring to the process of globalization as if devoid of human agency, and we might be well advised to thoroughly consider the conceptual responsibility of intellectuals with respect to the implications of globalization (see Hastrup 2002a). It seems to me that globalization has turned into a kind of 'globalism' among intellectuals that leaves the old notion of Orientalism (Said 1979) nothing wanting. Like Orientalism, globalism remains an *external* perspective upon the world, sustained by metaphysical realism and denying people both history and agency. This contributes negatively to the

sense of a shared human responsibility, and thus, arguably, to the increasing propagation of the global culture of human rights. There are no responsible human agents in the globalist world-view; only states (and now increasingly multinational firms and corporations) are responsible actors in the world of human rights. There are decisions made somewhere in the world that have effects elsewhere; there are collapses in the stock exchange that affect prices worldwide; there are cybercities and internetworks, satellite communication and commerce in futures; and there are international courts of human rights taking states to task for their performance vis-à-vis their citizens. All this, I would argue, contributes to the distancing of people from their own histories, much in the same manner as the imperial topography did.

Thus, we should be careful not to equate globalization with an idea of global compassion; likewise, to proclaim a global culture of human rights may actually alienate people from their own horizon of a truly moral agency. Anthropologists have attempted to add life and texture to the human rights discussion by reverting to local experiences of injustice and violence (e.g. Wilson 1997 and various contributions to this volume). There is another lesson to take, however, namely that the idea of a transcendent culture of human rights is an integral part of the historical moment; it both expresses a global outlook and reacts against its obvious inequalities. Expression and reality are not simple reflections of each other, as the modernists would have it, to express a global culture in legal terms not only jeopardizes a sense of agency, it is also to accept a very 'thin' description of morality and human values. This shall now be substantiated further.

Speaking law

In modern legal thinking, dating back to Montesquieu, whose work *The Spirit of the Laws* (first published in 1748) has been extremely influential in Europe, there is a latent schism between natural and positive law. Montesquieu defines laws, in the broadest sense, as 'the necessary relations deriving from the nature of things' (1989: 3), and he goes on to define *natural* laws as those that derive uniquely from the constitution of our being, listing the quest for peace as the first natural law, the seeking of nourishment as the second, the entreaty between the sexes as the third, and, finally, the desire to live in society as the fourth natural law (ibid.: 6–7). Once this last desire is fulfilled the need for *positive* laws arises:

> As soon as men are in society, they lose their feeling of weakness; the equality that was among them ceases, and the state of war begins.
>
> Each particular society comes to feel its strength, producing a state of war among nations. The individuals within each society begin to feel their strength; they seek to turn to their favor the principal advantages of this society, which brings about a state of war among them.

> These two sorts of states of war bring about the establishment of laws among men. Considered as inhabitants of a planet so large that different peoples are necessary, they have laws bearing on the relation that these peoples have with one another, and this is the *right of nations*. Considered as living in a society that must be maintained, they have laws concerning the relation between those who govern and those who are governed, and this is the *political right*. Further, they have laws concerning the relation that all citizens have with one another, and this is the *civil right*.
>
> (Montesquieu 1989: 7)

The extensive quotation from Montesquieu goes to show how, in fact, his (dual) legal programme still seems to govern present-day human rights thinking, equally spanning from the right of nations to civil rights, and legitimizing the positive legal ruling by reference to a natural law principle. The latter is a precondition for the claim to universality as expressed for instance in the Universal Declaration of Human Rights:

> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
>
> (UDHR, Article 1)

This Article is well known, and my point in quoting it here is simply to show how the human rights instruments point to a transcendental human nature expressed in terms of social values that are thereby naturalized. This is not the only instance of natural law surfacing in the positive legal instruments. The schism between natural law and positive law has divided human rights thinkers in two major groups, both of which find support in the human rights documents themselves. While the articles of the various conventions generally tend to stress the aspect of positive law, the preambles more often than not provide the philosophical or moral underpinnings of these.

Whether natural or positive, Montesquieu saw the law as the mouth or the voice of society, i.e. the means by which the implicit relations and values were externalized. This also seems to be one of the driving forces of human rights talk; it has even been claimed that 'human rights only exist because they are talked about' (Dembour 1996: 22). The important point is that any discourse, including the legal discourse, is a creative speech which may bring into existence that of which it speaks. Language produces existence by producing the collectively recognized, and thus realized, representation of existence (Bourdieu 1991: 42). Moreover, language, including legal language, still has a distinct quality of address that should not be overlooked; the arbitrary signs derive their signification from actually being *addressed* (Lyotard 1993: 137). Human beings are bound together in a speech

community; there can be no sense of self or of worth outside a conversational community by which a moral horizon is established (Taylor 1989). From this perspective, 'speaking the law' may actually take us part of the way towards a realization of the values of human dignity and equality inherent in the human rights conventions. The South African Truth and Reconciliation Commission is a case in point (see Ross, this volume)

It does not take us there by itself, of course. It must be addressed both in the right places and in the right way. And here we face a new problem in that the international legal language, including the language of human rights, translates social, cultural and economic differences into differences in 'linguistic' competence. In the process of producing a legitimate, standardized language, sociologically and historically pertinent differences of various kinds are expressed in different *uses* of the same language and are evaluated accordingly. People will show more or less competence of expressing their rights within the idiom of international legal language, which now functions as the legitimate representation of a global moral economy.

This is where social scientists should become more aware of the nature of language itself. Language never directly represents the social, nor is it simply the handmaiden of reason. It has its own logic and rules of operation that have their own symbolic effects on society. As Bourdieu has reminded us:

> language is the exemplary formal mechanism whose generative capacities are without limits. There is nothing that cannot be said and it is possible to say nothing. One can say everything in language, that is, within the limits of grammaticality. We have known since Frege that words can have meaning without referring to anything. In other words, formal rigour can mask *semantic freewheeling*.
>
> (1991: 41)

Legal language and rights talk may externalize implicit values and potentially bind people together in a speech community, but the possibility remains that the language spoken is semantically empty, because the words refer to no actual experience. The language remains form without substance. The (possible) lack of substance may persist and may even pass unnoticed because the process of externalization implied in the speaking of the law is never a simple process of representation. As Bourdieu (once again) reminds us:

> [M]oving from the implicit to the explicit, from one's subjective impression to objective expression, to public manifestation in the form of a discourse or public act, constitutes in itself an act of *institution* and thereby represents a form of officialization and legitimation: it is no coincidence that . . . all the words relating to the law have an etymological root meaning to say. And the institution, understood as that which is already instituted, already made explicit, creates at one and the same

> time an effect of public care and lawfulness and an effect of closure and dispossession.
>
> (Bourdieu 1991: 173)

Thus, the mere fact of voicing the law is also an act of instituting it and of demarcating right from wrong. In the process, people and acts are included or excluded from a particular social space and its instituted legitimate language. To fill in the empty space of the common good with meaning, we shall pursue the discussion of legal representation.

Representing morality

Any culture in some ways rests on representation; for it to be conceivable as a whole, it must be demonstrated as such. In a 'legal culture', such as the international culture of human rights, the representation becomes of a particularly reductive kind, because the experiences, by being represented as if on permanent trial in a courtroom, become subjected to an unavoidable process of reduction, or a 'skeletonization of fact, the reduction of it to the genre capacities of the law note' (Geertz 1983: 172).

The limiting genre capacities are accompanied by a feature of specialism. Legal language is a language of specialists; as such it is marred by a feature of distortion that goes with all specialist languages. As Bourdieu has it:

> The specialized languages that schools of specialists produce and reproduce through the systematic alteration of the common language are, as with all discourses, the product of a compromise between an expressive interest and a censorship constituted by the very structure of the field in which the discourse is produced and circulates.
>
> (Bourdieu 1991: 137)

Both expressive interest and the feature of censorship are found within the increasingly self-righteous human rights discourse, where the appeal to rights sometimes leads to an almost absurd literality, as the following example will show. In international archaeological scholarship, the discussion of archaeological access to prehistoric North American burial sites and their human remains is cast in terms of hearing 'the rights of tribal bones' in court. This is no metaphor, nor is it simply a token of respect for the remains, which would be fair enough given the colonial history of North America. It is to be taken quite literally, as far as our archaeological spokesman is concerned:

> Human remains, tribal bones, have rights, human rights, protected by a creative and pragmatic interpretation of the Bill of Rights which forbids the taking of life, liberty, or property, without due process of law. Tribal bones are sovereign, a moral measure of properties, and an agonistic

> continuation of narrative rights in language – a postmodern language game. Tribal remains bear the same rights to be represented in court as those human and civil rights provided in constitutional interpretations; moreover, bones are in human communion with the earth, a natural disposition, and cannot be taken for public use – such as archaeological research and museum servitude – without legal consideration and compensation.
>
> (Vizenor 1996: 654)

The passage is extraordinary, not only for its will to protect human remains, but also and especially for its representation of the matter in legal terms. Morality is translated into legality, with nonsensical consequences: 'hearing' the bones and duly compensating them for the inconvenience of being disinterred may eventually legitimize exhibition. With all due respect, this suggestion is an instance of suspending common sense by way of the language of human rights. There might be other means of appealing to scholarly ethics. The problem is that, in the age of rights, the discourse is already predetermined. It is determined both by expressive interest and by structural censorship, in Bourdieu's phrasing.

> The metaphor of censorship should not mislead: it is the structure of the field itself which governs expression by governing both access to expression and the form of expression, and not some legal proceeding which has been specially adapted to designate and repress the transgression of a kind of linguistic code.
>
> (Bourdieu 1991: 138)

The point is that the ever more strongly articulated 'culture of human rights' carries with it a particular discursive field that reduces and refracts legitimate language. For some scholars, the acknowledgement of historical injustice (towards the native North Americans in the example above) has resulted in a belief in 'human rights' as a truly global charter for absolution. However, to claim narrative rights for bones is not only to emphasize a decidedly western logocentrism, it is also a skeletonization of fact to an absurd degree. It is a complete submission to the censorship constituted by the structure of the field, demarcated as a global culture of human rights.

One of the implications of this is that, far from uniting people across differences in history and culture:

> [the] language game imposed by the human rights culture separates people. It is an inherent feature of 'rights talk', because the language of rights is the language of no compromise. The winner takes all and the loser has to get out of town. The conversation is over.
>
> (Glendon 1991: 9)

Glendon refers to a particularly American form of rights talk, but the point is worth taking also with respect to human rights, where all too often the rights part tends to dominate at the expense of the humanity part. Thus, the category of human rights itself tends to make people believe that even the discussion of indivisibility and interdependence has been developed for the sake of rights rather than persons. 'Censorship is never quite as perfect or as invisible as when the agent has nothing to say apart from what he is objectively authorized to say' (Bourdieu 1991: 138). Rights talk produces its own certainties.

From an anthropological perspective, one notable paradox inherent in this process of replacing local culture and implicit moral values with international law and explicit universal standards is a certain co-opting of culture on the part of law. Among the more recent international human rights instruments are a number that are designed to protect the cultures of minorities and other groups, thus drawing the power of the concept of culture into law itself. This has some possibly unfortunate consequences; by investing groups of people with particular collective rights, culture itself is (re-)essentialized, and the legitimate language for political struggle is twisted. As demonstrated by Cowan *et al.* (2001, and this volume), a remarkable 'minoritization' is a likely outcome. Thus, new boundaries are established and new fights for a particular label (of minority) are in the making (see also Hastrup 2001d).

What I am arguing is, in fact, that, because human rights are cast in the genre of legal language, they rely heavily on their *form* for authority. Their nature *is* form and, along with other genres that depend on form, the law also legitimately exercises a violence of the freedom of interpretation. It is in the nature of the legal strategy to impose a particular form, through which the 'consecrated works impose the terms of their own perception' (Bourdieu 1991: 139). With all due respect for Vaclav Havel, Mary Robinson and other human rights advocates and scholars, the recurrent 'consecration' of the human rights documents may turn out to be counterproductive, because it encloses the moral discourse in a particular genre that (like all writing) not only implies a fixation of speech, but also shelters the event of discourse from destruction, including the probing arising from a serious scholarly discussion (see Ricoeur 1981: 139). To fix moral concerns in legal language is the result, not of the nature of things, but of a remarkably modernist legacy, viewing representation as a 'mirror of nature'.

This view of Realism was linked up with an enlightenment notion of Reason that is also obsolete (Hastrup 1995). We have learned (the hard way, one might add) that Reason never worked on its own. It invariably got stuck, and history moved as much by irrational impulses and uncontrolled emotion as by rational calculation. This is why human rights thinking and language must be backed by institutions and mechanisms that will facilitate the implementation of the 'imagined' human rights community. There have to be some hard law mechanisms to enforce the mythical charter.

One of the achievements of anthropology, history and other human sciences has been the discovery of different rationalities and the infinite malleability of people. Worlds are 'rationalized' in different ways; and one might argue that all people have equally good reasons for rationalizing and maintaining their own standards. More importantly, a good many features of social life and of cultural judgement simply defy the labels of rationality or irrationality, labels that are given by those who defined the distinction in the first place. This has important consequences for the link between universal and local standards. They cannot simply be measured against each other as more or less rational, according to an absolute (if arbitrary) scale of reason. Vast areas of moral conduct are neither articulated in language nor reducible to reason.

In so far as human rights are ideological expressions of deeper struggles and value differences which become most volatile under conditions of stress, it follows that the logic of human rights itself is subject to considerable flux; being a set of standards by which a society may judge its own performance, human rights principles are susceptible to historical and ideological changes (Downing 1988: 11). Changes over time are matched and amplified by differences across space. In a world that sees itself as multicultural or multinational there will be a number of competing ideologies at any given place or point in time. 'At every level, people continuously codify and modify, clarify and obscure, adopt and reject, interpret and reinterpret propositions concerning what ought to be proper human interaction. Sorting out the hierarchies of logics concerning human rights proves a formidable task' (ibid: 13).

As far as the global culture of human rights is concerned, its modernist outlook and its appeal to reason is based on a view of the disengaged mind and of instrumental modes of thought (see Taylor 1989: 495). It is no coincidence that the legal documents are referred to as 'instruments'; it is a reflection also of the view held by John Rawls (1971, 1993) of justice as procedural fairness. This is what keeps the exaggerated individualism inherent in the language of rights at bay. As Charles Taylor (1989: 508) has it in more general terms, the *only* ethics that are generated beyond the quest for self-fulfilment in our age are precisely those of procedural fairness, which is also central to the instrumental view of rationality. To build a moral community on a sense of fair trial and perceive it as a 'culture' that may embrace everyone is strikingly modernist. At a time when intellectuals of all bents have come to terms with the collapse of the instrumentalist outlook, and of modernist values more generally, experts continue to refine them, to explicate them even further by adding more words to the current charters on rights and freedoms for all. This will possibly lead to increasing difficulties in having them globally endorsed. Instrumentalist thinking demands a transparency of language, a one-to-one correspondence between words and practice, that we should not expect in a universal standard which must

comprise thousands of different practices, that may not directly 'reflect' the declaration but may certainly not violate it either.

If we admit that 'legal thought is constructive of social realities rather than merely reflective of them' (Geertz 1983: 232), the construction of the international community in terms of human rights must be seriously questioned for its inherent reductions and refractions of practice. A too refined and detailed legalization of culture will tend to bind people's imagination and reduce their imagination of the social and political space to a matter of a 'rights economy'. For all the positive connotations, the constant appeal to 'rights' might even entail a remarkable inflation. This becomes the more conspicuous if we dare make a comparison to another international currency: money, of which George Simmel said:

> By being the equivalent to all the manifold things in one and the same way, money becomes the most frightful leveller. For money expresses all qualitative differences in terms of 'how much?' Money, with all its colourlessness and indifference, becomes the common denominator of all values; irreparably it hollows out the core of things, their individuality, their specific gravity in the constantly moving stream of money. All things lie on the same level and differ from one another only in the size of the area which they cover.
>
> (1950: 414)

It takes little imaginative effort to see how human rights have become the means of exchange par excellence in an international community, imagined in terms of equal birthrights of all human beings rather than in terms of manifest cultural, social and economical differences. Rights are what unite us, as attributed to us by the global, imagined community, glued together not by a sense of tradition and a shared past but by a hope for the future and a universal currency of rights.

Seeing law as a particular way of representing facts enables us to focus our attention 'on how the institutions of law translate between a language of imagination and one of decision and form thereby a determinate sense of justice' (Geertz 1983: 174). The appeal to a common denominator in terms of rights and procedural fairness may not, as it happens, result in a unified sense of justice. The legal traditions, and the conventions of representation in terms of 'law' may differ vastly between cultures. We need only remind ourselves of James Clifford's analysis (1988) of the court case revolving around the Mashpee's claim to native lands to note that already from the outset, by being cast *in legal terms* in the first place (and not a 'moral' one for instance), the literate culture of the modern US had an unavoidable advantage over the oral culture of the Mashpee. It is the modern concept of law itself that generates the disadvantage, because the law is so distinctly verbal, and even more than that: it is written. The power of the written,

and the instrumental view of writing in general, is one of the features that have propelled modernity to its present stage, but so far without fulfilling the promise of universal emancipation.

Moral agency

It has often been stressed that the subject, or beneficiary, of human rights, is the individual person. This was fairly straightforward when the rights referred to were those civil and political rights that all states should grant their citizens in equal measure. With the latecomers among the human rights, i.e. the social, economic and cultural rights, and, still younger, the rights to development and to a clean environment, it has been more difficult to maintain individualism at the core. For cultural rights in particular, the rights of the individual are increasingly submerged within the rights of the group (see Eide 1995; Stavenhagen 1995; Hastrup 2001d).

The human rights discourse in many ways reflects the fact that also moral philosophies generally are subjectivist; they express and exalt human-centred goods: freedom, benevolence and human rights (Taylor 1989: 102). Subjectivism is a good many things, however, and it does not imply a subversion of collectivity. I would argue that there can be no moral agency at all without a sense of a shared moral space; there can be no sense of self, for that matter. To know who you are is to know how to orient yourself in a moral space, to experience your self among other selves (Taylor 1989: 35). The empowerment of individuals promoted in the human rights culture, the freedom to make individual decisions about life, can never be of concern only to individuals.

As we know, in anthropology, the interest in the 'self' has actually led anthropology to a renewed notion of 'community', and of the interrelatedness of these two entities (see Cohen 1994). Thus, the concern with the individual is also a concern with society and with the world. Moral agency takes place within a shared space. In so far as this is rule-governed, the rules are not primarily expressed in (legal) language, but in social *practice*. However, to recognize difference as of equal worth requires a horizon of shared significance against which the differences can be checked out (Taylor 1991: 51–2). A principle of procedural fairness may be instrumental to this, but behind it a more substantive standard of value must be operative, lest the formal principle of fairness and equality before the law shall be empty. The advocating of human rights may take side with either form or substance, or – indeed – bridging the gap between them by acknowledging both the shared and the particular of any one culture and any one individual in the global community. If it seems a logical corollary of a *global* culture to stress the formal (legal) aspect of human rights, because the 'thinner' the description the less likely is it to exclude the particularities on the ground, it also carries the risk of moral emptiness (along with the semantic). For

recognition to be other than rhetorical, formal procedures have to be accompanied by substantive measures.

The (untenable) idea that to follow a rule you must either obey it blindly or be able to rationalize it completely is related to an idea of consciousness that is supremely monological (Taylor 1997; Hastrup 2001b). In traditional 'modern' epistemology, the view of the acting subject is one of a disengaged self, who is able to act upon sound judgements on the basis of reason. This notion of the self is a notion of a person who is primarily a mind, that is a subject of reason and representation, rather than an embodied agent. Accordingly, all acts are equally 'monological' and carried out on the basis of a single person's judgement.

In this view, any agent is capable not only of reasoning and controlling his or her acts, including the tempering of drives, but also of ruling out irrational actions. Historically and personally we all know this to be impossible, yet the idea of a disengaged rational subject is hard to lay to rest. What the stripped-down view of the subject as a monological consciousness leaves out is both the body and the 'other' (Taylor 1997: 169). Both have to be brought back into the picture if we are to grasp the background understanding that will eventually make us see what it means to follow a rule. The body is a site of experience and incorporated cultural knowledge, and it is the locus of feelings of both pain and pleasure. To disconnect action from the body by appeals to the mind is to overlook what it means to be human. To appeal to human responsibilities on a grand scale by way of imposing upon the individual certain obligations is (paradoxically) to dehumanize the individual.

Not only is the body left out of this kind of thinking, so is the 'other'. The cogito is not enough for an ontological claim these days; we *are* primarily through our practices, and practices are not simply carried out in the acts of a single agent. They generally involve a multiplicity of people, accounting at least in part for the action. We don't have to think of football to understand that social action presupposes an other, nor do we have to invoke ballroom dancing to remind ourselves that social life has a particular rhythm. If all social acts don't actually involve any particular other, most of them imply an awareness of one or more others. We think of others, anticipate their reactions and take note of their needs even when we are on our own. The general point is that, in contrast to the monological vision of the rationalists, most social acts are in fact 'dialogical'.

Dialogical acts need not be actually coordinated, nor follow a precise rhythm. The ordinary conversation, which is the dialogue par excellence, is actually a very good example of the variety of dialogical acts (Taylor 1997: 172). Intimate conversations may be like a dance with a rhythm and a coordination, and a complete sense of joint absorption. Other conversations have less feeling of balance; one may talk considerably more than the other, whose speech is reduced to grunts, or maybe screams. Yet the listener's attention is crucial, and thus, like in other matters, the monologue is actually a dialogue.

> The importance of dialogical action in human life shows the utter inadequacy of the monological subject of representation which emerges from the epistemological tradition. We can't understand human life merely in terms of individual subjects, who frame representations about and respond to others, because a great deal of human action only happens insofar as the agent understands and constitutes himself as integrally part of a 'we'.
>
> (Taylor 1997: 173)

Most of our understanding of self and society is derived from and expressed in dialogical action. Language itself becomes part of this, by setting up spaces of common action; and this is where the human rights declarations may come back in. They will only work if they actually set up a space of common action, and this cannot be met simply by specific rules and regulations, only by general standards of achievement and background sensitivity, because the connection between rules and actions is not to be understood as a causal one.

Bearing in mind that laws and written conventions are representations, that is ways of phrasing multifaceted ideas, they are not the primary locus of understanding; rather, they are, as Taylor has it, 'only islands in the sea of our unformulated practical grasp of the world' (ibid.: 170). This implies that our understanding first and foremost is located in our practices, and this involves acknowledging an inescapable role of the background as the site of causation.

It is a fallacy to see the rule-as-represented as the effective factor, but it is a common enough misunderstanding, because the representation is all we can see. The rule, however, is but an express depiction of a situated, embodied sense of what must be done. Representations are abstracted from lived time and space, and to make them the ultimate cause of anything is to make actual practice in time and space merely derivative, or simply an application of a disengaged scheme. The stone does not drop to the earth because of the law of gravity, but because of that force which the law of gravity simply *represents*. Similarly, written laws that aim at a universal audience will not cause the world to change by themselves. But the values and other themes of directive force that are represented in the laws may do exactly that, provided they promote an understanding of a *common* good.

This understanding cannot be imposed by appeal to reason alone, but must depart from a sense of a shared space, which may, of course, be facilitated by a particular language, even if it does not 'represent' it. Articulacy itself has a moral point, as Taylor states:

> not just in correcting what may be wrong views but also in making the force of an ideal that people are already living by more palpable, more vivid for them; and by making it more vivid, empowering them to live up to it in a fuller and more integral fashion.
>
> (1991: 22)

This is also what makes the anthropological contributions to the human rights debate so pertinent, in spite of their well-founded (explicit or implicit) disclaimers of the modernist legacy inherent in the language of rights. By adding new expressions, for instance in the shape of sensitive ethnographies of the unsaid, to the instrumentalism of legal language, and by questioning some of the assumptions behind the 'global culture of human rights', they may contribute effectively to a new, empirically grounded, comparative conscience.

Bibliography

Bauman, Z. (1999) 'On Universal Morality and Morality of Universalism', in C. Lund (ed.) *Development and Rights: Negotiating Justice in Changing Societies*, London: Frank Cass.

Bobbio, N. (1996) *The Age of Rights*, Cambridge: Polity Press.

Bourdieu, P. (1991) *Language and Symbolic Power*, Cambridge: Polity Press.

Clifford, J. (1988) 'Identity in Mashpee', in *The Predicament of Culture*, Berkeley: University of California Press.

Cohen, A. (1994) *Self Consciousness*, London: Routledge.

Cowan, Jane K. (2001) 'Ambiguities of an Emancipatory Discourse: The Making of a Macedonian Minority in Greece', in Jane K. Cowan, Marie-Bénedicte Dembour and Richard A. Wilson (eds) *Culture and Rights, Anthropological Perspectives*, Cambridge: Cambridge University Press.

Cowan, J., Dembour, M. and Wilson, R. (2001) *Culture and Rights: Anthropological Perspectives*, Cambridge: Cambridge University Press.

Dembour, M. (1996) 'Human Rights Talk and Anthropological Ambivalence: The Particular Contexts of Universal Claims', in O. Harris (ed.) *Inside and Outside the Law*, London: Routledge.

Downing, T.E. (1988) 'Human Rights Research: The Challenge for Anthropologists', in T.E. Downing and G. Kushner (eds) *Human Rights and Anthropology*, Cambridge, MA: Cultural Survival.

Eide, A. (1995) 'Cultural Rights as Individual Human Rights', in A. Eide, C. Krause and A. Rosas (eds) *Economic, Social and Cultural Rights*, Dordrecht, Boston, London: Martinus Nijhoff Publishers.

Geertz, C. (1983) 'Local Knowledge: Fact and Law in Comparative Perspective', in *Local Knowledge*, New York: Basic Books.

Ginzburg, C. (1995) 'Killing a Chinese Mandarin: The Moral Implications of Distance', in O. Hufton (ed.) *Historical Change and Human Rights: The Oxford Amnesty Lectures 1994*, Basic Books: New York.

Glendon, M.A. (1991) *Rights Talk: The Impoverishment of Political Discourse*, New York: The Free Press.

Hastrup, K. (1992) 'Anthropological Visions: Some Notes on Visual and Textual Authority', in P.I. Crawford and D. Turton (eds) *Film as Ethnography*, Manchester: Manchester University Press.

Hastrup, K. (1995) *A Passage to Anthropology: Between Experience and Theory*, London: Routledge.

Hastrup, K. (2001a) 'The Quest for Universality: An Introduction', in K. Hastrup (ed.) *Human Rights on Common Grounds: The Quest for Universality*, The Hague: Kluwer Law International.

Hastrup, K. (2001b) 'To Follow a Rule: Rights and Responsibilities Revisited', in K. Hastrup (ed.) *Human Rights on Common Grounds: The Quest for Universality*, The Hague: Kluwer Law International.

Hastrup, K. (2001c) 'Accommodating Diversity in Global Culture of Rights: An Introduction', in K. Hastrup (ed.) *Legal Cultures and Human Rights: The Challenge of Diversity*, The Hague: Kluwer Law International.

Hastrup, K. (2001d) 'Collective Cultural Rights: Part of the Solution or Part of the Problem?', in K. Hastrup (ed.) *Legal Cultures and Human Rights: The Challenge of Diversity*, The Hague: Kluwer Law International.

Hastrup, K. (2002a) 'The Responsibility of Intellectuals: An Introduction', in K. Hastrup and G. Ulrich (eds) *Discrimination and Toleration: New Perspectives*, The Hague: Martinus Nijhoff Publishers.

Hastrup, K. (2002b) 'Toleration: Making Room for Difference', in K. Hastrup and G. Ulrich (eds) *Discrimination and Toleration: New Perspectives*, The Hague: Martinus Nijhoff Publishers.

Hastrup, K. (2002c) 'Anthropology's Comparative Consciousness: The Case of Human Rights', in R.D. Fox and A. Gingrich (eds) *Anthropology – By Comparison*, London: Routledge.

Havel, V. (1999) 'Voices', in Y. Danieli, E. Stamatopoulou and C.J. Dias (eds) *The Universal Declaration of Human Rights: Fifty Years and Beyond*, New York: United Nations/Baywood Publishing Company.

Hufton, O. (ed.) (1994) *Historical Change and Human Rights: The Oxford Amnesty Lectures 1994*, New York: Basic Books.

Karst, K.L. (1989) *Belonging to America: Equal Citizenship and the Constitution*, New Haven: Yale University Press.

Lindholm, T. (1999) 'Article One', in A. Eide *et al.*, (eds) *The Universal Declaration of Human Rights*, The Hague: Kluwer Law International.

Lyotard, J. (1993) 'The Other's Rights', in S. Shute and S. Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures 1993*, New York: Basic Books.

Montesquieu (1989 [1748]) *The Spirit of the Laws*, ed. and trans. A.M. Cohler, B.C. Miller and H.S. Stone, Cambridge: Cambridge University Press.

Porsdam, H. (1999) *Legally Speaking: Contemporary American Culture and the Law*, Amherst: University of Massachusetts Press.

Rawls, J. (1971) *A Theory of Justice*, Cambridge, MA: Harvard University Press.

Rawls, J. (1993) 'The Law of Peoples', in S. Shute and S. Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures 1993*, New York: Basic Books.

Ricoeur, P. (1981) *Hermeneutics and the Human Sciences*, ed. and trans. J.B. Thompson, Cambridge: Cambridge University Press.

Rorty, R. (1993) 'Human Rights, Rationality, and Sentimentality', in S. Shute and S. Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures 1993*, New York: Basic Books.

Said, E. (1979) *Orientalism*, London: Vintage.

Simmel, G. (1950) *The Sociology of Georg Simmel*, ed. K. Wolff, Glencoe, IL: The Free Press.

Stavenhagen, R. (1995) 'Cultural Rights and Universal Human Rights', in A. Eide, C. Krause and A. Rosas (eds) *Economic, Social and Cultural Rights*, Dordrecht, Boston, London: Martinus Nijhoff Publishers.
Taylor, C. (1985) *Human Agency and Language*, Cambridge: Cambridge University Press.
Taylor, C. (1989) *Sources of the Self: The Making of the Modern Identity*, Cambridge: Cambridge University Press.
Taylor, C. (1991) *The Ethics of Inarticulacy*, Cambridge, MA: Harvard University Press.
Taylor, C. (1997) 'To Follow A Rule', in *Philosophical Arguments*, Cambridge, MA: Harvard University Press.
Vizenor, G. (1996) 'Bone Courts: The Rights and Narrative Representation of Tribal Bones', in R.W. Preucel and I. Hodder (eds) *Contemporary Archaeology in Theory: A Reader*, Oxford: Blackwell.
Wilson, R.A. (ed.) (1997) *Human Rights, Culture and Context: Anthropological Perspectives*, London: Pluto Press.
Winston, M.E. (1989) *The Philosophy of Human Rights*, Belmont, CA: Wadsworth.

Chapter 2

Two approaches to rights and religion in contemporary France

John R. Bowen

Recent debates about Islam and society in France have raised issues central to contemporary liberal political theory. I address here two of these issues in the context of the French debates. Both concern the limits of toleration, or the conditions under which a majority in a society accepts as suitable or appropriate social norms associated with a subgroup. The first issue is the right of exit, the right to become non-members without loss of personal security or property. Exit problems have been raised most notoriously for Islam because of several highly publicized charges of apostasy (most notably that levied at Salman Rushdie), but the issue is a more general one. It arises, for example, when North American communities of Mennonites or Hopis make a resident's property rights contingent on his or her full participation in community life.[1]

The second, and more general, issue raised by the French debates is the degree to which social groups agree on a set of core principles of justice and equality, the 'overlapping consensus' in John Rawls's (1999) model of liberal democratic societies. For Rawls, citizens must distinguish between their 'background culture', the domain where subgroups may preserve distinctive norms and values, and the area of public reason about justice and equality, where all subgroups must agree on common principles. In cases where subgroups derive principles from their religions, they may draw on those religions, but their public reasoning must be solely in terms of society-wide principles.

The case discussed here concerns a less-discussed dimension of these two issues, that of the explicitness with which subgroups declare their allegiance to a liberal model of politics. Certain rules, legal traditions, or declarations associated with a social subgroup may be considered as problematic because they penalize efforts to leave the community, or because they introduce principles of justice and equality that violate those of the society-wide overlapping consensus. But these rules may or may not be 'active'; that is, members of the subgroup may or may not currently act on the basis of those rules, or even refer explicitly to them. It then is unclear whether we can consider them to be social norms. Such a situation raises a number of

questions for western liberal political theory, and indeed for projects of inviting (or demanding) adherence to universal conventions of human rights. Does the mere existence of such rules pose a threat to the integration of a subgroup into the society? Does the right to exit need to be explicitly acknowledged? Does participation in an overlapping consensus necessitate explicit agreement among subgroups?

These issues arise most pointedly in the case of large-scale, text-based religions. These religions have multifaceted traditions consisting of sacred texts, bodies of interpretive texts about these primary texts, and legal or quasi-legal pronouncements. People claiming authority to speak on behalf of the religion live in many different societies. Among these texts, interpretations, and pronouncements invariably are found propositions and commands that contradict norms and laws that are broadly accepted within any particular society. Is it reasonable to demand that citizens who adhere to that religion explicitly renounce these propositions, or that these citizens contradict propositions made by religious authorities who live in a different society? Does such a demand promote or hinder efforts to reconcile religious precept and social norm, or sacred text and state law?

My concern in this chapter is not normative but empirical. I do not pursue here the question of how particular actors ought to respond to these issues, but focus instead on how, in one circumstance, some of them have responded. I ask how a particular configuration of political ideology and religious institutionalization shapes public reasoning about the matter. My example is debate in France among public intellectuals, and in particular among Muslims, about the right to change religions. In France, the question is specially charged because of the specific oppositional quality possessed by the idea of *laïcité*; the debate over the issue illuminates the specific structure of debates in France about rights and religion.

As Olivier Roy (1999) recently has pointed out, French public figures demand much of Islam that has not been demanded of Christianity. Drawing on the work of Marcel Gauchet (1985, 1998), Roy contrasts Christian secularization in Europe and elsewhere to French *laïcité*. Secularization was a process that was internal to the society, and that gradually lowered the social and political normative quality of Church teachings without attacking faith. Tenets of the Church could go unchallenged, as long as they were not proposed as the bases for society or state. By contrast, modern French *laïcité* is a specific ideology that was erected against the Church and in its image, as a substitute set of idea and institutions. *Laïcité* has its own tenets, against which it measures those of other organized religions. Most recently, it has been ideas and practices associated with Islam that have been measured against those of laic French public culture, and sometimes attacked for their shortcomings.

The 'Consultation'

I begin with a controversy surrounding what has come to be called the 'Consultation' between various Muslim figures and the French Minister of the Interior. The Minister has jurisdiction over religion qua 'cults', i.e. organized bodies of worshippers. Between October 1999 and the end of January 2000, Minister Jean-Pierre Chevènement succeeded in producing a document regarding the present and future status of Islam in France. The 'charter' or 'consultation' set out commitments made by, on the one hand, the government, and, on the other hand, a number of 'Muslim groups and associations'. The former agreed that Muslims had the right to build mosques, hold public celebrations, and form associations. The latter agreed to respect the conditions of *laïcité*, which included maintaining the neutral space defined by public schools, affirming freedom of religion, and acknowledging gender equality. The document also affirmed specific compromises already reached, for example regarding burial, where the state forbids the construction of distinct Muslim cemeteries but allows mayors to permit 'groupings' of Muslims within the confines of the general cemeteries. Sixteen Muslims signed the charter on 28 January. Some of the signers represented organizations, some signed as leaders of mosques, and some as 'qualified personalities'.[2]

The signing gave rise to a process of continual 'consultation', recorded in an official publication of the Ministry, *Al Istichara* (Arabic for *The Consultation*), and continuing relatively smoothly through the change of Ministers (over the issue of Corsica), from Chevènement to Daniel Vaillant. Throughout 2001, work groups met to consider issues such as cemeteries, slaughterhouses, and rules for the building of mosques and, in particular, the rules and procedures for electing a new consultative body. This body is supposed to represent Muslims in France vis-à-vis the state, as formally similar bodies are supposed to do for Jews and Protestants.

Many hailed the signing as a breakthrough in the continually inconclusive attempts by successive Ministers (Pierre Joxe in 1989–90, Charles Pasqua in 1994) to produce an organization of Islam in France. That such an organization should be seen by many Muslims and by the government as necessary for Muslims to practise their religion points to an important way in which French ideas of *laïcité* differ significantly from more broadly held ideas of secularization. *Laïcité*, legally embodied in laws passed in 1901 and 1905, is intended to bring citizens to recognize themselves through the public life that is structured and presented to them by the state. Because that public life is to be based on universal (read: French) values, it must be free of, or superseding, identities of religion or ethnicity. And because it is the state that oversees public life, it must police both sides of the religion–public divide. It does so by creating structures of responsibility for each type of religion: Catholics, Protestants, Jews, and, now, Muslims. French regimentation of religion is a kind of indirect rule, where the state and the local ruler

acknowledge each other's legitimacy, and the latter promises to keep his people in line in exchange for a certain degree of freedom of movement (no matter that few of the faithful consider themselves to be so governed).

In the Muslim case, the competition between mosques, which in some cases has been a competition between leaders with ties to different Muslim countries (notably Algeria, Morocco, and Turkey), has greatly complicated efforts to create a single structure to represent Muslims, as has the tendency of Ministers to pick and choose allies, and in particular to place in and out of favour the 'grand mosque of Paris', historically tied to Algeria. The resulting absence of an official organization has been interpreted as 'neglect' by some Muslim figures. This neglect is particularly felt each January, when, at the beginning of the New Year, the President receives the official representatives of each religion at the Elysée, and when Muslims, having no official representative, are left out. (Since 2000, President Jacques Chirac has attempted to make up for this annual humiliation by inviting Muslim 'representatives' to the Elysée in an additional ceremony, but also making clear that their invitation was dependent on progress towards creating a representative body.)

The text of the charter itself underwent several changes in January 2000 before it was signed. The most obvious change was in its title. Initially called the 'declaration of intention regarding the rights and obligations of the faithful of the Muslim cult in France', a title that was seen by some as needlessly implying that Muslims needed to take an oath of loyalty to France, in its second edition it was called 'principles and legal bases governing the relationships between the public powers and the Muslim cult in France'. The Ministry published a list of those invited to attend the initial Consultation; several figures were notable for their refusal to participate, among them the influential head of one of the major Paris mosques ('rue de Tanger'), Larbi Kechat. (Kechat's version of events is that he asked to be allowed to state his own position as a condition for signing, a condition refused by the Minister.) As for the 'grand mosque of Paris', jealous of its primacy among French mosques, it chafed at the idea that any other mosque leaders would be considered worthy co-signers of the document. Several Muslim public figures pointed out that mosque leadership did not represent the large number of Muslims who did not attend mosques.[3]

Among Muslim figures who made public comments on the charter, including some of the signatories, the most commonly heard complaint was that the Consultation and its document reflected a suspicion of Muslims. As a joint press release from the several large groupings of young Muslims put it, behind the self-proclaimed integration of Muslims in France 'stands the idea of imposing on French citizens of Islamic faith a new oath in which they would declare in writing their allegiance to the basic principles of republicanism' (Press release of 9 February 2000, in *Islam de France* (2000) 7: 59–60).

Freedom of religion means what, exactly?

The most intense emotions surrounding the text regarded a clause that was contained in the first, but not the second, version of the text. In its third paragraph, the original document affirmed Muslims' commitment to human rights and freedom of religion, and then went on to say that this commitment 'establishes notably the right of everyone to change religion or conviction'. This clause was dropped from the final version of the text at the objection of several of the Muslim participants.

The omission of this phrase received a blistering attack in the pages of the daily newspaper *Libération* in June 2000. Leila Babès, sociologist of Islam, and Michel Renard, editor of the review *Islam de France*, both Muslims, denounced the decision to remove this clause. Championing the cause of the 'law in common' against 'communitarian law', they argued that Muslims in France must declare themselves fully for liberty of conscience, which implies the right to change one's religion and leave Islam if one so decides.[4] They suggested that leaving the matter unspecified opened the door to later Islamic interpretations of the law. They pointed out that, although the Qur'ān does not specify a penalty for leaving Islam, 'Islamic law' prescribes the death penalty for such an action, based on a disputed statement of the Prophet, and that this might be what remains intended by some Muslims. In full Republican rhetoric, they quote, not the Qur'ān, but Robespierre, on the need to 'do all for liberty'.[5]

Their column (published in the rubric Rebonds, roughly the equivalent of the US op-ed page), might not have been written had the clause about freedom to change religion never been included in the draft document. Once it had been included, however, its subsequent removal signalled, in the eyes of Babès and Renard and some others, both the inability of some Muslims to completely accept the doctrines of human rights that were a sine qua non for integration into French society, and the unwillingness of the government to stick by its own principles of *laïcité*. Babès and Renard even criticize the government for its use of the Arabic appellation *al-'istishara* to refer to the process. They charge that this usage implies 'that the principle of consultation required a specifically Islamic legitimation to be accepted', a move which they see as opening the door to an unacceptable Islamic law. In other words, the terms on which Islam becomes part of the Republic ought to be entirely Republican terms, without an attempt to rationalize the merger on Islamic grounds.

Among the responses to their article were two more Rebonds pieces, both published in the issue of 2 August. One was written by Mustapha Yahyaoui, representing one of the major Muslim associations (the Fédération Nationale des Musulmans de France), and the other by the Minister of the Interior's counsellor on Islamic affairs, Alain Billon. Yahyaoui stated that, once the signatories had accepted the basic laws on human rights, there was no need

to be more specific, and complained that much more was being asked of Muslims than had been asked of adherents to other religions. Doing so was dangerous; Renard and Babès, he warned, were playing into the hands of those Muslim states that wanted to see this entirely French project fail. Billon, for his part, acknowledged that the reference had been removed because the Muslim signatories had judged it 'useless and wounding', and that the change had no effect, because the legal and political regime of *laïcité* in France means that apostasy simply cannot become an issue.

If the two responses in the daily press spoke from the side of *laïcité*, other discussions pointed out that the sort of explicit renunciation of Islamic principles demanded by Renard and Babès would cut off French Muslims from the larger Muslim world. On the internet forum found at the site Allahouakbar.com (sponsored by the journal *Islam de France*), 'Muslim' (a pseudonym) argued that no Muslim can simply delete a statement from the Qur'ān, and to do so would mean that Muslims would be very poorly considered in the Muslim world. He also noted that the Catholic Church has never acknowledged divorce, yet Catholics in France are perfectly well integrated in the Republic; why could not the same tacit acceptance of *laïcité* do for Muslims as well?[6] The position of one member of the Consultation body, the independent historian Mohsen Ismail, was that both sides had made valid statements: Billon, that, because French law guarantees freedom of religion, apostasy penalties are not a real issue in France; and Babès, that, once the clause was inserted into the document, taking it out implied that Muslims did not support freedom of religion (interview, 12 May 2001).

Among other issues, the debate touched on matters of scriptural proof and foreign policy. The status of scripture concerning apostasy is in dispute. The Qur'ān certainly says that Islam is the complete religion, but the notion of penalties for leaving religion comes from a statement by Muhammad, and the reliability of this statement is debated. Also available for citation is the well-known Qur'ānic verse that asserts that there is 'no compulsion in religion' (Qur'ān 2: 256).

The debate also raised the question of whether one should take into account Muslim opinion abroad. All agreed that many Muslim public figures in the Middle East would condemn the explicit renunciation of the penalties for apostasy. After all, the 'Islamic Declaration of Human Rights in Islam', adopted at the 1990 conference of the Organization of the Islamic Conference, conspicuously omits any mention of the freedom to change religion.[7] Because French policy toward Islam has for long been a part of foreign policy, some commentators suspected that the government was willing to quickly withdraw the offending clause in order to ensure that regimenting Islam at home had no damaging effect on relations with Muslim states abroad.

Should Islamic social norms be acknowledged in Europe?

But the reason why these French Muslims argued over the omission of the apostasy clause is neither because they disagree over technical issues of scriptural interpretation, nor because they have concerns about French foreign policy (nor, for that matter, because they feared that underground Islamic courts in France were going to sentence apostates to death). Rather, the debate has been heated because it points to a fundamental difference about how a European Islam ought to be constructed.[8] Should Muslims (and not only Muslims) seek ways to (re)interpret scripture so as to bring about a de facto convergence of Islamic norms with European ones?[9] Or should they explicitly discard the baggage of Islamic law and politics entirely, and live an Islam of the spirit (and a Frenchness in everyday public life)?[10]

The first position, which for convenience I will label 'pluralist', involves accepting the possibility that distinct normative positions may produce compatible results. Muslim and laic traditions may start from very different positions (God, on the one hand; Robespierre, on the other), but they can, if properly interpreted, produce compatible sets of social norms, or at the very least converge. One can interpret this position in terms of various political philosophies: as a neo-Hobbesian argument that in conditions of cultural pluralism one ought to work towards a modus vivendi (Gray 2000), or a revised Rawlsian argument that one can find areas of normative overlap without discarding the specifically religious character of social norms. As we shall see, it is compatible with a range of Muslim ideas about scriptural interpretation.

The second position, which I will call 'monist', calls for rejecting sharīʿa, or at least the many of its tenets that conflict with the contemporary norms of human rights, and instead turn to French universality as a single source of social norms, wherever the mind and the heart might wander on their own. This position is a species of the 'moral monism' that Bhikhu Parekh (2000) traces back to Locke, and among Muslims it is associated with those who emphasize Islam as a tradition or as a matter of faith and private devotions.

The matter is not entirely one of public versus private life, although it is closely related to it. It more centrally concerns the question of whether or not there ought to be Islamic social norms in France alongside traditional French norms, or rather only French norms, plus the Islamic faith of individuals (and the actions those individuals take on the basis of their faith). This question implicates basic ways in which all public issues are thought out in France. The French ideology of *laïcité* is discursively deductive. Of course, one frequently uses words like deduction, Cartesian, and rationalist to talk about French reasoning, but I mean 'deductive' in a more specific sense. French ways of talking about public policy issues often begin with a reference to a statute or a principle, and then develop reasoning that leads

to a particular problem or case. In that sense, much of public policy reasoning in France mimics the idealized process of legal reasoning in the civil law tradition: legislators enact laws and judges apply them (an idealization that often translates into a greater respect for legal and administrative rules than for jurisprudence).

When discussing *laïcité*, French commentators inevitably refer to the 1905 law separating Church and State, or the laws of the early 1880s that guaranteed and required free and laic education. Broader historical perspectives will include the Edict of Nantes, the Declaration of the Rights of Man, the Civil Code, etc. In this juridical deductive scheme, values or norms are usually invoked in their legal incarnation, as rights and obligations that follow either from higher-order rights, or directly from laws or codes.[11]

The discourse of *laïcité* is also oppositional, even militant. The laws and doctrines mentioned earlier were all created in order to remove the Catholic Church from the public sphere, and, in particular, from the process of educating French boys and girls. The school reforms of the 1880s were designed as much to retake education from the Church as they were to create a uniform Frenchman. This militant idea of the laic school helps explain why recent debates about Islam and *laïcité* were set off by schoolgirls wearing headscarves – and, unfortunately for them, wearing them right at the moment of the 200th anniversary celebration of the French Revolution. The conditions that produced *laïcité* also help explain one response in France to the *affaire du foulard* that was not widely noticed elsewhere, which was to question the need for the militancy of *laïcité* now that the Catholic Church has effectively faded from the scene. Because *laïcité* was always about who did the teaching, not who did the learning, the secure control by the state of the public school system, even a school system with scarf-wearing Muslim girls and kippa-wearing Jewish boys, lessens the need for vigilance and might allow a less rigorously oppositional approach to French education.[12]

Deductive and oppositional, *laïcité* discourse is also normatively monist. Without the Church as an enemy, the new dangers to *laïcité* in the eyes of some are posed by the possibility that the state might sanction a pluralism of social norms, whether that be a region-based pluralism of distinct 'peoples' (*vide* the current debate over Corsica), or a religion-based pluralism of distinct 'communities'. Hence the seemingly trivial, even perverse, objection by the two Muslim authors of the critique of the Consultation cited earlier that the government's use of an Arabic word might send a message that Islam could enter into the Republic on its own terms, even a little bit on its own terms. The general fear of pluralism is not motivated by concerns about language or religion, despite the fact that the issue is often posed in those terms, but rather by a concern about pluralisms of norms and values. No one worried about the linguistic abilities, or religious piety, of those scarved schoolgirls, nor did most people think that somehow they were connected to terrorism. A normatively pluralistic France can no longer be a

deducible France, a France in which everyone knows what the norms of public life are, and where they come from.

This set of concerns and perceptions is, of course, not shared by all in France, nor by all social scientists; quite a number (Touraine 1997; Wieviorka 1997) have developed pluralistic models of French society. And yet one finds agreement by many social scientists and some younger francophone Muslim writers that Muslims should explicitly reject the sociolegal tradition of sharīʿa thinking. These writers advocate an Islam that is a matter of individual faith, existing in a social universe whose norms can be deduced from commitments to human rights and French codes.[13] From the social science side, the issue is posed as a choice between communitarian and Republican models of society, where Islam is to be either an ethnicized community or an individualized religion. On the Muslim side (and there is some overlap between these two categories), the issue is posed as a choice between sharīʿa-based and faith-based models of Islam.

The recent positions taken by the political scientist Olivier Roy offer a particularly clear and perceptive example of the social science version of this position.[14] Roy (1999: 78–80) states that, given that a European 'political Islam' is impossible, Islam in Europe must choose one of two options. The first is a communitarian Islam, *à la* Britain, where Muslims are reduced to being an ethnic group. One sees something similar in France, he acknowledges, where young Muslims practise fasting and congregational prayer as markers of identity rather than as part of religious faith (his proof of this thesis being that they do not carry out individual prayer). The second option is to treat Islam as a matter of individual faith, a universal religion, which would make it more like Catholicism.

Roy argues that the second position is not only preferable, but that it is indeed what will happen simply by virtue of the fact that European Muslims live in a laic environment, in which religiosity becomes a matter of individual choice, not of social pressure nor state action. Here, as I noted earlier, he joins the Weberian religious evolutionism set out by Marcel Gauchet (1985). He notes that some reformist thinkers, such as Mohammed Arkoun and Tariq Ramadan, try another way towards European Islam, a third way, namely, to exercise interpretation (ijtihad), and thereby rework Islamic legal traditions. But, he argues (1999: 30, 71), Islam has never changed as a result of ijtihad; rather, changes are determined by social forces, and ijtihad follows later on.[15] In any case (1999: 87ff.), reformism misses the point that in Europe all normativity has become a matter for an individual to decide. Europe offers the possibility of an Islam that is there to be embraced or not by each person, rather than an Islam imposed by 'the religious police', as he starkly puts it (1999: 96).

In personal communications, Roy has clarified how, in his view, the French ideology of *laïcité* makes it nearly unthinkable that Muslims could be publicly Muslim and French. Roy mentioned the example of Tariq

Ramadan, the Swiss francophone scholar and lecturer, who is both particularly active in France and elsewhere, and particularly controversial among some Muslims and non-Muslims (Frégosi 1999). In part, this controversy is because of his lineage; his grandfather was Hassan al-Banna, a founder of the Egyptian Muslim Brotherhood. For Roy, a Muslim advocating reformism such as Ramadan:

> [speaks in] two languages; he plays on several registers, because he says on the one hand that we need to live in Europe, build an Islam here, but then in other contexts he says things like girls should wear the foulard, and he tells schoolboys to organize a demand for hallal meat. That is betraying *laïcité*. He may not see these as different registers, but they are. It is what people call his 'double discourse'.
>
> (Interview, 17 May 2001)

The contemporary Muslim version of this position can be exemplified by the general approach taken by the editors of the trimestral review *Islam de France*. The review, which is still basking in the glory of *Le Monde*'s 1999 labelling of it as the journal of record on the topic, uses the term ijtihad favourably, usually modified by the terms francophone and laic, but defines ijtihad in a rather general manner as an '*effort de recherche*' (Branine and Renard 1998: 19). The review's last issue of 2000 makes it quite clear that the term does not mean a way of preserving a separate identity for Muslims by way of sharīʿa. In that issue, Leila Babès launches a criticism of Ramadan as having a covert agenda, finding evidence for her suspicions in Ramadan's call for creating a European *fiqh* while remaining silent on its content, thus leaving the door open for those who advocate positions incompatible with human rights. She notes that Ramadan discusses favourably Hassan al-Banna, a mention that leads her to offer a long polemic against his positions on women and on other issues.

In the event, Babès seeks to unite the Muslim and the social scientific approach by advocating a sociological over a normative view of Islam, a move that she claims will refocus debates on the everyday concerns of most Muslims living in Europe, concerns that she says have nothing to do with matters of sharīʿa and *fiqh*, but instead have to do with faith and spirituality, on the one hand, and the practical problems of daily life, on the other. Her proposal is for an '*Islam intérieur*', a phrase that is also the title of her latest book.

What I have been calling the monist position involves a strict separation between the universalistic norms governing social life, on the one hand, and the particularistic beliefs governing the practices of some individuals, on the other. (It thus is perfectly consistent with Rawls's [1999] overlapping consensus model for having both political agreement and cultural pluralism.) It requires an explicit renouncing of any competing claims to social normativity, in this case the norms identified as 'sharīʿa', on grounds that a pluralism

of social norms is incompatible with the political philosophy of the French Republic.

Although I have used the French case to illustrate the position, and because it offers an intriguing alliance between like-minded Muslim intellectuals and non-Muslim social scientists, this approach to sharīʿa is probably the dominant one among public intellectuals and political theorists in North America as well. The argument runs as follows: because sharīʿa has been used to justify practices that we all agree are to be rejected, and neither sharīʿa in general nor these specific justifications are renounced by most other Muslims, Islam does not provide reliable guarantees of human rights.[16] The distinguishing feature of the positions taken in France is that they are crisply enunciated in a combative fashion: the line is drawn, and we must choose for our social norms between Islam and the Republic.

Strategies of rapprochement

Let me now introduce the other possible position, what I have called the pluralist approach to Islamic norms and law. Do we have to choose between an explicit renunciation of Islamic law, on the one hand, and a normatively unacceptable set of sharīʿa rules enforced by raw social pressure (or by the state police), on the other? Is it the case, as Roy suggests, that change cannot come from within Islamic legal reasoning?

Stepping back a bit from the debate's immediacy, can we offer another way of understanding the cultural role of discourse about Islamic law? I continue to find most useful an approach to Islam that takes it first and foremost to be a discursive tradition (Asad 1986; Bowen 1993), one in which, in their thinking about social matters, people make reference to a broader set of texts and ideas as well as local, particular ones. Much about being a Muslim involves references to that tradition, as of course could be said for people of other faiths. The mere act of referring to a set of Islamic terms may serve as an attestation of one's commitment to the tradition and one's membership in the *ummah*, the 'Islamic community'. However, these acts of referring to the tradition, invoking its general authority, tell us nothing about which elements of that tradition are chosen for further elaboration, how they are interpreted, or what degree of normativity is attributed to them. These matters require that we look in more detail at the commitments individual Muslims demonstrate to particular social norms.

It is in discussing Islamic law that it becomes especially important to distinguish between invoking a broad tradition and applying particular elements of it. Far from being a law code, Islamic law consists of several distinct ideas about knowledge and norms. The term sharīʿa refers to God's overall plan, or way, that was given to humans for them to follow. As a divine plan it is only imperfectly knowable by humans, who must content themselves with the long and complex tradition of jurisprudence, *fiqh*. The activity of doing

fiqh is freely acknowledged to be a fallible struggle to infer from an often vague or general body of scripture what Muslims ought to do in quite specific cases. As an activity, it is closer to Anglo-American common law than to the reading of scripture. Jurisprudence includes efforts by jurists to reason through analogy, to take the overall good of society into account when creating new rules, and to rely on the consensus of the community when in doubt: 'my people will never be in error', said the Prophet.

So understood, sharīʿa is a term of reference to the tradition, and a way of attesting to one's own participation in that tradition. By itself the term does not point to any particular rules of behaviour. Let me offer an example far from France: the war-torn province of Aceh, Indonesia, where I have worked since 1978. As of 2001, according to national law, Aceh is to be ruled according to sharīʿa. What does that mean? Family law in Aceh long has been Islamic law. What else will be changed? When asked by the media, the governor has declined to mention any specific legal rules. Some religious scholars have mentioned requiring that men and women wear modest clothing. A friend of mine, a legal scholar at the State Islamic Institute in Aceh has told me that he thought sharīʿa would mainly mean stricter rules on how young men and women interacted in village life, and a devolution of political authority to older, pre-Indonesian districts. Although the latter change has nothing directly to do with Islam, the combination of a widely quoted Acehnese proverb about Islam and custom being as close to each other as are the essence and the characteristics of God, and the idea that more sharīʿa means less rule by Jakarta, means that this particular set of ideas about what 'ruling through sharīʿa' might mean probably makes sense to most Acehnese.

The term 'sharīʿa', then, has a dual meaning: it indexes general commitment to a tradition, and it also may be used to label specific rules that are arrived at through complex, locally determined processes (and may have much or little to do with the texts of the Qurʾān, as in the example of Aceh). Explicitly disavowing sharīʿa would mean disconnecting French or European Muslims from the Islamic tradition. One might then ask, is there hope for success of the alternative, trying to approximate European social and legal norms from within Islam, combined with the tacit setting-aside of certain legal propositions to be found in the Islamic tradition?

Those French Muslims attempting to do just that start from a different point than the monists, from what they portray as the flexible traditions of jurisprudence, *fiqh*, and the possibilities of making new norms in the form of legal opinions, fatwas. The choice of starting point is critical to the two opposing rhetorics. The monists, whether Muslim or not, claim that sharīʿa is the fixed body of rules that define Islamic law, and then show its incompatibility with French norms. Conversely, pluralists (or in the Muslim contexts 'reformists') emphasize the importance of *fiqh* and fatwa-giving as ways of adapting norms and law to changing circumstance, and then show the potential compatibility of Islamic law with French norms.

Two quite different strategies have been pursued to create a set of norms that, while plausibly characterized as rooted in Islamic legal traditions, converge with French, or more broadly, European norms and law. The first, international and largely carried out in the Arabic language, seeks to remain recognizable as Islamic jurisprudence. The key figure in this effort is Syaikh Yusuf al-Qaradawi, a highly respected scholar of Egyptian origin now living in Qatar. His European Council for Fatwa and Research meets in different cities in Europe to deliberate questions posed by Muslims living in Europe. The questions concern a wide range of topics, from matters of halal meat, to the legality of home mortgages, to details of prayer. Their first booklet was published in 2000 in Cairo, in separate English and Arabic versions (European Council for Fatwa and Research 2000).

In the Council's fatwas, Europe appears only as a set of novel social conditions in which some Muslims live, and not as a source of norms or values. And yet merely taking account of different social conditions has led Qaradawi and the Council to take positions that are at odds with general, long-standing views. One such stance is on home mortgages, where Qaradawi stated that, in Europe, borrowing money from a bank was preferable to living in a rental apartment, because Muslim families live better, and more religious lives, away from crime-ridden apartments.[17] His argument was not that Islam had to be adapted to European norms, but that, from its beginning, Islam allowed certain measures to be taken under extreme conditions, of which this was one.

Consider one of the fatwas issued at a meeting held in Dublin in May 2000, in response to the question: 'What is the Islamic rule of divorce judged by a non-Muslim judge?' The Council's answer was pragmatic:

> Muslims ideally should resort to a Muslim judge or acting Muslim judge. But there is no Muslim judge in non-Muslim countries. Consequently whoever enters into a marriage contract according to the laws of these countries should carry out the divorce as judged by a non-Muslim judge, because entering into a marriage contract according to non-Muslim laws means implicitly accepting the results, one of which is that divorce can only be carried out by a judge. According to the majority, this can be considered general authorization, even if it is not explicitly expressed. Rulings delivered by non-Muslim judges should be carried out for the sake of public interest and to avoid chaos and disorder (as some Muslim scholars, for example Al-Izz Ibn Abed Esalam, Ibn Taymiyah, and Ash-shatibi, have stated).[18]

In other words, one is not living in ideal conditions in Europe because there are no Muslim judges, or other Muslim institutions, but Muslims have to obey the law in order to avoid chaos, and they have obliged themselves to accept a judge's orders by agreeing to marry under non-Muslim laws.

There is no normative rapprochement between Islam and secular law, only a means for Muslim people to survive in a non-Muslim environment.

The second strategy is to argue that there are such normative rapprochements. This argument is carried out in national languages: French in France, English in Britain. The most influential European practitioner of this approach is Tariq Ramadan, introduced earlier as a prime target of those urging the rejection of Islamic law. Ramadan (1998: 96–8) gives priority to *fiqh*, which he characterizes as the results of ijtihad, efforts at research, reflection, and judgment by jurists in light of conditions of the day; indeed, for him *fiqh* 'is in effect Islamic law' (Neirynck and Ramadan 1999: 131).

Ramadan is critical of attempts to lighten *fiqh*, as bricolage or piecemeal efforts, which sometimes work in a good direction, but without rethinking *fiqh* itself. He includes Qaradawi's Council in this category. Note the slight difference between the Qaradawi fatwa described on p. 45 and the way Ramadan approaches the question of the status of marriages in Europe. One should understand as background that most Muslims in Europe consider marriages to be religiously valid only if performed in a private 'Muslim' context, after the legal marriage, performed at city hall.

> What we have to do is to step back and set the general principles, and then work down to specific fatwas. For example, we should respect contracts, and if I, a believer, enter into a contract with an unbeliever, I have engaged to respect that contract. That is a universal element of *fiqh*, valid anywhere. This step allows us to accept much of European law. So, for example, a civil marriage already is a Muslim marriage, I think, because it is a contract, and that is what a Muslim marriage is.[19]

For Qaradawi and his Council, the world is divided into Muslim and non-Muslim countries, and the rules differ for each. In France, laws must be obeyed both because one must follow laws, and because one agrees to follow them when entering into a legal marriage. For Ramadan, there are points of normative contact between those two worlds. A marriage is a contract in Islam, and it also is in France, so a French marriage 'already is' a Muslim marriage. 'Principles should be universal', he added, 'and therefore I have problems with the idea of a minority *fiqh*' (the development of separate fiqhs for Muslim majority countries and non-Muslim majority countries).

Ramadan's strategy emphasizes the compatibility of universal Islamic norms with French law and values; Qaradawi's, the possibility of exempting Muslims from the norms of Islam so long as they reside in France (or elsewhere outside the Muslim world). If Qaradawi's approach is essentially a search for a modus vivendi, Ramadan's is a search for an overlapping consensus. Qaradawi's 'plays better' to international Muslim audiences; Ramadan's, to French Muslims and to non-Muslims outside of France

(French non-Muslims generally condemn both approaches, preferring the monist, *Islam de France* position).

If these writers represent an extension from Muslim jurisprudence towards French law, there also is a movement in the opposite direction, from French law toward Islamic norms. French law does not recognize as valid marriages or divorces performed on French soil in any way other than that dictated by French law, i.e. at city hall or before a judge. However, French international private law does recognize, under certain circumstances, marriages and divorces performed in other countries. The relevant issue for French judges and jurists has been how to decide whether a marriage or divorce conducted according to Islamic law in another country should be recognized in France (see Bowen 2002).

There are, roughly speaking, monist and pluralist answers to this question. One is that an Islamic divorce, the talaq, more precisely a man's repudiation of his wife, should always be declared invalid in France because the entire institution offends French principles of gender equality. One of the most influential jurists in the field, Jean Déprez, argues that talaq has nothing to do with divorce, because the judge cannot prevent a husband from carrying out the talaq. Even if a treaty (such as the bilateral convention with Morocco) states that such divorces should be recognized, 'public order' places an absolute limit on what can be recognized as valid.[20]

The second, opposed, answer is that one must look at the specifics of the procedure in the country in question to evaluate the extent to which the wife was treated equally, or fairly. The jurist Ibrahim Fadlallah takes this position, pointing out that sometimes in practice the talaq resembles a divorce by mutual consent, which we can recognize as tolerable.[21] In a 1979 decision by the French Court of Cassation (the Dahar case), a talaq was accepted as having effects in France because the wife had been allowed to present her arguments before the judge in Algeria who heard the husband's talaq request. In the same year, two Paris appellate court cases also stated that a talaq was acceptable if it produced effects comparable to those of a divorce by mutual consent. The Court of Cassation has at different times taken each of these positions, ruling in 1997 that the European Convention on Human Rights required France to reject any procedure that explicitly discriminated against women, and in 2001 returning to the logic of the Dahar ruling, admitting a talaq divorce obtained overseas.

Evaluating pluralism

These debates, over apostasy and freedom of religion, divorce and women's rights, Islamic and secular marriages, place in relief two contrasting ideas about how histories of pluralism are to be evaluated. Should Muslims, if they reside in France (or a fortiori if they become French citizens) become indistinguishable from other French people (whatever such a phrase might mean)

when they venture outside their homes? Or should points of rapprochement between French and Islamic norms be sought, such that a greater range of acceptable public conduct would be recognized as consistent with French citizenship? These normative positions often are represented as if they were empirical ones, as if one could simply inspect the content of 'Islamic law' or 'French culture', and then decide whether or not they were compatible. Advocates of moral monism form their arguments in just this way, and then they conclude in the negative. Sometimes French advocates of pluralism also proceed in this way, when they say that 'Islam really says that . . .', but more typically the pluralist approach is by way of emphasizing flexibility.

The project of pushing Islamic law towards an approximation of European social norms has difficulty finding a toehold in French public discourse not because such theological thinking cannot be an important way of changing Islam, as Roy suggests. To the contrary, the reinterpretation of basic principles is central to the practice of jurisprudence, whether secular-legal or religious in nature. Nor does the difficulty lie with Islamic reformism's blindness to equality and freedom of religion, as has been argued by some Muslim secularists (e.g. Charfi 1998). No doubt some in France would think it typically 'Anglo-Saxon' to point out that what are conceived as fixed systems of value and law also can be seen as subject to change and variable interpretation, but the evidence from France itself, as well as from other Muslim societies, supports the view that religious reformism can promote equality and religious freedom.[22]

The rapprochement is difficult rather because of the ideology and history of normative explicitness that characterizes French *laïcité*. If the pluralist project is even partially realizable, then demands for explicit renunciation of sharīʿa, or even explicit setting-aside of specific Islamic norms, is likely to be counter-productive. Such demands are generally motivated more by a concern over public displays of fundamental cultural difference than they are by threats to human rights. Despite claims that headscarf-wearing schoolgirls were coerced by their fathers, it was not concern for their welfare that led teachers to expel them from class (what better way to ensure parental control, and minimize the potential for socialization into Republican values than expulsion?); it was largely teachers' fears of encountering difference and losing control. Few on the staff of *Islam de France* fear that the freedom of French Muslims is directly threatened by the absence of explicit declarations of the right to change religions. It is, rather, the idea that French Islam must define itself, deduce itself, from French, and not from Arabo-Islamic principles, that shapes the specific demands that the monist camp puts forth.[23]

The viability of a pluralist and reformist agenda depends on a certain willingness to ignore, in our public encounters, radical differences in starting points. This sort of attitude characterizes a good deal of our everyday relationships with others. We all engage in practical activities and sometimes even interesting discussions with people with whom we greatly differ on

one first principle or another. My neighbour in the US may favour the death penalty, and also favour bombing abortion clinics to save babies' lives, both because of a belief in the inerrant Bible. I may believe strongly the other way, based on a set of (less clearly formulated) ideas about the appropriately limited powers of governments. Neither of us is about to renounce these fundamental positions, but we nonetheless are able to carry on as neighbours, discussing local matters and sometimes even larger ones. Our social lives are not lived by 'working out' these differences in fundamental assumptions about the world. Tacit acceptance of each other, a willingness to ignore the opinions or even the statements of others, are the necessary requirements of social life. Even in France, the modern secularization of the Catholic Church has proceeded as peacefully as it has not because partisans of the Church and partisans of *laïcité* no longer care about their respective beliefs (a few casual conversations with priests and atheists would quickly convince one of the opposite), but because of the many compromises reached during the twentieth century, some of them explicit, many more of them not, about schools, politics, and the nature of civic discourse (Gauchet 1998).

Without amassing evidence for the proposition, I would venture that one of anthropology's lessons has been that this tacit acceptance of incompatibilities is basic to human sociability. Ethnographers of religiously plural contexts have documented myriad ways in which people living in small-scale contexts are able to hold conflicting religious views. My own studies of Sumatran Islamic practices (Bowen 1993) support this proposition, as does Spencer's (1995) work on Buddhists and Christians in Sri Lanka, and van der Veer's (1988) study of Hindu and Muslim veneration of shrines in India. As noted by Wilfred Cantwell Smith (1978), the notion that religion is a matter of incompatible systems of beliefs is a post-Enlightenment one. The demand for explicit adherence to one, and not the other, set of beliefs and norms, what I have called the monist view, is, indeed, a feature of modernity itself, characterizing the ideas of state citizenship, religious identity, and scientific discipline.

As the supremely modernist nation-state, France illuminates most clearly the conflict between monist and pluralist positions on toleration. The ideal of a monist resolution of difference has propelled French political discourse at least since the Revolution, and in the French public-intellectual context this ideal provides the dominant framework both for analysing cultural pluralism and for evaluating it. Although Anglo-American political theory is little read in France, the 'overlapping consensus' model proposed by Rawls is consistent with this monist view. European and North American images of a fixed 'Islamic law' add to the plausibility of this way of viewing the integration of Muslims in France, namely, that Muslims will have to renounce sharīʿa in order to become European.

I have argued that another model, the pluralist one, underlies a set of efforts to rethink Islamic norms and law (and to some extent French law),

with either a normative rapprochement, or a modus vivendi, as the goal. Understanding and evaluating these efforts will require different analytical and normative models than those supplied by French ideology or Anglo-American consensus-oriented political theory. Taken as static sets of norms, and based on majority, written traditions, Islamic and French views on the right of exit and about basic issues of justice and equality are far apart, and they are not going to be identical in the near future, any more than will Catholic views and European laws on abortion or contraception. Creating a workable model of Muslim integration in France requires recognizing two elements of the contemporary French discussions: tacit Muslim acceptance of certain French (and European) norms, such as the right of exit and gender equality, and the (several) processes of reinterpreting Islamic law and norms with European conditions and values in mind.

I doubt whether these tacit acceptances and reasoning processes will soon yield a fully secularized Islam in Europe, *pace* the predictions of many French social scientists and Muslims. Values and norms likely will remain rooted in the Qur'ān and the legal traditions, but reworked for European conditions. These processes are not, I think, a troublesome transition towards a society-wide, and thus secular, agreement about rights and authority, any more than, say, US jurisprudence will some day settle into a society-wide, explicit agreement about abortion. In both cases, the best that can be hoped for is tacit acceptance of certain ways of getting along, and efforts to find rapprochements. I would submit that the challenge for political theorists is to develop a normative framework that recognizes a moving object, a set of public reasoning processes, as themselves the basis for a legitimate, pluralistic political order.

Notes

1 See the discussion by Kymlicka (1995: 152–72) concerning exit and the limits of toleration, and the distinction made between rights of entry and exit, and the specific case of religious dissent, in Walzer (1983: 39–40, 243–8).

2 I obtained the first version of the text on 30 December 1999, on the Ministry's website at http://www.interieur.gouv.fr/organisation/ministere/discours/musulman.htm. The text is no longer available on the official site, but the differences between it and the now-official version of the text are detailed in *Islam de France* (2000) 7: 44. The official version is published in the Ministry's online journal on the Consultation, *Al Istichara* at http://www.interieur.gouv.fr/information/publications/istichara/mars_3.htm.

3 Coverage of these debates includes articles in *Libération* dated 29–30 January 2000 and 17 April 2000, and in the numbers of *Le Monde* dated 3 May 2000 and 2 September 2000, as well as the issue of *Islam de France* devoted to the matter (No. 7, 2000). My conversations with participants in the Consultation and Muslim leaders took place in June 1999, April–May 2001, October 2001, and April 2002.

4 'Communitarian', always a negative word in France, means closing off against the national community; one often hears the phrase '*repli communitaire*', literally a folding in on one's own group, applied to efforts to raise to the surface group identities.

5 *Libération*, 26 June 2000. In a later version of the letter published in *Islam de France* (2000, 8: 47–51), they make their suggestion of dire consequences more specific by referring to the killing of Mahmoud Mohammed Taha in the Sudan, and the forced divorce and exile of Nasr Abou Zeid by an Egyptian court, both on grounds of apostasy.
6 Forum on the website Allahouakbar.com, 5 July 2000. This site has now been renamed as oumma.com.
7 See the response to their critics by Babès and Renard in *Islam de France* (2000) 8:64–6.
8 The ambiguity in what follows about whether the issue is 'European Islam' or 'French Islam' is an ambiguity in the discourse itself. Recent books by Olivier Roy (1999) and Tariq Ramadan (1999a) refer to the former, but are couched in the terms of the latter. Neither, for example, takes account of the very different debates in Germany, the Netherlands, and Great Britain.
9 That these debates are not only about Islam was made nicely evident in January 2002, when the Pope objected to the 'marginalization of religions' in Europe, against the efforts of both Jospin and Chirac to keep the phrase 'religious heritage' out of the 2000 Charter of European Rights (*Le Monde*, 18 January 2002).
10 A number of interests are implicated as well in these debates: the control of French-language Islamic media, jockeying for electoral advantage in the contest for the future Muslim representative body, influence within the Islamic community, and so forth. My focus here is on the specific form these debates take in the French ideological context, not the range of personal reasons for which certain of these actors have taken the positions they currently hold.
11 Ozouf (1963) is an important historical work on the history of French *laïcité*; see also the short history by Baubérot (2000). For a recent compendium of texts, see Boussinesq (1994); for one of many polemical works on 'threats to *laïcité*', see Pena-Ruiz (2001).
12 Two issues of *Le Monde de l'Éducation* serve as indications of a recent shift in thinking about *laïcité*. The May 1999 issue (No. 270) was devoted to '*Laïcité*, an ideal to be reinvented'; the December 2001 issue (No. 298) to 'Islam, school and identity'. The 1999 issue emphasized that the Church was no longer an external threat to the laic school; the 2001 issue, that Islam could be absorbed within it.
13 The Conseil d'État has repeatedly emphasized that *laïcité* is about the obligations of teachers, even as they also have elaborated the category of 'public order' so as to allow school administrators to expel girls who refuse to participate in biology or physical education classes, or whose scarf-wearing leads anyone to demonstrate and thus disrupt education. It is an interesting object of further analysis, to be merely noted here, that French social science combines the 'is' and the 'ought' in intriguing ways, as if social scientists were to deduce from a Republican ideology what one should find, and then look for evidence of those desirable social trends. For a trenchant critique of this combining of perspectives from a suitably peripheral position in the French academic universe, namely IREMAM, located in Aix-en-Provence, see Lorcerie (1994).
14 Despite differences on other issues, Roy's position here is roughly similar to those held by Gilles Kepel (1991), probably the best-known French political scientist writing on Islam, and the sociologist Dominique Schnapper (1991, 1998). For a very different point of view on integration, see Gaspard and Khosrokhavar (1995).
15 One could point out in response that such is true of western jurisprudence as well, as is evidenced by current French legal responses to changes in the forms of family, marriage, and cohabitation in France today.

16 Even such an advocate of multiculturalism as Charles Taylor (1994: 62) perceives 'mainstream Islam' as incompatible with liberal political cultures; his evidence is the Rushdie case.
17 The fatwa occasioned a considerable debate in Paris, where it troubled some Muslim scholars and students, who saw it as the abandonment of a commitment to develop alternative Islamic banking institutions. The fatwa's text is available on the Council's website at http://www.fioe.org.
18 From the Council's website. I have altered the English for clarity and grammaticality.
19 All quotes in this and the next paragraph are from an interview in St Denis (Paris), 14 June 2001.
20 In the *Revue critique du droit international privé*, 1995: 115–16.
21 In the same *Revue critique*, 1984: 332.
22 See the survey in Esposito (1982), and on Indonesia, Bowen (2002).
23 I base this claim on interviews with Said Branine, one of the review's two co-editors, in 2001.

Bibliography

Asad, T. (1986) *'The Idea of an Anthropology of Islam'*, Washington, DC: Center for Contemporary Arab Studies, Georgetown University, Occasional Papers Series.

Babès, L. (2000) 'L'Identité Islamique Européenne d'après Tariq Ramadan', *Islam de France* 8: 5–20.

Babès, L. and Renard, M. (2000) 'Quelle Liberté de Conscience?', *Islam de France* 8: 47–51.

Baubérot, J. (2000) *Histoire de la Laicité Française*, Paris: Presses Universitaires de France.

Bencheikh, S. (1998) *Marianne et le Prophète: L'Islam dans la France Laïque*, Paris: Bernard Grasset.

Boussinesq, J. (1994) *La Laicité Française: Memento Juridique*, Paris: Éditions du Seuil.

Bowen, J.R. (1993) *Muslims Through Discourse: Religion and Ritual in Gayo Society*, Princeton: Princeton University Press.

Bowen, J.R. (1999) 'Legal Reasoning and Public Discourse in Indonesian Islam', in D.F. Eickelman and J.W. Anderson (eds) *New Media in the Muslim World: The Emerging Public Sphere*, Bloomington: Indiana University Press.

Bowen, J.R. (2002) 'Sharīʿa, State, and Social Norms in France and Indonesia', Leiden: Institute for the Study of Islam in the Modern World, Paper No. 3.

Branine, S. and Renard, M. (1998) 'Bilan d'une Introuvable 'Représentation', *Islam de France* 1: 17–22.

Charfi, M. (1998) *Islam et Liberté: Le Malentendu Historique*, Paris: Albin Michel.

Charnay, Jean-Paul (1998) 'Que Devient une Religion Réduite à l'Observance Rituelle?', *Islam de France* 1: 31–42.

Esposito, J.L. (1982) *Women in Muslim Family Law*, Syracuse: Syracuse University Press.

European Council for Fatwa and Research (2000) *First Collection of Fatwas*, Cairo: Islamic Inc.

Frégosi, F. (1999) 'Les Contours Discursifs d'une Religiosité Citoyenne: *Laïcité* et Identité Islamique Chez Tariq Ramadan', in F. Dassetto (ed.) *Paroles d'Islam: Individus, Sociétés et Discours dans l'Islam Européen Contemporain*, Paris: Maisonneuve and Larose.

Gaspard, F. and Khosrokhavar, F. (1995) *Le Foulard et La République*, Paris: La Découverte.
Gauchet, M. (1985) *Le Désenchantement du Monde: Une Histoire Politique de la Religion*, Paris: Gallimard.
Gauchet, M. (1998) *La Religion dans la Démocratie: Parcours de la Laicité*, Paris: Gallimard.
Gray, J. (2000) *Two Faces of Liberalism*, Cambridge, UK: Polity Press.
Kepel, G. (1991) *Les Banlieues de l'Islam: Naissance d'une Religion en France*, Paris: Éditions du Seuil.
Kymlicka, W. (1995) *Multicultural Citizenship*, Oxford: Oxford University Press.
Lorcerie, F. (1994) 'Les Sciences Sociales au Service de L'Identité Nationale', in Denis-Constant Martin (ed.) *Cartes L'Identité*, Paris: Presses de la Fondation Nationale des Sciences Politiques.
Neirynck, J. and Ramadan, T. (1999) *Peut-on Vivre Avec l'Islam?*, Lausanne: Favre.
Ozouf, M. (1963) *L'École, l'Église et la République: 1871–1914*, Paris: Armand Colin.
Parekh, B. (2000) *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Cambridge, MA: Harvard University Press.
Pena-Ruiz, H. (2001) *La Laicité pour l'Égalité*, Paris: Mille et Une Nuits.
Ramadan, T. (1998) *Les Musulmans dans la Laicité*, Lyon: Tawhid.
Ramadan, T. (1999a) *To Be a European Muslim*, Leicester, UK: The Islamic Foundation.
Ramadan, T. (1999b) *Muslims In France: The Way Towards Coexistence*, Leicester, UK: The Islamic Foundation.
Rawls, J. (1996) *Political Liberalism*, 2nd edn, New York: Columbia University Press.
Rawls, J. (1999) *The Law of Peoples, with 'The Idea of Public Reason Revisited'*, Cambridge, MA: Harvard University Press.
Roy, O. (1999) *Vers un Islam Européen*, Paris: Éditions Esprit.
Schnapper, D. (1991) *La France de l'Intégration*, Paris: Gallimard.
Schnapper, D. (1998) *Community of Citizens*, New Brunswick, NJ: Transaction.
Sellam, S. (1998) 'Peut-on être un Bon Musulman quand on est Citoyen d'un État Non Musulman?', *Islam de France* 1: 28–30.
Smith, W.C. (1978 [1962]) *The Meaning and End of Religion*, San Francisco: Harper and Row.
Spencer, J. (1995) 'The Politics of Tolerance: Buddhists and Christians, Truth and Error in Sri Lanka', in W. James (ed.) *The Pursuit of Certainty*, London: Routledge.
Taylor, C. (1994) *Multiculturalism*, ed. A. Gutmann, Princeton: Princeton University Press.
Touraine, A. (1997) *What is Democracy?*, trans. D. Macey, Boulder, CO: Westview Press.
van der Veer, P. (1988) *Gods on Earth: The Management of Religious Experience and Identity in a North Indian Pilgrimage Centre*, London: Athlone Press.
Walzer, M. (1983) *Spheres of Justice: A Defense of Pluralism and Equality*, New York: Basic Books.
Wieviorka, M. (1997) *Une Société Fragmentée? Le Multiculturalisme en Débat*, Paris: La Découverte.

Chapter 3

This turbulent priest

Contesting religious rights and the state in the Tibetan Shugden controversy[1]

Martin A. Mills

Introduction

Between 1996 and 1998, the International Secretariat at Amnesty International received, by a variety of routes, a considerable quantity of material alleging human rights abuses by the Exiled Government of His Holiness the Fourteenth Dalai Lama (henceforth referred to as the Central Tibetan Administration, or CTA). The sources of the vast majority of the material were the London-based Shugden Supporters Community (SSC) and the Delhi-based Dorje Shugden Devotees Charitable and Religious Society (DSDCRS). The substance of the allegations was that, by banning the worship of the Tibetan deity Dorje Shugden, His Holiness and his government had infringed the rights to religious freedom of Tibetan worshippers of the deity, and had persecuted a religious minority. In particular, the SSC and DSDCRS alleged the banning of Shugden worship by the CTA Chamber of Tibetan People's Deputies, the withdrawal of democratic legal rights within the Tibetan refugee structure, the purging of CTA institutions and the instigation of forced signature campaigns denouncing Shugden worship within Tibetan Buddhist monasteries, house-to-house searches and assault against Shugden worshippers and their families, the withholding of welfare privileges from Shugden worshippers and their families by CTA organizations, the expulsion of monks and nuns from exile monasteries, and the desecration and destruction of Shugden statues and shrines.[2]

In effect, the claim was that Shugden worshippers were being forcibly purged from the ranks of the Tibetan exiled polity (an expulsion which, given the legal statelessness of Tibetan refugees within the Indian polity, and the importance of mutual support networks within the exiled community, would be individually devastating). A considerable amount of documentary material was provided in support of these allegations, including paperwork allegedly circulated by, amongst others, the CTA Department of Health, the Tibetan Youth Congress, the Guchusum Movement, and the Tibetan Women's Association, largely centred on the three-month period following the Dalai Lama's denunciation of Shugden worship at a series of public

tantric initiations given on 21 March 1996. In this regard, organizations such as the Shugden Supporters Community sought in particular to lay blame for these events at the door of His Holiness, and engaged in a high-profile campaign to denounce him, through both the international press and human rights organizations, and by picketing his visits to Europe throughout that year.

The vast majority of these allegations were quickly denied by His Holiness's government, via a statement from the CTA's Department of Information and International Relations (5 July 1996). However, the CTA acceded to the existence of 'restrictions' on Shugden worship and of moves to eradicate its practice, both within the CTA structure and within Gelukpa order monasteries;[3] this, they regarded as within the rights of organizations to constitute themselves as they wish.[4] The CTA's full response to the allegations, presented in the Department of Religion and Culture's booklet, *The Worship of Shugden: Documents Related to a Tibetan Controversy*, repudiated in particular claims that any expulsions from CTA organizations, children's homes or schools had occurred, and that efforts by His Holiness and the CTA to bring Shugden worship to an end had been solely in terms of education and advice; conversely, they accused certain Shugden worshippers of persistently threatening (and eventually committing) murderous violence against those who preached against Shugden, asserted that Shugden worshippers were receiving support from, and had acted in support of, the Chinese authorities, and argued that Shugden worship was itself a tradition whose overt sectarianism had acted against Tibetan welfare since its origins in the seventeenth century, was opposed to Buddhist precepts, and that it undermined the cause of Tibet, the national unity of Tibetans, and the religious pluralism of the Tibetan religious environment. At the same time, the vast majority of media, political and academic opinion within Europe proved far from sympathetic to the SSC's position, regarding it as a self-serving attack on a recognized champion of peace and human rights by an extremist cult holding arcane and potentially violent beliefs.

The object of the controversy – the deity Dorje Shugden, also named Dholgyal by opponents of its worship – had been a point of controversy between the various orders of Tibetan Buddhism since its emergence onto the Tibetan scene in the late seventeenth century, and was strongly associated with the interests of the ruling Gelukpa order. Supposedly the spirit of a murdered Gelukpa lama who had opposed the Fifth Dalai Lama both in debate and in politics, Shugden is said to have laid waste to Central Tibet until, according to one account, his power forced the Tibetan Government of the Fifth Dalai Lama to seek reconciliation, and accept him as one of the protector deities (Tib. *choskyong*) of the Gelukpa order (see Nebesky-Wojkowitz 1993: 134–144). Despite this, the deity retained a controversial quality, being seen as strongly sectarian in character, especially against the ancient Nyingmapa school of Tibetan Buddhism: the deity was seen as

wreaking supernatural vengeance upon any Gelukpa monk or nun who 'polluted' his or her religious practice with that of other schools, most particularly those of the Nyingmapa. This placed the deity's worship at odds with the role of the Dalai Lama, who not only headed the Gelukpa order but, as head of state, maintained strong ritual relationships with the other schools of Buddhism in Tibet, particularly the Nyingmapa (see below; Dreyfus 1999). The deity thus became the symbolic focus of power struggles, both within the Gelukpa order and between it and other Buddhist schools.

This conflict continued after the Chinese invasion of Tibet in 1950, and the Dalai Lama's subsequent flight into exile in 1959. Indeed, the present Dalai Lama himself practised Shugden worship in his younger years, but he renounced it during the 1970s following the publication by a prominent Gelukpa lama of a devotional text to Shugden which, in defence of the deity's efficacy as a protector, named 23 government officials and high lamas that had been assassinated using the deity's powers. In 1978, His Holiness spoke out publicly against the use of the deity as an *institutional* protector, although maintaining that *individuals* should decide for themselves in terms of private practice. It was not until Spring 1996 that the Dalai Lama decided to move more forcefully on the issue. Responding to growing pressure – particularly from other schools of Tibetan Buddhism such as the Nyingmapa, who threatened withdrawal of their support in the Exiled Government project – he announced during a Buddhist tantric initiation that Shugden was 'an evil spirit' whose actions were detrimental to the 'cause of Tibet', and that henceforth he would not be giving tantric initiations to worshippers of the deity (who should therefore stay away), since the unbridgable divergence of their respective positions would inevitably undermine the sacred guru–student relationship, and thus compromize his role as a teacher (and by extension his health). The events alleged by the SSC and DSDCRS refer to the period following this announcement.

In the wake of all of these events, pressure grew for Amnesty to come up with some kind of assessment. Cognisant in particular of the considerable attention that the issue had received, and of the fact that the issue was clearly open to manipulation by Chinese authorities opposed to the Dalai Lama and his exiled government, Amnesty's reaction was a cautious one. For the purposes of this chapter, it's worth quoting their assessment in full:

> Amnesty International (AI) has received and studied a large amount of material alleging human rights abuses against worshippers of the Tibetan Buddhist deity Dorje Shugden. These alleged abuses are reported to have happened largely in Tibetan settlements in India. None of the material AI has received contains evidence of abuses which fall within AI's mandate for action – such as grave violations of fundamental human rights including torture, the death penalty, extra-judicial executions, arbitrary detention or imprisonment, or unfair trials. While recognizing

> that spiritual debate can be contentious, Amnesty International cannot become involved in debate on spiritual issues. AI campaigns on the grave violations of human rights in Tibet, as well as the rest of the People's Republic of China. In 1997 a widespread crackdown on Tibetan nationalists and religious groups continued. At least 96 Tibetans, most of them Buddhist monks and nuns, were reported to have been detained during the year for peacefully exercising fundamental freedoms. A continuing 'patriotic re-education campaign' in monasteries and nunneries has led to expulsions and arrests. Prison conditions remain harsh in Tibet and prisoners are often ill-treated for minor infringements of prison regulations.
>
> (AI Index: ASA 17/14/98, June 1998)

In making this declaration, Amnesty were clearly taking a particular perspective on the nature of 'substantial' human rights abuses and the question of legitimate religious rights – a position which was simultaneously different from that of the Tibetan Government-in-Exile and, moreover, that section of the pro-Shugden campaign which emerged in Europe (itself somewhat at odds with the position of Shugden worshippers in South Asia). What constituted a religious right – particularly in relationship to notions of law and the state – became a contested issue. Now, I would like to look at each of these various perspectives in turn, and examine the thinking behind them.

Amnesty International: human rights and the state

Worded as it is, Amnesty's statement clearly treads a fine line, neither asserting nor denying the validity of the allegations laid against the CTA, nor finding either side culpable in the dispute. Rather, it ruled the entire issue 'out of court', both in terms of severity and nature. Whilst, on a *realpolitik* level, the statement clearly avoided taking any position which muddied the waters on what they (rightly) perceived to be more important human rights issues within the Sino-Tibetan crucible, it is also apparent that their strategy involved a variety of assumptions about the nature of human rights abuses and their treatment. Specifically, that:

- Central to the constitution of a 'human rights abuse' is the existence of *nation-state interventions that are at odds with accepted legal process* Thus, its principal objects of concern are the kind of illegitimate and violating acts that are generally carried out by states: 'torture, the death penalty, extra-judicial executions, arbitrary detention or imprisonment, or unfair trials'.
- 'Spiritual issues' are not in and of themselves human rights issues, unless they are supplemented by questions of state intervention.
- Following on from the previous two, there is an implicit separation between those acts of religious intolerance that are backed by the state,

> and those that are not, a separation which informs the distinction between issues of criminal and civil law on the one hand, and human rights law on the other.

In these respects (and particularly the first) Amnesty was working within an accepted Western tradition of thought on human rights that sought to render accountable the actions of states.

Egregious acts between human beings have always been the object of some kind of legal gaze. The primary act of that legal gaze has always been to ascribe positions of right and responsibility linking involved parties (whether individual citizens, family groups, owner and slave, man and wife, parent and child, or citizen and officer of the state) in (usually unequal) dynamics of legitimacy in terms of the use of force or violence. Criminal law, in particular, tends to attribute legitimacy to violence enacted in order to constitute, maintain and defend the state of which individuals are parts, and of which state law is an instrument; indeed, as Weber himself noted, this relationship constitutes our primary understanding of statehood.[5] In most pre-modern cases, this has placed the state itself (and its representatives) beyond legal redress with reference to activities vis-à-vis its own citizens.[6]

The rise of international human rights law presented a challenge to this perceived impunity. Particularly in the wake of the Nuremberg Trials, states (and the individuals that 'run' them) have increasingly been deemed legally responsible for their own acts, and therefore held accountable on the international stage. In this sense, human rights law is perceived to be both universal (in the sense of applying across borders) and fundamental (in the sense of appealing to moral norms which do not vary according to individuals' relationship with state power). Indeed, implicit within the very notion of human rights is the sense that it is a 'dialogue against power', something which lends it considerable moral strength.

Nonetheless, this fundamental and universal nature can only be read so far. Indeed, its very strength as a check to the abuse of state power is a weakness in other regards. By rendering human rights in this way, liberal human rights theorists often accede to a very particular portrait of the state – specifically, that of the territorially bounded, command-based nation-state – that is arguably the product of a particular history of European political development and subsequent global colonisation (Anderson 1991; Steiner and Aston 1996: 73–5), and which therefore may not always be applicable.

This limited conception of the state presents particularly acute problems when it comes to questions of jurisdiction and accountability. Pre-modern states, for example, maintained diffuse relationships with territory which cannot necessarily fit into existing ideas of state jurisdiction (indeed, the very idea of diplomatic immunity and embassy exclusion speak volumes about the limits of territorial notions of statehood even in the modern context). Similarly, the assumption that the institutions and officers of the

state are to be fully or dependently identified with it – that they are 'arms' or 'organs' of the state, under the *command* of its 'head' – presents complex problems even in the classical nation-state context (Ratner and Abrams 1997: 118–20).

This reading of the state is particularly problematic when looking at the Central Tibetan Administration's relationship with exiled Tibetans in India. Firstly and most obviously, it is difficult to ascribe nation-state status to such a structure. The Tibetan exiled community is spread out in a series of internally administered camps across the subcontinent, run by a series of elected camp administrators, who continue the running of camps as individual entities whilst maintaining allegiance to the Central Tibetan Administration at Dharamsala. Whilst the camps maintain the *de facto* right to administer limited internal law according to established Tibetan legal systems, and are partially protected from external tourist, business and population incursions, they have no police forces of their own and must defer to local Indian state police; similarly, whilst the Indian government has since the days of Nehru given the camps internal self-governance, the CTA as a whole remains technically and legally something akin to a private NGO under the patronage of the Dalai Lama, linked to a series of nominally independent organizations such as the Tibetan Youth Congress.

Within this set-up, two problems arise. First, the CTA and Tibetan exiled communities clearly do not constitute a nation-state, either in principle or in fact: their boundaries are neither impermeable (for Tibetans), nor are they dominated by legalized notions of citizenship. Second, identification of a 'command structure' to act as the basis of accountability is particularly difficult. As mentioned earlier, many pre-modern – or, more accurately in the Asian context, *pre-colonial* – state systems lacked the kind of infrastructural powers associated with modern European states: in particular, their economies lacked the kind of surplus production required to support large state structures (in particular legal and military bureacracies) given over to the close regulation of subjects' affairs. In such situations, the forced maintenance of, for example, legal or religious homogeneity was simply beyond the capacities of pre-modern states.

In the pre-modern Tibetan case, this led to forms of law and taxation which were primarily built not on the regulatory use of coercion, but on the maintenance of passive authority built around Lhasa and the Dalai Lama as sacred centres (Goldstein 1971); sacral authority was maintained by its 'mirroring' at local level, through monastic and legal rites through which individuals, households and villages demonstrated their loyalty to the faraway, and in most cases unseen, authority of Lhasa. This had two effects: first, the exercise of real power within the Central Tibetan state was highly localized, and separated from the authority of the centre, which anyway lacked the infrastructural capacity to affect people's lives in any direct way. Because sacred authority was functionally separate from the local exercise of

power, moreover, that authority was rarely if ever compromised by the abuses of power that did occur.

As a result, the maintainance of state authority beyond Lhasa itself was only partially guaranteed by the exercise of centralized coercive power; instead, a much more diffuse structure was maintained by the exercise of ritualized loyalty at the local level. On the whole, loyalty is not regarded as an indispensable facet of state action in Western political theory, being ascribed more substantially to charismatic movements, ethnic struggles, and religious organizations. In many respects, we regard it as only a structural feature of *sub-state* social organization. This has led certain Tibetologists, using the modern European state as a framework, to argue that old Tibet was a 'stateless society' (Samuel 1982; see also Goldstein 1971; Mills 2003).

The Central Tibetan Administration: the right to state constitution

In many respects, this kind of system, with its notions of authority and ritualized loyalty, has extended into the modern exiled period.[7] In other respects, this 'pre-modern' mode of Tibetan state authority has actually developed within the modern exile context. Within pre-1950 Tibet, for example, whilst most Tibetans regarded Lhasa and the Dalai Lama as representing a superordinate authority, that ascendancy was usually vague and – for those who pledged primary religious allegiance to local non-Gelukpa schools, monasteries and teachers, held in slight tension. Direct religious relationships with the Dalai Lama – particularly of the importance that all adult Tibetan Buddhists ascribed to their tantric 'root-guru' – were by no means even common. The last thirty years, however – during which the Dalai Lama has sought to build links with the other schools of Tibetan Buddhism existing in exile – has witnessed the growing ascendancy, both in exile and within Tibet, of the Dalai Lama as either the direct root-guru of all those firmly interested in Tibetan independence (often through the numerous mass Kalacakra empowerments he has given since 1959) or, more commonly, the indirect apex of an increasingly unified pyramid of lamaic (guru–disciple) relationships, many of which transcend the sectarian divides which became entrenched within Tibetan Buddhism during the centuries following the Fifth Dalai Lama's establishment of centralized Gelukpa rule in Central Tibet. As can be seen from the events of 1996 described above, the Dalai Lama's request that Shugden worshippers not receive tantric initiations – the foundation of the 'root-guru' relationship – from him, effectively placed them outside the fold of the exiled Tibetan polity.

This question of *loyalty* as the basis of Tibetan systems of state action illuminates some apparently contradictory elements of the CTA's approach to Shugden. Whilst it is clearly the case that the numerous denials of *any* kind of ban on Shugden worship, produced at various points during the 1996–8

period, were in all probability simply disingenuous, there is cause to reflect on what such a ban might look like in this kind of context. Indeed, the moves to eradicate Shugden worship within Tibetan Buddhist regions that I myself witnessed in the years since 1996 were of two kinds: firstly, a sense amongst those that did not worship Shugden that they should endeavour to eradicate its practice amongst their peers, neighbours and co-workers *as an act of loyalty to the Dalai Lama*; and, amongst those that had a history of worshipping the deity, a complex and ambivalent combination of acknowledging that getting rid of the deity may be the 'best thing' to do (because his Holiness had said it was) and wishing that the ban did not have to apply to them (something which led to a considerable quantity of invisibility and reluctant foot-dragging, Scott's famed 'weapons of the weak'). This was not, therefore, a hierarchical command process, but rather the constant reiteration of acts of loyalty all the way down a lengthy and disarticulated ladder of authority, a syatem of orthopraxy consistent with *passive* modes of governance.[8]

This important religious dimension to the exile polity again presents problems for liberal human rights theory, which conceives the relationship between religion and state in particular ways. As we saw in the Amnesty statement, 'spiritual issues' are seen to be peripheral to human rights concerns unless they are in some sense linked to state action. This is perhaps most clearly spelt out in Amnesty's inclusion of the expulsion of monks from Tibetan monasteries by Chinese officials as an example of the 'grave violation of human rights' in the region; similar events in exile, where the influence of 'state power' was (for reasons outlined earlier) harder to locate, are deemed less grave, despite their identical consequences. As with so much of human rights theory, what matters is the juncture with state power.

This conceptual separation of religion and state runs through a large quantity of modern writings on religious human rights. In a recent article on religious freedom (Durham 1996), Durham argues that religious freedom is best maintained in 'accommodationist' regimes, in which the state maintains a studied indifference to religious groups, neither in favour of any particular tradition (as in the case of theocracies and established churches), nor opposed to religion (as in avowedly atheist states such as certain communist regimes). In the case of theocracy – which Durham (rather revealingly) sees as the most primitive form of the religion/politics interface – religious freedom is restricted because state power is marshalled in favour of a particular set of religious beliefs (and, by extension, against others), the intention being to eradicate alternative beliefs and pursue national homogeneity of belief. State action divested of positive or negative religious preference (assuming that such a thing is truly possible) is thus an ideal for the human rights situation generally, and for religious rights in particular.[9]

Whilst this is an issue which requires a much deeper treatment, it's worth looking briefly at the problems with this perspective. First, and in line with

some of the issues raised earlier, many pre-modern states may have been theocracies, but that does not mean that they have the infrastructural capacity to maintain uniformity of belief or ideology (whose pursuit is more characteristic of nationalist modernity); instead (and this is true of many Islamic states as much as it was of Tibet), they sought to maintain particular *hierarchies* between religious groups, hierarchies which were most usually maintained by relations of symbolic tribute.

Second, it assumes as universal the *conceptual* separation of church and state that emerged within the political ideologies of post-Reformation Europe and America, and therefore that theocratic systems are characterized by the linking of two fundamentally different institutional structures – religion and politics – the former of which is most essentially characterized by a set of beliefs (Needham 1972: 20; Tooker 1992), and the latter of which is characterized by the practical organization and control of populations through law and taxes. This historical separation of church and state is not a feature of Tibetan history, which instead regarded there as being a *hierarchy* between religious and worldly, in which the religious is the model of the worldly. As we have seen above, political loyalty in the modern Tibetan diaspora is most commonly manifest in the assertion of the disciple/root-guru relationship. This is more than a simple piece of political legitimisation: as an icon of rule, the notion of the root-guru stood behind most conceptions of religious governance (Tib. *chos-srid-gnyis-ldan* – 'the religious and worldly combined') in traditional Tibetan polities. The root-guru was seen as more than an ordinary teacher, because the faithful's relationship with him was in principle mediated by tantric initiation. This had three relevant dimensions: Firstly, it was a relationship bound by a series of religious vows. Secondly, Tibetan Buddhist ideas of morality and religious striving concentrate very strongly on the assertion that serving the root-guru unswervingly – by following his every instruction and imitating his actions – was the primary root of morality and means of spiritual liberation (again, this was not a *command* relationship – a *guru* had no legal power to command his disciples, who were deemed to obey out of religious fealty). Finally, these ritual relationships, being tantric, came under the specific jurisdiction of Buddhist protector deities (Tib. *choskyong*), employed to protect, amongst other things, the purity of the guru–student relationship. Here, therefore, religious membership is not so much a question of belief as the construction of a particular (hierarchical) relationship of tutelage with another individual.

The relationship between root-guru and his followers, and the place of *choskyong* deities, were seen as part of the basic model of religious law, from which state law derived both its example and its structure. People received law not so much as absolute injunctions, but in the manner of religious instruction: thus, for example, as with religious teaching, all state law in old Tibet was verbally transmitted, with the Dalai Lama's edicts and laws being distributed and read out afresh each year in each of the villages by a respected

monk or village headman (this same mode of instruction was used in the Shugden ban). Adherence to Buddhist state law, whilst deemed to be a question of individual endeavour rather than top-down policing, was also seen to be attended to by the *choskyong* deities, before whom Tibetan law courts often demanded that plaintiffs made oaths to secure their case (French 1995). In much the same way, Tibetan systems of taxation were built on the foundation of ritual offering (see Mills 2003). Pre-modern Tibetan law and taxation systems, in other words, rather than being notionally separate from religion, were built upon them.

This presents particular difficulties in the case of the deity Dorje Shugden. As we have seen, Shugden was a protector deity – a *choskyong* – whose historical role served to bolster the symbolic distinction between the ruling Gelukpa order and the influence of other schools of Buddhist institutional thought in Tibet. As a *choskyong*, however, the deity's role was more than a question of personal belief: *it existed as an element within the functioning structure of state law and practice*. As such, the continuity of the deity's *institutional* worship within the diaspora supported a state that was institutionally sectarian at a symbolic level. This consequence of continued Shugden practice was so strongly felt, for example, that during the early 1990s the Nyingmapa school threatened to remove their presence from the Tibetan Assembly of People's Deputies – they sought to secede from a state structure whose very *form and functioning* was antagonistic to their presence.

The allegation has been laid against the CTA (specifically, the Twelfth Session of the Assembly of Tibetan People's Deputies) that they changed Article 63 of the Tibetan Democratic Constitution such that the presiding judge of the Judiciary Commission, along with its two juries, should not be worshippers of Shugden. This specific accusation has not been rejected by the CTA (however, I have yet to confirm it either way), who see it as within their remit to constitute governance as they wish. If true, however, it is indicative of the particular place that the Shugden controversy plays within Tibetan cultural politics: it is a debate about the foundations of *the rule of law*. In banning Shugden from the institutional echelons of exiled governance, the Dalai Lama is not simply reacting to intolerance of a sectarian minority: he is also acting to *remould* the exiled Tibetan polity as constitutionally non-sectarian.[10]

Another important consequence came in the form of Tibetans' relationship with the Dalai Lama: the deity was seen to work against those that mixed Gelukpa and other teachings. Such a 'mixing' is (and always has been) a crucial facet of the Dalai Lama's position as head of state: firstly, because the present Dalai Lama saw a particular need to unite the various Buddhist and Bon traditions politically within the diaspora context. Secondly, because the Tibetan Buddhist state was, mythically at least, founded in around 641 AD – 750 years before the foundation of the Gelukpa order – many of the rituals of state which the Dalai Lamas inherited in their assumption of power in the

seventeenth century were pre-Gelukpa in form and content: specifically, they were part of the ritual corpus of the Nyingmapa, the oldest Tibetan Buddhist school and object of Shugden's protective ire (see also Dreyfus 1999).

In a circumstance where the Dalai Lama, as head of the Tibetan political cause, increasingly represented the principal religious centre for all politically inclined Tibetans, therefore, the worship of Shugden became, in terms of Tibetan state logic, symbolically opposed to the 'Tibetan cause'.

The SSC position: religious rights and personal belief

It is difficult to speak conclusively about the position taken by Shugden worshippers on this issue. The views expressed on the international stage were, despite efforts to 'Tibetify' them, almost exclusively those of European practitioners of Shugden worship, and particularly those associated with the Cumbria-based New Kadampa Tradition, an almost entirely British group which broke its links with the Dalai Lama and the wider Gelukpa order in the early 1980s. The views of those indigenous Tibetans who maintained the practices associated with Shugden – whether within the Tibetan exiled communities, or within non-refugee Buddhist communities in India, Nepal and Sikkim – have been largely silenced, by the campaign against Shugden and by their own divided loyalties: seeking on the one hand to act in accordance with the Dalai Lama's views, but at the same time reluctant to dispose of a powerful (and for many, reliable) protector deity.

Nonetheless, the London-based Shugden Supporters Community's (initially) pronounced voice within the international arena also speaks to this complex question of the relationship between religious rights and state power. For the SSC, the *existence* of the CTA as a bona fide state in the modern mould was largely taken for granted. This led to an automatic assumption on the SSC's part that accountability for egregious and politicized acts within the Tibetan refugee communities could unproblematically be laid at the Dalai Lama's door. By contrast, the less vocal South Asian protesters in Delhi – aware of the legal difficulties of treating the CTA as anything approaching a state – centred more substantially on the intervention at various points of the Indian government, and specifically the role of the Karnataka state police, who were on two occasions invited by the CTA to protect those CTA officials announcing the ban within the South Indian monastic universities. This, the DSDCRS (and various others in India) argued, was an inappropriate use of Indian state power, and at odds with its secular constitution. Interestingly, the DSDCRS's approach to the Tibetan Government-in-Exile during this period also lacked the confrontational approach of the SSC, all the way to observing traditional Tibetan protocols of assuming the impartiality and benevolence of the Tibetan ruler, whilst alluding to the possibility that his aides had somehow misled him.

The relationship between religiosity and state *within* the CTA was also a point of some emphasis for the SSC, who distributed a paper entitled 'Evidence that the Dalai Lama Bases His Decisions on the Words of Trance-Oracles and Divinations by Lottery'. Of all the considerable quantity of paperwork distributed by the SSC to the world press and human rights organizations, this is perhaps the oddest. Its ostensible intent (clear from the title) was to portray the Dalai Lama as a superstitious and irrational decision maker, who relies not on 'democratic decisions', 'coherent justifications' or 'deliberation' when making state-level decisions, but on the word of possessed oracles and rituals. That this allegation is in its literal sense true will surprise no one familiar with Tibetan affairs, and certainly wouldn't be denied by the Tibetan Government-in-Exile. On the other hand, the worship of Shugden, as with most such deities in the Tibetan tradition of Buddhism, is equally replete with divination and oracular pronouncement (the deity himself regularly possessed two principal oracles, one of whom has key links to the New Kadampa Tradition, and by extension the SSC). What is being asserted here, however, is not the existence of such traditions *per se*, but the role they play in the political and religious decision-making of a head of state, a role which the SSC deemed illegitimate. Again, the spectre of the church–state divide haunts this viewpoint, essential to the presentation of Shugden worship as a politically neutral, individual and thus harmless religious practice.

In summary, the Shugden dispute represents a battleground of views on what is meant by religious and cultural freedom. Inherent to this calculation is some kind of assessment of the legitimate relationship between religion and state action, a calculation which, in the case of the Shugden dispute, has been approached from (at least) four angles, whose evocation of the state as the basis for the conceptualization of religious rights can be seen as a rough continuum between a fundamentally sacral polity, and one based on the modern European nation-state. These views mark out some of the respective players in the dispute:

- *The Tibetan Government-in-Exile (CTA):* Asserted the functional role of religion within the constitution of a sacral political life centred on the Dalai Lama and held together primarily by acts of ritualized loyalty. Whilst conceding to the existence of a ban, they rejected the notion of a deterministic command structure or of de facto nation-state status within the Indian context. It was, therefore, seen more as a case of shifting the boundaries of a porous organization in favour of non-sectarian governance.
- *The Delhi-based DSDCRS:* Argued that the religious freedom of Shugden worshippers in India had been infringed, but also acceded to the sacral and sub-state nature of the CTA within South Asia. As a result, its primary human rights (as opposed to legal) claim was aimed at the

alleged interventions by the Indian nation-state (rather than the CTA) in the controversy.

- *Amnesty International:* Regarded 'spiritual issues' and state affairs as separate, whilst seeing the command-based nation-state as the fundamental framework for understanding the category of 'actionable human rights abuses'. Fundamental to this were linked criteria of state accountability and the exercise of state force, neither of which could clearly be identified within the CTA context. Whilst a prima facie case of infringement of religious freedoms within Tibetan refugee communities certainly existed, the absence of definable nation-state command structures precluded the formulation either of accountability or unavoidable jurisdiction essential to the formulation of a 'human rights violation'.
- *The British-based SSC:* Asserted the separation of religion and state as the basis for their understanding of religious freedom, and denied any legitimate functioning role to Buddhism within the constitution of that state. Identified the Dalai Lama as the de facto head of a refugee 'nation-state', and thus assumed the existence of a definable command structure within legally demarcated borders.

Conclusion

Whilst there was clearly also a strong issue of the actual 'facts of the case', the debate surrounding Shugden was primarily one of differing understandings of the constitution of religious rights as an element of state life, particularly in the context of theocratic rule. As an international dispute, moreover, it crossed the increasingly debated line between theocratic Tibetan and liberal Western interpretations of the political reality of religion as a category. By this, I do not mean to imply that the CTA slipped through a loophole in human rights law. Rather that, by denaturing relationships of religious faith to the extent to which they are merely 'individually held beliefs' and 'private practices', Western social and legal discourse may have blinded itself to the role that such relationships play in the constitution of states as communal legal entities.

Here, as we have seen, a key element of the human rights modelling of social reality – the concept of accountability – can only reasonably be said to be 'universal' to certain kinds of state formation. Indeed, the assumption that all egregious events can be conceptualized or encapsulated in terms of either human rights or legal-criminal discourse is a peculiarly modernist fantasy, akin in many respects to the assumption that all human value can be conceptualized in monetary terms (see Hastrup 2001): within such assertions, an implicit structure of exchange, positively regulated and homogenized (unsurprisingly, the principal cultural functions of the modern state) becomes hidden and normalized (see Cross 2001; Wilson 1997). This is more

than a mere conflict of measurement: like the monetary commodification of value, human rights discourse tends to exclude other idioms of morality and structures of moral action, acting as a 'universal solvent' that renders other discussions impossible within particular arenas.[11]

This should not, of course, surprise us: anthropologists have long critiqued the universal pretensions of modernist conceptual architectures, and the vast cultural project that is 'human rights discourse' is surely no exception.[12] As a legal discipline, it constitutes one of a number of dynamics by which people's lived experiences are appropriated, reconstructed and re-presented within the particular frames of nation-state and 'international' legal reality, a process of structured 'skeletonization' (Geertz 1983) which renders void 'vast areas of moral agency' (Hastrup 2001). As we have seen, however, different kinds of state have different kinds of skeleton, and modern human rights discourse was designed with only one physiology in mind, searing the flesh and bones of diverse moral and political lifeworlds on to the ribs and scapulae of the modern nation-state. In this kind of context, state systems constituted through acts of ritualized loyalty render the ideological demand for an anatomy of accountability obsolete as a diagnostic tool.

Notes

1 Much of this work is based on material that was distributed during the 1996–7 period to the international media and human rights organizations amongst others. Whilst it is therefore public material, this chapter could not have existed without the cooperation of a variety of institutions and archives: since this is a sensitive topic, many of them would not wish to be named specifically, but my thanks go to them anyway.

2 It must be clearly noted here that, whilst a *prima facie* case was presented to human rights organizations such as AI, these allegations remain effectively unsubstantiated, and their point-by-point veracity should *not* be assumed from any element of this chapter. The Tibetan Government-in-Exile invited human rights organizations such as AI to visit the refugee settlements to investigate, but the allegations were (as we shall see) deemed to be outside AI's mandate for action.

3 Tibetan Buddhist political and institutional life centres round the activities of its four principal schools – the Nyingmapa, the Kagyud, the Sakya and the Gelukpa – the last of which was politically dominant in Tibet from the seventeenth to the twentieth centuries; the four schools had the Dalai Lamas as their political figureheads.

4 'There is no religious suppression concerning the Shugden Deity issue. There is no coercion on personal freedom of worship. As every organization, institution, administration and government has certain rules and regulations [sic]. An individual or a group of people who do not subscribe to the established policies of an organization or administration can not remain in it. However, at no stage [has] the Tibetan Government in exile imposed any restrictions on an individual's right to worship.' (Statement of the Kashag, Dharamsala, May 14, 1996. Reported in *World Tibet Network News*, 13 May 1996).

5 Exceptions to this are those cases, such as many Islamic states, where political and legal power are disjunct. See, for example Ahmed (1987) and Bannerman (1988: 60–83).

6 Of course, states could always be held responsible for the lives of subjects and citizens of other regimes: in such cases – particularly where the victim is a *representative* of another state – then legal, financial or territorial compensation may be demanded.
7 Unlike many independence movements acting *within* the boundaries of ex-colonial territories, where the representation of political legitimacy has all too often adopted the framework of the very colonial rule it sought to overthrow (nationalism, borders, and so forth), the diffuse nature of the Tibetan diaspora has supported much of the practical efficacy of sacral modes of governance, despite an international political climate that assumes their inevitable obsolescence.
8 Of course, whether this makes the experience of being on the 'wrong end' of the process any less pleasant is another issue. Indeed, evidence from other 'loyalty-based' disputes in Tibetan politics – such as the recent acrimony over the competing candidates for the position of Gyalwa Karmapa – suggests that it simply adds to the ferocity of the dispute.
9 Durham wisely notes the difficulties that some historical theocracies have presented for this view, most notably certain Islamic states, where absolute Islamic theocracy was often allied with structures of limited religious pluralism that in certain respects afforded legal freedoms to religious minorities above and beyond those given by many modern secular states. However, he clearly sees these as exceptions that prove the rule.
10 In a *Guardian* interview on the Shugden controversy in 1996, the Bristol-based Buddhist specialist Paul Williams remarked: 'The Dalai Lama is trying to modernize the Tibetans' political vision and trying to undermine the factionalism. He has the dilemma of the liberal: do you tolerate the intolerant?' (Bunting 1996).
11 It is perhaps for this reason that human rights calculations represent a uniquely successful manner of 'resolving' contested issues such as the one at hand. However, the degree to which such a resolution depends on a shared 'regime of truth' (Foucault 1980: 131) about legitimate statehood may make the resolution of such issues illusory at best. Whilst Amnesty's statement was widely accepted in the Tibet-supporting international arena as the 'last word' on human rights calculation, it seems clear that, within the Tibetan refugee communities, the issue was also resolved to a limited extent by a wish (even amongst many Shugden worshippers) not to further threaten the theocratic authority of the Dalai Lama. As a whole, however, the notions of resolution and closure in this issue are probably equally statist fantasies, especially given the present heterogeneity of the Tibetan Buddhist world.
12 One of the questions here is whether human rights theory is a conceptual tool that anthropologists should be thinking about cultures *with*, or a cultural project that they should be thinking *about*. The dual nature of anthropology's ambiguous project – to at once catalogue the possible relevance of alternative social realities to our understanding of the dominant ideological frameworks of our own communal lives, whilst also acting as 'expert witness' for the inscription of those selfsame ideologies upon the very social realities that we study – makes practitioners of the discipline uniquely vulnerable to this ambiguity.

Bibliography

Ahmed, I. (1987) *The Concept of an Islamic State*, London: Frances Pinter.
Anderson, Benedict (1991 [1983]) *Imagined Communities*, London: Verso.
Bannerman, P. (1988) *Islam in Perspective*, London: Routledge.

Bunting, M. (1996) 'Shadow Boxing on the Path to Nirvana', *The Guardian*, London, 6 July 1996.

Central Tibetan Administration – Department of Religion and Culture (1998) *The Worship of Shugden: Documents on a Tibetan Controversy*, Dharamsala: Central Tibetan Administration.

Central Tibetan Administration – Kashag (1996) 'Statement from Kashag Concerning the Deity Dorje Shugden', *World Tibet Network News*, 13 May 1996.

Cross, F. (2001) 'Using Rights to Measure Wrongs: A Case Study of Method and Moral in the Work of the South African Truth and Reconciliation Commission', presented at the Annual Conference of the Association of Social Anthropologists, University of Sussex, 30 March– 2 April 2001.

Dreyfus, G. (1999) 'The Shuk-den Affair: Origins of a Controversy', online at http://www.tibet.com/dholgyal/shugden-origins.html. Also published in *Journal of the International Association of Buddhist Studies* 21(2) [1998]: 227–70.

Durham, W.C. (1996) 'Perspectives on Religious Liberty: A Comparative Framework', in J. van der Vyver and J. Witte (eds) *Religious Human Rights in Global Perspective: Legal Perspectives*, London: Martinus Nijhoff Publishers.

Foucault, M. (1980) *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, Brighton: Harvester Press.

French, R. (1995) *The Golden Yoke: The Legal Cosmology of Buddhist Tibet*, London: Cornell University Press.

Geertz, C. (1983) *Local Knowledge: Further Essays in Interpretive Anthropology*, New York: Basic Books.

Goldstein, M. (1971) 'The Balance between Centralisation and Decentralisation in the Traditional Tibetan Political System', *Central Asiatic Journal* 15: 170–182.

Goldstein, M. (1989) *A History of Modern Tibet, 1913–1951: The Demise of the Lamaist State,* Berkeley: University of California Press.

Hastrup, K. (2001) 'Representing the Common Good: The Limits of Legal Language', presented at the Annual Conference of the Association of Social Anthropologists, University of Sussex, 30 March–2 April 2001.

Mills, M.A. (2003) *Identity, Ritual and State in Tibetan Buddhism: The Foundations of Authority in Gelukpa Monasticism*, London: RoutledgeCurzon.

Nebesky-Wojkowitz, R. de (1993) *Oracles and Demons in Tibet: The Iconography of Tibetan Protector Deities*, Kathmandu: Pilgrims.

Needham, R. (1972) *Belief, Language and Experience*, Oxford: Basil Blackwell.

Ratner, S. and Abrams, J. (1997) *Accountability for Human Rights Atrocities in International Law*, Oxford: Clarendon Press.

Samuel, G. (1982) 'Tibet as a Stateless Society and some Islamic Parallels', *Journal of Asian Studies* 41: 215–29.

Sera Je Monastery (1996) *Declaration of the Expulsion of Kelsang Gyatso from Sera Je Monastery*, *UK Tibet Society News*, August.

Shugden Supporters Community (1996) 'Evidence that the Dalai Lama Bases His Decisions on the Words of Trance-oracles and Divinations by Lottery', fax.

Shugden Supporters Community (1996) 'Summary of Acts of Repression of Religious Freedom within the Tibetan Community in Exile Perpetrated by the Dalai Lama and His Government in Exile', fax.

Steiner, H.J. and Aston, P. (1996) *International Human Rights in Context*, Oxford: Clarendon.

Tooker, D. (1992) 'Identity Systems of Highland Burma: "Belief", *Akha-zang* and a Critique of Interiorized Notions of Ethno-Religious Identity', *Man (N.S.)* 27(4): 799–819.

Wilson, R. (1997) 'Representing Human Rights Violations', in R. Wilson (ed.) *Human Rights, Culture and Context*, London: Pluto Press, pp. 134–40.

Chapter 4

Legal/illegal counterpoints

Subjecthood and subjectivity in an unrecognized state*

Yael Navaro-Yashin

> But it is, in *droit*, what suspends *droit*.
>
> (Jacques Derrida 1992: 36)

In recent anthropological writing on the state, it has become quite common to conceptualize the entity, polity, or existence of 'the state' in inverted commas. The implication is, to use the words of Michael Taussig (1992), that 'the state' is 'a fetish', an abstraction imagined to be 'a thing' on the part of both public-political as well as scholarly discourses (Navaro-Yashin 2002). The suggestion of this emergent literature for the anthropologist is to write ethnographies which would deconstruct the notion of 'the state', focusing, instead, on the everyday social relations which make it up.

I propose, in this chapter, to focus on the inverted comma, but not only as a theoretical tool for deconstruction. What interests me is the inverted comma as an anthropological object in its own right, as a device employed in international bureaucratic transactions. The reference here is to a 'state', this time, that has been literally placed in inverted commas in international legal documents. An illegal, pirate, or pseudo-state, as it is referred to in various fashions, 'the Turkish Republic of Northern Cyprus' (TRNC) declared its independence in 1983 and was denied recognition by the United Nations. The 1983 declaration was the last in a series of earlier such attempts, on the part of Turkish-Cypriot officials, to create a 'state' of sorts, separate from the Republic of Cyprus which has been recognized internationally since its secession from Britain in 1960.

In the legal profession, its critics Douzinas and Warrington observe that 'Disputes about the placing of humble punctuation marks can still make all the difference between the success and failure of cases' (1994: 17). Indeed, 'quotation marks' are devices which generate specific policy effects in international law. In official documents, as well as in semi- or non-official publications coming out of the Republic of Cyprus and Greece, as well as the United Nations, all direct and implicit references to the existence of a state, a polity, or an administrative structure in northern Cyprus are negated

by framing such inferences in quotes. The use of the inverted comma writes and erases the reference to statehood in one motion, mentioning 'the thing' without recognizing it. In turn, references to the Republic of Cyprus are straightforward in international documents. The absent quotation marks in the writing of 'the Republic of Cyprus' in international law and practice could be magnified as anthropological objects, too.

What interests me is the experience of subjects of this specific unrecognized state, the 'TRNC'. But this illegal state would not have been able to maintain an administrative practice of sorts if it weren't for Turkey's military interests in Cyprus and its political and economic support. I will argue further that the unrecognized state also remains because of the meagre pressure put on Turkey, by Britain, the US, and international bodies, to withdraw its military from Cyprus. (Here we have a lot of room to study legal states' and the international legal system's construction, making, and support of the illegal.) Northern Cyprus is a zone that, effectively speaking, is controlled by the Turkish army and its martial law. The 'TRNC', presenting itself through the rhetoric of 'independence' and 'self-determination', is really a prop for an administration which governs northern Cyprus pretty much under the directives of the Turkish army. People who live in northern Cyprus, Turkish-Cypriots in particular, are 'citizens' of the unrecognized state, but also subjects of the military regime on site. If they suffer from being represented by 'a state' that does not have international recognition (or which, as they sometimes claim, does not represent their interests as Turkish-Cypriots), they are able to resist this subjection only if ready to face political persecution under military rule. With birth certificates, diplomas, passports, and deeds that are considered invalid anywhere outside northern Cyprus and Turkey, the 'citizens' of the 'TRNC' employ a whole variety of means to obtain papers from other ('legal') states. The sorts of transactions they have to undertake in order to be recognized on paper reflect much commentary on the problematic line between 'the legal' and 'the illegal' in international law. My objective, in this chapter, is to draw attention to what I call the dialectical relation between 'the legal' and 'the illegal'.

As an outcast of the international legal system, the 'TRNC' is also outside the bounds of internationalism's practices of accountability and ethics (Strathern 2000). Unlike Turkey, which effectively governs and supports it, the 'TRNC' is not a signatory of the International Convention on Human Rights. But it is well known that Turkey, a 'legal state' from the point of view of 'international law', has a frightening record of human rights violations. Amnesty International and the European Human Rights Court have some of their most extensive files, among all countries, on Turkey. But the 'TRNC', without a seat in the UN, is absent from the records of Amnesty International, too.[1] That which falls out of the internationalist loop remains unchecked by its systems of accountability. Like other international organizations (and following international law), Amnesty International deals with

'states' and not with individuals. In international law, individuals exist only as far as they are protected (or unprotected) by their respective 'states'. Within this logic, Turkish-Cypriots and other subjects of the unrecognized state do not have a category through which they could be held internationally accountable. In other words, we can argue, one has to be within the bounds of the law (or within its mandate) to be a proper outlaw.

It is perhaps partly because of this that northern Cyprus is an area where there is an excess of off-the-record economic transactions, including laundering, smuggling, and drug-dealing. As an area that is not checked by the international system, Turkey has channelled some of its undercover political activities, involving statespeople, the military, and the mafia, to northern Cyprus, too. The 'illegal state' and its territory cannot be singled out for illegal activities that take place under its premises, since very similar activities take place through the agencies and under the premises of 'legal states' too. But, in the absence of a system of accountability, the possibilities for violating 'the law' in a 'legal system' that is under international embargo are even more open. I will argue that this situation does not clear or sanction 'the international law', 'legal states', their legitimacy, rationality, or logic, but heavily implicates them. As Jacques Derrida has argued, 'it is, in *droit*, what suspends *droit*' (1992: 36).

It would be difficult to write anthropology on Cyprus without a reference to international relations and indeed much ethnographic work on both Greek-Cypriots and Turkish-Cypriots is prefaced with accounts of the international relations history (e.g. Papadakis 1998). However, anthropologists have taken international relations for granted, positing it as a background or context for their own microanalyses. My intention is to write against the grain of the normalization of 'international law' in ethnographic work. Instead, the project, here, is to turn 'the international law' itself into an object of anthropological analysis.[2] I propose not only a discursive analysis, in line with Michel Foucault, of the language of the 'international system' and its effects of truth (e.g. Malkki 1995; Ferguson 1990) or of 'policy documents' and the production of new subjectivities (e.g. Shore and Wright 1997), but also a deconstructive analysis. In the hall of mirrors in which 'legal' and 'illegal' papers reflect upon one another, the so-called boundaries between the 'legal' and the 'illegal' that people trespass in their transactions, and the personhoods and experiences caught in between, demand reflections that are more deconstructive than discourse analysis allows.

Among Turkish-Cypriot youth, international relations and political science has now for decades been a favourite topic for higher education. And, indeed, the language of international relations is common conversation in Cyprus. One informant reflected, saying, 'You see, if Cyprus wasn't considered "strategic", we wouldn't have any of these problems.' The word for 'strategic' is '*stratejik*' in Turkish – a derivative – and there is enormous public consciousness about the positioning of Cyprus on the axis of international

interests. Ordinary everyday conversations will refer to the recent attempts for bi-communal meetings between the Greek-Cypriot and Turkish-Cypriot officials, the last pronouncements of British, American, UN, EU, Turkish, and Greek political leaders, and the several solutions ('federation', 'confederation', 'joining the European Union', 'integration with Turkey', 'union with Greece') that have been offered for the Cyprus problem. The issue of 'the recognition of the TRNC' is a subject of discussion in homes, offices, and coffeehouses. And, in fact, most international symposia and conferences on Cyprus have also been focused on international relations, reproducing the very language and logic of the international system.[3] A focus on the experience of the subjects of the unrecognized state and their precarious positions on bureaucratic paperwork would have much to relate back to the language and practice of 'international law', rendering it, in itself, theoretically, politically, and ethically precarious. That is the project here.

Inverted commas

Let us turn the page to an international legal document, Resolution 541 adopted by the Security Council of the United Nations on 18 November 1983, three days after the unilateral declaration of independence by Turkish-Cypriot officials in northern Cyprus. Notice how a document of this sort constructs a 'state' which falls outside the bounds of 'the law':

> Concerned at the declaration by the Turkish Cypriot authorities issued on 15 November 1983 which purports to create an independent state in northern Cyprus,
>
> Considering that this declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee,
>
> Considering therefore that the attempt to create a 'Turkish Republic of Northern Cyprus,' is invalid, and will contribute to a worsening of the situation in Cyprus,
>
> . . .
>
> Calls upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus;
>
> Calls upon all States not to recognize any Cypriot state other than the Republic of Cyprus; . . . .
>
> (Press and Information Office of the Republic of Cyprus 1999: 87–8)

According to this resolution passed by the Security Council, no symbols, representations, functions, or activities of statecraft employed or undertaken in northern Cyprus would be recognized. International documents of this sort take great care to refrain from giving any hint of credibility to pariah

states. The inverted comma frames references to 'the state' and its derivatives, giving the anthropologist a lot of clues as to what is considered to constitute or represent 'statecraft' according to international law. Study the following excerpt from another relevant UN resolution (550, adopted in 1984):

> *Gravely concerned* about the further secessionist acts in the occupied part of the Republic of Cyprus which are in violation of resolution 541 (1983), namely the purported 'exchange of Ambassadors' between Turkey and the legally invalid 'Turkish Republic of Northern Cyprus' and the contemplated holding of a 'Constitutional referendum' and 'elections' as well as by other actions or threats of actions aimed at further consolidating the purported independent state and the division of Cyprus . . . .
>
> (Press and Information Office of the Republic of Cyprus 1999: 90)

Like 'the state', all its representatives – 'officials', 'administrators', 'ambassadors' – and all its functions – 'elections', 'referendums' – are considered fraudulent. The use of the inverted comma in such documents is supported by adjectives and adverbs like 'the purported', 'the so-called', 'the pseudo', 'the invalid', and 'the illegal', all putting the existence of the political entity of northern Cyprus into doubt.

We could comment that the producers of such international and/or official documents are good deconstructionists, that they draw attention to the constructed nature of 'the state' and its functions in much the same way that anthropologists, nowadays, approach notions associated with 'the state', its institutions, and representations. However, in the very motion of writing off the existence of 'a state', the producers of official documents inscribe and confirm the existence of other states or of the international system itself. In this sort of deconstruction, halted midway, it is possible to legitimize a seeming 'presence' for recognized states and for the international legal system against the constructed 'absence' of an unrecognized state and its subjects. The inverted comma in these documents could be interpreted to be supporting an international system that is based on the logic of statecraft, covering up the inverted dimension of legal states and the internationalism that supports them. But the inverted comma and the language of constructionism are good analytical devices, too, as they are used by anthropologists. If I position legal states as well as the international system itself in quotation marks in this chapter, it is to draw attention to the dialectical relation between the 'legal' and the 'illegal'. Indeed, 'the law' is well serviced and supported by such zones and constructions of 'illegality'.

In documents produced in the Republic of Cyprus, devices like the inverted comma, implying simultaneous reference and erasure, are employed in a similar, if at times more exaggerated, fashion. Observe, for example, the

following section from a document published by the Press and Information Office of the Republic of Cyprus:

> The declaration of the so-called 'Turkish Republic of Northern Cyprus' which was unanimously declared an independent state by the Turkish Cypriot 'Legislative Assembly' on 15.11.83 is the continuation and the zenith of the separatist activities which began on another instigation and with the involvement of Turkey quite openly in '64 but in actual fact covertly from '55. The previous stage was the so-called 'Turkish Federated State of Kibris' which was declared on 13/2/75 and which, in its turn, was the continuation of 'the provisional Turkish Administration' established in 1967. From '63 when the intercommunal friction began and the majority of the Turkish Cypriots, mainly under pressure from their leaders, isolated themselves in enclaves, until '67 the Turkish Cypriots were administered by a General Committee under the Chairmanship of Fazil Kuchuk.
>
> . . . Furthermore, the Turks claims that the Greek Cypriots, unreasonably in their opinion, maintained that they were the legal Cyprus Government and imposed a political and economic embargo on the Turkish Cypriots whom they considered a minority and at the same time they made recourses to various international fora. That is why the Turkish Cypriot leaders claim the Turkish Cypriots had no other choice but to declare independence without however precluding a final reunification of the island under federal administration.
>
> . . . Recognition of the pseudostate would mean that the legal Cyprus Republic, which is now internationally recognized, would cease to exist and the demand for reunification of the country would cease to be self evident . . . It would be up to the two equal 'states' whether they wished to come to an agreement for the federation or confederation and any negotiations for the partnership would begin from the same point for both parties. In other words it would be as if there never was a united and legal state, an invasion, an occupation, refugees; everything would be wiped out. That is the aim behind the declaration of independence in the occupied area of Cyprus.
>
> (Press and Information Office of the Republic of Cyprus 1996: 16–17)

The wars in Cyprus have not only been military. In what appears to be a ceasefire, there is not only an ongoing militarism, but also a conflict over statehood and proper international recognition. It is hence that 'officials' in both the south and the north take great care where they place their quotation marks when they produce documents to be circulated for propaganda or administrative purposes. In fact, one can get into trouble under both the northern and southern administrations for where one places one's inverted

commas in official or non-official documents or for what institution one chooses to interact with on the other side of the border. In documents produced in the south, all the emblems and practices of the administration in the north are questioned.

But in spite of the lack of recognition, since the intercommunal conflicts Turkish-Cypriots have been governed and ruled by several self-declared and successive administrative bodies. Turkish-Cypriots have received 'birth certificates' from this administrative practice; have been arrested and imprisoned by the northern Cypriot 'police' for demonstrating against 'the authority'; have been schooled in all levels up to university; have been allocated housing and 'title deeds', sometimes on property that belonged to Greek-Cypriots; have received salaries as 'state employees', as well as pensions and social security rights; have registered as lawyers, doctors, and personnel; and have been conscripted into compulsory military service. Indeed, if unrecognized, a state practice, of sorts, has existed in northern Cyprus since the partition of the island after Turkey's invasion in 1974. And for Turkish-Cypriots who, out of historical circumstance and/or their own agency, found themselves as subjects of the unrecognized state, an everyday involvement with state practices of many sorts has been necessary. In fact, in contrast to certain spaces in 'legal states' where an engagement with state apparatuses is apparently not necessary on an everyday basis, in northern Cyprus there is not an absence, but an excess of statecraft. Not only is every arena regulated by practices of the unrecognized state, but, because the area and the administration is practically controlled by the Turkish military, the presence of state figures and functions is even more poignant for Turkish-Cypriots and others who are now subjects of the administration. Indeed, the paradox is that, by ousting the self-declared state as 'illegal', the international system has assisted in generating a 'Leviathan' state practice of sorts in what is a very small geographical and physical space.[4]

No document or title produced by 'TRNC' institutions is considered valid by the 'Republic of Cyprus' or by the international system. Therefore, effectively speaking, if 'a state' is unrecognized, its 'citizens' are unrecognized, too. Those who only have 'TRNC' certificates, diplomas, licences, or travel papers to show cannot reach very far out of northern Cyprus (except to Turkey), unless they attempt to attain other ('valid') papers from other ('legal') states. From the point of view of the 'Republic of Cyprus' administration, there is technically no difference between 'a passport' produced by 'TRNC' authorities, a 'title deed', a 'municipality' water bill, a 'driver's licence', or a 'university diploma'. Since the 'state' in the north is unrecognized, all institutions associated with it, as well as their practices, documents, and products, are officially invalid, too. In life histories embroiled with necessary relations with a succession of 'state bodies' and in subjectivities and livelihoods formed under techniques of militarized and authoritarian statecraft, there isn't any personhood, in northern Cyprus, which is untainted,

unrelated, or unsubjected to the unrecognized state. The generation born around 1974 has known nothing other than the unrecognized authority in the north and the military which controls the border with the south. The 'state' is everywhere, we could say, imitating Foucault's comment on power; it is only experienced more visibly as such under the domain of an unrecognized state. The omnipresence of statecraft can, of course, be observed in legal (including liberal-democratic) states, too. However, the experience of statecraft under militarism and the absence of international recognition is contingently and comparatively more poignant. The life histories of individuals in northern Cyprus are marked by documents of the unrecognized state: birth, school, marriage, and death certificates, salary slips, utilities bills, land registry documents, property points, and certificates of military service.[5] But the 'Republic of Cyprus' considers all these transactions in certificates and papers false. Indeed, so concerned are they not to give any space of recognition for any institutional practice in the north that it is very common for documents produced in the south to read, 'the pseudo-minister of foreign affairs of the pseudo-state gave a talk at the pseudo-university in the north'. Turkish-Cypriots often joke about these adjectives of negation that are excessively used by Greek-Cypriots, making up imitations of their own negation in phrases like 'our so-called artist from the so-called state exhibited his work in the so-called art gallery'. The issue, here, is that international discourses of recognition cancel them, Turkish-Cypriots, too, as 'citizens' of the unrecognized state.

The inverted commas and allegations of 'piracy' in documents coming out of the 'Republic of Cyprus' and 'the United Nations' are countered or confronted by similar such claims in reverse in publications printed in 'TRNC' offices and their representatives abroad. In a propaganda pamphlet published soon after the 'TRNC' declaration of independence, Zaim M. Nejatigil, 'Attorney-General of the Turkish Republic of Northern Cyprus', wrote:

> On 15 November 1983 the Turkish Republic of Northern Cyprus was proclaimed by the unanimous vote of the Legislative Assembly of the hitherto Turkish Federated State of Cyprus. . . .
>
> The Turkish Federated State was set up in 1975 even though no federal structure existed to which it could be federated. The reason behind such a move was to keep the door open for a federation of two federated States. However, in the international field the Turkish Cypriots remained 'stateless' because the Turkish 'Federated' State did not, and could not, ask for international recognition. Paradoxically, the Greek Cypriot administration claimed to be the 'Government' of the whole of Cyprus even though its writ has not run in Turkish areas since December 1963 as confirmed by the then U.N. Secretary-General in his report S/6228 of 11 March 1965. . . .

> All through the process of the intercommunal talks conducted under the auspices of the United Nations since 1975, the Greek Cypriot side assumed, in complete disregard of the present realities, that a unitary 'Government of Cyprus' still existed and that the Greek Cypriot administration was that 'Government'.
>
> (Nejatigil 1983: 3)

The quotes, as used by the 'Attorney-General', do not mark the experiences of the Greek-Cypriot citizens of the 'Republic of Cyprus' because they do not match the quotes that are used in documents of the UN. Internationally, the embargo (economic and political) is on subjects of the administration in northern Cyprus.

Documentary reflections

According to a British Home Office document I have in hand, Dervish Tahsin 'arrived in the UK from north Cyprus on 20.4.97 and claimed asylum'.[6] 'He was in possession of a valid north Cypriot travel document', writes the immigration officer. He was detained and photocopies of his passport and plane ticket were kept. In the standard first interview, a question and answer session, Tahsin was asked what events led him to leave his country. Tahsin said he had been arrested in northern Cyprus because he refused to participate in a nationalist demonstration. 'Why would they arrest you?' asked the immigration officer. 'Because of the conflict on the border', replied Tahsin.

Q: These were Turkish Cypriot police and soldiers?
A: Turkish soldiers and Turkish Cypriot police.
Q: These are soldiers from mainland Turkey?
A: Yes.
Q: Why should they want to arrest their own people?
A: Because of the events happening near the border.
. . .
Q: What reason did they give you for arresting you?
A: Because the Greeks were creating problems on the border and they wanted us to go and fight against them.
. . .
Q: What sort of trouble occurs on the border?
A: Throwing stones and things like that. I am supporting the peace not the war in Cyprus.
Q: Are you involved in any political activities?
A: No.

After this interview, Dervish Tahsin's asylum claim was refused. He received an official letter from the Immigration and Nationality Directorate which read as follows:

Dear Mr. Tahsin

. . .

The basis of your claim is that you left North Cyprus because you are frightened of war and only want peace. You also claim to fear arrest from the Turkish security forces because of the conflict between the north and south of Cyprus. You claim that you have been arrested by the Turkish authorities over the years, the reasons being that they want you to go and fight against the Greeks. You claim there is no safety to your life.

The Secretary of State has carefully considered your application but is not satisfied that you are a refugee.

You are the holder of a valid TRNC travel document issued by the North Cypriot authorities in your name. As a holder of a TRNC passport you are considered to be a national of North Cyprus and as such recognised as a citizen of North Cyprus and therefore entitled to all the benefits accruing to any citizens as laid down by the Constitution of 12 March 1985. You do not claim to have any political affiliations, nor do you claim to have had any problems in obtaining a travel document. You do not claim to have had any problems leaving North Cyprus. Your ability to obtain and use this document legitimately indicates to the Secretary of State that you left by normal methods and were of no adverse interest to the North Cypriot authorities. The Secretary of State is therefore of the opinion that you were not at risk from those authorities.

However it is not the North Cypriot authorities that you claim to be afraid of in North Cyprus; it is the Turkish forces in particular whom you claim have harassed you over the years. . . . You also imply that there is no freedom of speech in North Cyprus.

The Secretary of State considers that these claims are not consistent with what is known about the situation in North Cyprus. In forming this opinion the Secretary of State is not satisfied that you have given a true account of events.

The Secretary of State is satisfied that North Cyprus is a fully functioning democracy with respect for human rights. There is no independent evidence to suggest otherwise. Information which is available indicates that in North Cyprus freedom of speech, religion and association with political parties is freely respected. These rights are provided by law . . . .

The Secretary of State is aware that the Turkish Cypriot Army is in North Cyprus at the request of the North Cypriot authorities and these forces work with the North Cypriot authorities. The Secretary of State is of the view that any action that is taken in maintaining law and order would be within the bounds of keeping the peace and that any actions that the security forces take are within the jurisdiction of the legal system as laid down by the Constitution. He is of the view that any complaint

> you have against the Turkish security forces would be a matter for you to take up through the normal legal channels within your rights as a citizen of North Cyprus . . . .
>
> Having considered all the information available the Secretary of State is not satisfied that you have established a claim to refugee status under the terms of the 1951 United Nations Convention relating to the Status of Refugees. Your application is now refused.
>
> Yours Sincerely,
> Asylum Directorate

Positing this document from the Immigration and Nationality Directorate against the previous exemplary documents I have studied in this article, I would like to suggest that, from the anthropologist's perspective, this Home Office document should not be more self-evident as an object for analysis than the documents of the unrecognized state. That this document is a product of a 'legal state' makes it no less anthropological or more 'normal'. Of course, every document asks to be studied within the historical conditions that produced it and my intention is not to abstract 'documents' out of their context and suggest that a document is a document, whether 'legal' or 'illegal'. 'Documents' have differential and specific effects in the experiences of their subjects. However, as Foucault has suggested:

> [the] frontiers of the book are never clear-cut; beyond the title, the first lines, and the full-stop, beyond its internal configuration and its autonomous form, it is caught up in a system of references to other books, other texts, other sentences: it is a node within a network.
>
> (Cited in Swain 1997: 7)

I would like to argue that documents produced in the 'UN', the 'Republic of Cyprus', the 'TRNC', and 'Britain' operate within such a 'network' (Riles 2000), shared 'conditions of possibility' (Foucault 1972) and the same historical contingency. Therefore, I propose to place all these documents face to face, such that they mirror and reflect upon one another. The counter-images that will be produced through these multiple reflections form the space where I will situate my analysis.

Compare, then, Resolution 541, from which I quoted an excerpt, with this Home Office document, keeping in mind the reflections of the 'Republic of Cyprus' and 'TRNC' scripts. If the presence of the inverted comma is to be noticed in the UN references to the 'TRNC', its absence in the Home Office document should be instructive. Britain, like all UN member states other than Turkey, does not recognize the 'TRNC' as 'a state'. And yet, this Home Office document, designed to refuse asylum to people arriving from northern Cyprus, endorses 'the law' and validates 'the

authority' of the 'TRNC', while using the language of western liberalism – referring to 'democracy', 'freedom of speech', and 'human rights' – to further grant it legitimacy. Moreover, though the Turkish invasion of northern Cyprus is considered an 'occupation' in international legal documents, this Home Office document signs in to Turkey's martial law in northern Cyprus. Assuming that a language of accountability (Strathern 2000) running in western European states would be the order of the day in another state, too, the immigration officer advises Dervish Tahsin to resort to his 'rights as a citizen of North Cyprus' and to complain about the army 'through the normal legal channels'. That the very existence of the Turkish army in northern Cyprus indicates a state of emergency where so-called 'normal' measures of accountability would not pass is not a consideration which intersects the discourse of the immigration officer. In fact, assuming that a 'Turkish' army would protect ethnic 'Turks' in a given territory, and therefore endorsing the ideology of the army itself in its attempt to legitimize its ongoing presence in Cyprus, the immigration officer asks Dervish Tahsin, 'These are soldiers from mainland Turkey? Why should they want to arrest their own people?' In this ethnicized logic of Home Office discourse, if Dervish Tahsin had been 'Greek', his oppression in the hands of the Turkish soldiers would have made sense.[7] Here, though Tahsin has defected from the unrecognized state that he comes from and sought protection under a recognized state, the message of the Home Office is that he ought to continue being a subject of the unrecognized state, hence the initial refusal of his asylum claim and the order, before Tahsin's appeal, of deportation to northern Cyprus.

If we once again reflect the UN and Home Office documents against one another, documents that ought supposedly to be in agreement within the sacralized zone of 'international law', the 'legal' international domain's construction as well as support and endorsement of the 'illegal' should be self-evident. Here, then, the anthropologist can easily place the document coming out of the 'illegal state' beside the papers produced in 'legal states' and analyse them with similar theoretical tools. There is almost a mirror reflection. But further contextualization is necessary, as follows.

Certificate transactions

In the passport section of the Cyprus High Commission in London, the queue is long, the room is full. The passport officers are Greek-Cypriot civil servants. But most of the applicants are Turkish-Cypriots. 'All Turkish-Cypriots can apply for Cypriot passports because they are entitled to it', explains a high-level representative of the High Commission. 'Cypriot law works', he says, implying a contrast with the unrecognized state in the north representing the absence of 'law'. 'A Turkish-Cypriot can bring the Republic of Cyprus to court for not giving him a passport', he says.

Indeed, since the 'Republic of Cyprus' does not recognize the 'TRNC', it claims Turkish-Cypriots as its own citizens. 'To apply for a passport, you need to show your parents' birth certificates', explains the civil servant from the High Commission. But birth certificates issued after 1974 and under northern Cyprus administrations are not recognized. 'If, for example', the Commission officer explains, 'someone born after 1974 has parents who are 50 years old, he needs to bring their birth certificates.' Cyprus was a British colony until 1960 and birth certificates issued by the British are considered valid by Cypriot authorities today, if they undergo a recognized transformation process. 'What if', I ask, 'a Turkish-Cypriot does not have his parents' birth certificates to show?' 'There are records in Cyprus of all births', the officer explains, 'so if someone can't find a document, they can go and check in the records. Then, they have to come and swear that they are the child of so-and-so. Like this, they will be entitled to a Cypriot passport.' I don't endeavour to remind the officer that there is a border and that, unless they have special permission or connections, Turkish-Cypriots cannot pass the border to check their records in the south. But there are many Turkish-Cypriots who come to London, specially to apply for passports at the High Commission. Advice and community centres for Turkish-Cypriots act as intermediaries for such application procedures, too. But one has to seek advice from the right community centres. Social workers who affiliate with the 'TRNC' do not assist their clients in applying for 'Republic of Cyprus' passports, because 'TRNC' authorities do not recognize the 'Republic of Cyprus'.

Cypriot passports give their holders access to most countries without a visa. And when the 'Republic of Cyprus' joins the European Union in a couple of years, Cypriot citizens will be 'European'. For subjects of the 'TRNC' whose papers are not recognized and who, therefore, have limited access out of northern Cyprus, Cypriot citizenship and passports can be a blessing. And from the point of view of international law, their application for Cypriot passports is 'legal'. The 'Republic of Cyprus' is a valid state and Turkish-Cypriots, legally speaking, are its citizens.

However, what looks 'legal' from one perspective is 'illegal' from another. Following the precepts of the 'international law' is dangerous business in northern Cyprus: it is 'illegal'. On 12 and 14 April 1998, newspapers published in northern Cyprus (see *Kibris* and *Yeni Duzen*) announced that a statement had been issued by the government that 'Holders of Republic of Cyprus passports will be charged a fine of 2 billion Turkish liras and a prison term of 5 months.' I was in northern Cyprus at the time of what was called 'the passport scandal' and Turkish-Cypriots were, indeed, afraid of being found out for their (southern) Cypriot registration or citizenship. One lower-level civil servant said, 'I wouldn't get a Cypriot passport, because I am afraid. What if they take us in for an 'embarrassing crime'? I am a state employee, I receive a salary from the state. I couldn't take such a risk.' This

civil servant held a 'TRNC' passport as well as a passport of the Republic of Turkey. Turkey issues passports to Turkish-Cypriots for them to use as 'valid' travel documents. But he wanted everything to be done to assist his cousin, living in London, to get a Cypriot passport. Many Turkish-Cypriots, and especially those currently living in northern Cyprus, express dilemmas about applying for Cypriot passports. 'I wouldn't want to obtain one', said a Turkish-Cypriot man, 'because I have principles. I wouldn't want to accept Greek policy as it is. But I would like my son to get one so that he can escape from Cyprus and build a life somewhere else.' Others who are more overtly critical of the 'TRNC' authority and who live abroad express few such dilemmas and readily apply for Cypriot passports.

'Passports' are expensive commodities in international circuits: there is high demand for them. Until 1994, the UK did not enforce visa regulations on holders of 'TRNC' passports. It was easier, at the time, to gain access to the UK with an unrecognized 'TRNC' passport than with a recognized Turkish one. Therefore, a significant number of individuals from Turkey, and among them many Kurds and political dissidents, obtained 'TRNC' passports, paying high prices (in the range of 3,000 to 5,000 GBP) to the passport mafia operating in northern Cyprus. They arrived in the UK, skipping the visa restrictions on Republic of Turkey passports, and they claimed asylum. The Home Office, having figured the route, has now imposed visa regulations on 'TRNC' passports, too. Now it is not possible to embark on a UK-bound airplane from northern Cyprus without showing a valid British visa.

Because of the complications, it has become much more difficult, particularly for Turkish-Cypriots born after 1974, to obtain 'Republic of Cyprus' passports for which they have entitlements according to Cypriot and international law. The 'Republic of Cyprus' is much stricter on individuals born after 1974, wanting to distinguish between indigenous Turkish-Cypriots and more recent 'citizens' of the 'TRNC' who have been given settlement rights in northern Cyprus as immigrants from Turkey. On one occasion, a young Turkish-Cypriot man born in 1981 in Magusa (Famagusta) of parents of Baf (Paphos, south Cyprus) origin had to pay 3,000 British pounds to a passport mafia operating from south Cyprus in order to get the Cypriot passport he was entitled to by 'the law'. In other words, he had to undertake 'illegal' means to obtain his 'legal' right as a citizen of the 'Republic of Cyprus'. In the border village of Pile (Pyla), where Turkish-Cypriots are occasionally allowed access by the authorities in the north in order to meet their relatives in the south, middlemen have sprung up who will escort Turkish-Cypriots to the passport office in south Nicosia in return for a fee or who will take documents from Turkish-Cypriots, obtain the passport, and produce it again in Pile in return for an agreed payment. Of course, there are some Greek-Cypriots who will do this as a favour to their Turkish-Cypriot friends who live in the north.

Turkish-Cypriots who have worked in the 'Republic of Cyprus' in the past also have entitlements to Cypriot pensions. In 1957, under the British administration, a social security law was passed in Cyprus, covering both Greek-Cypriots and Turkish-Cypriots. Those who can document that they have worked in Cyprus between 1957 and 1963, or right before the beginning of the intercommunal conflicts, have the right to receive their pensions. In northern Cyprus, many elderly people still receive pensions in Cypriot pounds. Many such applications for Cyprus pensions are processed by the Dev-Is trade union in northern Cyprus. At a certain point, such applications for Cyprus pensions were banned by 'TRNC' authorities and Turkish-Cypriots protested, saying that it was their right for having worked in Cyprus in a certain period. 'TRNC' officers decided to overlook the widespread phenomenon, saying that 'most such pensioners will die soon, anyway'. There are about 4,000 Turkish-Cypriots who still receive such pension payments from the south, while they live in the north.[8] There are even exchange bureaus which openly advertise that they are able to provide cash in Turkish liras in return for pension cheques in Cypriot pounds. The elderly parents of many Turkish-Cypriots still maintain a living in northern Cyprus through 'Republic of Cyprus' pensions. Many other such transactions take place across the military border, transactions which confuse constructions of 'recognition', 'statehood', 'the law', and 'illegality'.

The dialectic of legality

The sorts of transactions subjects of an unrecognized state have to undertake to obtain legal papers, the borders they have to traverse, physically across military barricades or metaphorically across legal divides, open much to question and analysis in international legal discourses. One analytical vantage point could position itself beside the rationalist logic and rhetoric of international law and argue that the problems for the subjects of the 'illegal' state have to do with the anomalous entity, the 'illegal' state itself. Such an approach, which would isolate and objectify 'the illegal state' for its 'piracy' or its breaching of 'the law', is one which would reproduce the law's mythical representation of itself as an agency that contradicts or counters 'criminality'. I have different suspicions about 'the law'.

If, we could ask, 'the law' were so comfortable with its rationality and legitimacy, why the obsession with marking 'the outlaw', over and over and, yet again, with such stylistic devices like inverted commas and adjectives of negation and doubt? The 'Turkish Republic of Northern Cyprus' is interesting as a 'state' that functions supposedly outside the accepted boundaries of internationalism. And, indeed, it is not only 'illegal' as a state but, also due to this, is a zone where activities like laundering, smuggling, drug-dealing, political assassination, and arrest without trial more easily take place.

However, the 'TRNC' has been able to maintain itself, I would argue, not against, but with the support of 'international law'. This can be confirmed with reference to analyses of the complex history of Cyprus which refer to Britain and the US's inaction vis-à-vis (and therefore endorsement of) the partition of the island by Turkey's military invasion (see Hitchens 1999). I would like to suggest, further, that the 'TRNC' as a zone of illegality is interesting because it magnifies the international law's own immersion, construction, and therefore creation and support of illegality. Jacques Derrida has written about the allure of 'lawlessness' from the point of view of gatekeepers of 'the law':

> The admiring fascination exerted on the people by 'the figure of the great criminal,' . . . can be explained as follows: it is not someone who has committed this or that crime for which one feels a secret admiration; it is someone who, in defying the law, lays bare the violence of the legal system, the juridical order itself.
>
> (1992: 33)

I will propose that this is the explanation for the excessive attempts to stress the 'TRNC's illegality. The 'TRNC' is interesting for me as an anthropologist, not in the fashion of studying a 'peculiar cult in a peculiar context'. I think, rather, that this 'state', of sorts, which appears anomalous or peculiar, offers much to reflect on anthropologically in supposedly 'normal states'. It magnifies what is 'peculiar' in 'legal states' and in the 'international system' itself. This doesn't make it legitimate; it renders it further illegitimate as a dialectical partner in 'international law'. It highlights the 'illegitimacy' at the so-mythified foundation of international law itself.[9]

Derrida writes, building his analysis in dialogue with Walter Benjamin's 'Critique of Violence', that 'The parliaments live in forgetfulness of the violence from which they are born' (1992: 47). Indeed, Benjamin's work (1992) wakes one's imagination to the catastrophes that underlie modern bourgeois institutions which present themselves in the guise of rationality, liberalism, normalcy, and neutrality. If we follow this argument, then the 'illegal state' is not alone in founding its administration with a gloss over the violence committed under its name. In fact, one could argue that the construct of 'the unrecognized state' in international legal documents serves to cover the lawlessness or violence that underlies 'the law' of recognized states too (Gourgouris 1997: 127, 137).

Indeed, the frameworks proposed by the Critical Legal Studies movement (e.g. Douzinas and Warrington 1994) have much to offer the anthropology of the state and the anthropology of law. And my study of the 'illegal state' can be read as a magnification of what such critics of 'the law' have read in the institutions, discourses, and foundation of western legal practices. However, the experiences of those subjected to the 'illegal state' demand an

analysis that furthers this deconstruction and critique of 'the law'. To really understand and reflect on this experience, the anthropologist can introduce a dimension unstudied by students of 'law and literature' (Aristodemou 2000). The following section attends to the experience of a Turkish-Cypriot man thrown from one state body to another. What appears like an absence of difference between 'the legal' and 'the illegal' for critical theorists of the law is experienced as a real difference by someone caught in the possibilities offered by the dialectic of legality itself.

Paper bodies

Let us, once again, take a document produced in a 'legal state' and place it beside a document produced in an 'unrecognized state'. Compare, for example, a 'TRNC' and a 'Republic of Cyprus' passport. Is there a difference? Now, if we were to take Jacques Derrida's propositions seriously, we could argue, convincingly, that there isn't a difference. Derrida, as a critic of 'the metaphysics of presence' as it appears in multiple institutional discourses (including that of the law), suggests that 'there is no transcendental or privileged signified and that the domain and play of signification henceforth has no limit' (1978: 281). Accordingly, there couldn't be a difference between a document written under a 'legal' authority and one produced in an 'illegal' polity. Derrida questions the very distinction between an 'original' and a 'copy'. Every act of inscription is already 'a copy', according to Derrida, including that which presents itself as 'the original'.[10] Following this argument, and particularly Derrida's study of 'iterability' at the core of the law (1992), Veena Das, in a recent paper delivered at SOAS (2001), has argued that the state itself engenders the forgery of its practices. Therefore, no one can argue that a 'forged' paper contradicts the conditions of possibility set out by the 'legitimate' state authority itself. Following a comparable theoretical trajectory, Brinkley Messick has studied 'the existence of tens of thousands of hand-copyists' in Yemen before the advent of lithography and print technology, arguing that 'the copy may take on the authority of the original' (1997: 162, 164). These anthropological works may be set as precedents for a critique of 'the original' or 'legal state' – the question that interests me. If we were to deconstruct the notion of 'the original', in Derridean fashion, 'the copy' turns out to be no less 'original'. Hence, it would be difficult to argue a difference between a document of a 'legal' and 'illegal' state. Both are copies!

As convincing and radical as this argument, derived from deconstruction, may sound, particularly in the way it implicates the authority of 'legal' (and 'liberal') states, I would like to propose that it has considerable limitations. I will refrain from making any broader claims, for my interest is in the specific historical experiences of Turkish-Cypriots as subjects of an unrecognized state. As my account, so far, of their experiences seeking 'legal'

papers and caught between contradictory documents illustrates, for Turkish-Cypriots there is an existential difference between a document of the 'TRNC' and documents of 'legal states' or the 'international system'. A current 'TRNC' document confines one to the borders imposed by the Turkish army since 1974. A 'Republic of Cyprus' document, on the other hand, provides access all over the world. The difference between the two documents is experientially very real for the subjects of the documents. That is why Turkish-Cypriots take so many risks, including the possibility of imprisonment under military courts, in order to obtain 'Republic of Cyprus' passports.

One could argue that 'the difference', as experienced, is only 'a difference' because international legal discourses would construe 'an illegal state' (in inverted commas) such that there is an effect of 'difference'. True enough. But as Douzinas and Warrington have pointed out, law is the law because it is enforced (1994: 211–13). In other words, inverted commas are not just artefacts that can be hermeneutically interpreted by the law's critics; the law's enforcing mechanisms have to be studied too (ibid.). I will argue that, from the point of view of subjects of 'the law', here Turkish-Cypriots, there is a difference in the experience of subjecthood under a 'legal' and 'illegal' state. Turkish-Cypriots do not experience the same things in the process of applying for 'TRNC' and 'UK' documents. A 'document' cannot be theoretically abstracted from the historical conditions for its particular production, transaction, and reception. In other words, documents need to be studied and situated in their historical contexts. Even if it could be argued that they are all 'copies', as 'copies' they do not produce the same effects on the experiences of their subjects. 'The law' is enforced in the 'TRNC' in a way that differs from the 'UK'. From the point of view of people who have been subjected to political systems in varied (if related) contexts the difference is existentially and poignantly real.

Consider the different experience a Turkish-Cypriot faces when applying for a travel document from an office in the 'TRNC' or in 'Turkey' versus a 'Republic of Cyprus' or British 'Home Office'. Consider, as well, what can happen to a 'TRNC' subject when entering or leaving northern Cyprus. The experience of Halim Balli, an informant, is telling. In his town in northern Cyprus, Balli was known for his views, critical of the 'TRNC' administration. In 1980, pan-Turkish nationalists who had settled in his town as immigrants from Turkey began to harass him and threaten him. On one occasion, according to his account, a couple of nationalist Turkish men shot at his house with machine guns. He returned their shooting. The local police did not turn up to protect him or his family that night and his mother died on the occasion. On the following day, he was arrested by the 'TRNC' police for illegally using guns. Balli was imprisoned in northern Cyprus, confined for 93 days and tortured. He was sent to another prison, this time in Turkey, and tortured there, too. When released, he found a way to arrive

in the United Kingdom. That was in 1982. But he did not claim asylum until 1990. In the meantime, he applied for a 'Republic of Cyprus' passport through the High Commission in London. He filled in an application form, submitted it to the passport office, waited for the reply to return from Cyprus, and received his Cypriot passport three months after his application without any problems. In 1990, when he decided to apply for asylum in the UK, lawyers told him that he would be refused because he had been residing illegally in the UK for eight years. He decided to go ahead with his application to the Home Office. In his interview, the immigration officer asked him why he hadn't claimed asylum when he first arrived in the UK in 1982. He replied: 'I was waiting for Denktash [the political leader of the 'TRNC'] to die. I can't get used to the rainy weather in this country. In Cyprus, I go swimming in the sea every day.' He was granted asylum in the UK. Last year, he visited northern Cyprus for the first time since his forceful departure. Upon arrival, he was taken into custody by 'TRNC' police, questioned for seven hours and beaten. He was able to leave and return to the UK. In the UK, he works as a builder and a cleaner and claims housing benefit from his local council. He visits Cypriot advice centres frequently to ask for help in filling out benefit applications and documents to transact with local London bodies and authorities. He finds this document-filling process very difficult. But when I asked him, 'what difficulties have you experienced in Britain?', he was surprised and responded, 'the difficulties for us are not here. They are in northern Cyprus.'

If theoretically one can argue that there is no difference between 'a document' and 'a document' (or a 'state' and a 'state'), the sorts of experiences that one has to face when applying for documents from a militarized state are radically different. Halim Balli experienced major distress in the process of his asylum application in the UK. However, for him, what he had to endure under 'TRNC' and 'Turkish' authorities, in and out of his own country, are incomparable with his experience in Britain.

I will suggest, therefore, in dialogue with deconstructionist studies of writing, the law, and documentation, that, further than abstracting 'documents' out of their poignancy, significance, and context, an anthropology of documented lives requires that one study documents as they are experienced by their subjects. If theoretically one can argue that the difference between an 'illegal' and 'legal' state is a construction, experientially the difference is real. If one can demonstrate the dialectic between authoritarian and liberal states, for those caught in the dialectic itself the very contingencies it has created allow for only one better existential option: getting a European document. This situation may perhaps explain why so many Turkish-Cypriots would favour, off the record, Cyprus's integration with the European Union. In the conditions of possibility offered by the international system, with an 'illegal' zone supported by 'legal' practices, a document that allows an exit from the 'illegal state' is the only possible option.

Notes

⋆ I would like to thank Mehmet Yashin, Costas Douzinas, Marilyn Strathern, Jane Cowan and Anthony Good for discussing ideas in this chapter in the process of its production.

1 Amnesty International has not published anything on the 'TRNC' in recent years and does not hold a file on northern Cyprus. This was confirmed to me by the researcher on the Turkish team of Amnesty International's London office (March 2001). She was aware of the assassination of the journalist Kutlu Adali in Cyprus, after he published articles on the Turkish army's looting of property from Greek-Orthodox churches, as well as of the recent arrest of journalists of the *Avrupa* newspaper who had called for the separation of civil from military administration in northern Cyprus. But no further research was carried out on these cases by Amnesty International. In fact, the absence of a file on northern Cyprus in Amnesty International's archives and reports has been used as 'proof' by British Immigration Adjudicators for turning down asylum applications coming from northern Cyprus.

2 There are, of course, precedents for this (e.g. Wilson 1997). Richard Wilson has suggested that 'the numbers of anthropologists actively researching transnational legal processes is relatively small' (ibid.: 1). What I attempt to do here is different from the project, as outlined by Wilson, of studying the reception of transnational legal discourses in local contexts, or 'the tension between global and local formulations of human rights' (ibid.: 23). I think the project, as defined by Wilson, does not really challenge anthropology's conventional project of studying the local in its assimilation or response to the global. Nor does it really, in spite of Wilson's claims (ibid.: 3), move very far beyond the universalism/relativism debate which has kept anthropologists from more radically analysing the discourses and politics of modern legal systems.

3 An important exception is Yashin (2000).

4 The observation that 'the Leviathan' is a good metaphor through which to study the administration in northern Cyprus can be supported by Carl Schmitt's theory of state sovereignty (1985). (Schmitt was a great admirer of Hobbes's political theory.) According to Schmitt, a state is only 'sovereign' if it is able to suspend its constitution in a state of emergency. If we follow this theory of the state, Turkey's invasion of northern Cyprus in 1974 was done in accordance with the Treaty of Guarantee which was signed at the inception of the Republic of Cyprus in 1960. Accordingly, Turkey and Greece held rights to intervene in northern Cyprus, if their respective communities were threatened in northern Cyprus. Since 1974, Turkey has argued that the 'state of emergency' continues in Cyprus and has not withdrawn its army. The case only proves that Schmitt's reactionary notions of sovereignty reign in an international arena which runs on a discourse of 'liberalism' (which, incidentally, Schmitt thought he was countering). For discussions of Schmitt, I would like to thank Mariane Ferme and Costas Douzinas.

5 For a study of the 'TRNC' administration's allocation of property points to Turkish-Cypriots arriving as refugees from southern Cyprus after the 1974 war, see Scott (1998).

6 Please note that I have changed the name of the person concerned, as well as the details of his story, to retain confidentiality. The person concerned has already attained asylum in the United Kingdom and lives there with recognized papers. Home Office documents are public documents and can be quoted from as long as the confidentiality of the asylum claimant or appellant is protected.

7 A legal representative who acts for asylum seekers has observed, in an interview I conducted with her (8 March 2001), that Immigration Adjudicators in the UK are

not able to comprehend persecution on the basis of one's political ideas, even though this is one of the criteria sought in a 'proper' refugee under the Geneva Convention (Tuitt 1996: 11–12). According to this representative, immigration officers have a much easier time comprehending persecution on the basis of one's different 'ethnicity' or 'race'.

8 This is according to Onder Konuloglu, president of the trade union Turk-Sen.

9 For a study of mythological discourse about modern law, see Fitzpatrick (1992).

10 Hayden White (1987) has critiqued the notion of 'the archive' in the historical profession, by building his theoretical argument on Derrida's work. White has argued that an archival document is already a second-order interpretation of a past event, and therefore not a 'primary source'.

Bibliography

Documents and primary sources

Kibris (1998) Issues of 12 and 14 April, Nicosia, northern Cyprus.

Nejatigil, Zaim M. (1983) *Turkish Republic of Northern Cyprus in Perspective*, Nicosia: published by the author.

Press and Information Office of the Republic of Cyprus (1996) *Turkish Policy on Cyprus and Efforts to Solve the Cyprus Problem*, Nicosia.

Press and Information Office of the Republic of Cyprus (1999) *Resolutions Adopted by the United Nations on the Cyprus Problem, 1964–1999*, Nicosia.

Yeni Duzen (1998) Issues of 12 and 14 April, Nicosia, northern Cyprus.

Secondary sources

Aristodemou, M. (2000) *Law and Literature: Journeys from Her to Eternity*, Oxford: Oxford University Press.

Benjamin, W. (1992) 'Theses on the Philosophy of History', in W. Benjamin *Illuminations*, London: Fontana Press.

Das, V. 'Documentary Practices: State and Everyday Life on the Peripheries', paper presented in South Asia Centre Annual Lecture, School of Oriental and African Studies, University of London, 22 February 2001.

Derrida, J. (1978) *Writing and Difference,* trans. A. Bass, Chicago: University of Chicago Press.

Derrida, J. (1992) 'Force of Law: The "Mystical Foundation of Authority"', in D. Cornell, M. Rosenfeld and D. Gray Carlson (eds) *Deconstruction and the Possibility of Justice*, London and New York: Routledge.

Douzinas, C. and Warrington, R. (1994) *Justice Miscarried: Ethics, Aesthetics and the Law*, New York: Harvester Wheatsheaf.

Ferguson, J. (1990) *The Anti-Politics Machine: 'Development', Depoliticization, and Bureaucratic Power in Lesotho*, Cambridge: Cambridge University Press.

Fitzpatrick, P. (1992) *The Mythology of Modern Law*, London and New York: Routledge.

Foucault, M. (1972) *Archaeology of Knowledge*, London: Tavistock.

Gourgouris, S. (1997) 'Enlightenment and Paranomia', in H. de Vries and S. Weber (eds) *Violence, Identity, and Self-Determination*, Stanford, CA: Stanford University Press.

Hitchens, C. (1999) *Hostage to History: Cyprus from the Ottomans to Kissinger*, London: Verso.

Malkki, L. (1995) *Purity and Exile: Violence, Memory and National Cosmology Among Hutu Refugees in Tanzania*, Chicago: University of Chicago Press.

Messick, B. (1997) 'On the Question of Lithography', *Culture & History* 16: 158–76.

Navaro-Yashin, Y. (2002) *Faces of the State: Secularism and Public Life in Turkey*, Princeton: Princeton University Press.

Papadakis, Y. (1998) 'Greek Cypriot Narratives of History and Collective Identity: Nationalism as a Contested Process', *American Ethnologist* 25(2).

Riles, A. (2000) *The Network Inside Out*, Ann Arbor: University of Michigan Press.

Schmitt, C. (1985) *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab, Cambridge, MA: MIT Press.

Scott, J. (1998) 'Property Values: Ownership, Legitimacy and Land Markets in Northern Cyprus', in C.M. Hann (ed.) *Property Relations: Renewing the Anthropological Tradition*, Cambridge: Cambridge University Press.

Shore, C. and Wright, S. (1997) 'Policy: A New Field of Anthropology', in C. Shore and S. Wright (eds) *Anthropology of Policy: Critical Perspectives on Governance and Power*, London and New York: Routledge.

Strathern, M. (2000) 'Introduction: New Accountabilities' and 'Afterword: Accountability . . . and Ethnography', in M. Strathern (ed.) *Audit Cultures: Anthropological Studies in Accountability, Ethics and the Academy*, London and New York: Routledge.

Swain, S. (1997) 'Editorial: Legal Fictions', *New Formations* 32: 5–10.

Taussig, M. (1992) 'Maleficium: State Fetishism', in *The Nervous System*, London: Routledge.

Tuitt, P. (1996) *False Images: Law's Construction of the Refugee*, London: Pluto Press.

White, H. (1987) *The Content of the Form: Narrative Discourse and Historical Representation*, Baltimore and London: The Johns Hopkins University Press.

Wilson, R.A. (ed.) (1997) *Human Rights, Culture and Context: Anthropological Perspectives*, London: Pluto Press.

Yashin, M. (ed.) (2000) *Step-Mother Tongue: The Literatures of Cyprus, Greece and Turkey*, London: Middlesex University Press.

Chapter 5

Anthropologists as expert witnesses

Political asylum cases involving Sri Lankan Tamils

Anthony Good

Ever since the Immigration Law Practitioners' Association produced its first directory of 'experts' on the home countries of asylum seekers (ILPA 1993), British anthropologists have been regularly approached by immigration solicitors seeking expert reports on their clients, yet despite this increasing involvement, little has been written on asylum from an anthropological perspective.[1] This chapter addresses that gap by illustrating the role of 'country expert' evidence in asylum cases involving Sri Lankan Tamils and Muslims.

The 'ethnographic present' for what follows is late 1999. It is important to be clear about this for three reasons. First, these data precede the introduction of the Human Rights Act 1998, and the Immigration and Asylum Act 1999.[2] Second, as the political, military and human rights contexts in Sri Lanka evolve so the arguments and counter-arguments change. For example, many Tamil asylum seekers bear scars on their bodies, but there has since been a shift away from the relatively straightforward medical question of whether these could indeed result from torture as claimed, to whether they would be *perceived* by security staff at Colombo airport as evidence of involvement in combat or previous detention. Third, these data were obtained prior to my fieldwork in the asylum courts,[3] though that subsequent research allows me to look back with greater understanding of the legal processes involved.

The chapter has five main sections. The first concentrates on the manual used by asylum decision-making staff in the Home Office's Immigration and Nationality Directorate (IND). It examines the allegation that IND tends to take a negative, rather than positive, approach to asylum criteria – thereby effectively converting the 1951 Refugee Convention into a 'check-list for exclusion' (Justice 1997: 21). The second section illustrates the kinds of 'objective evidence' provided in my own expert reports on cases concerning Sri Lankan Tamils and Muslims in 1999 and serves also to provide background information on the situation in Sri Lanka for the general reader. The third section exemplifies the kinds of issues that arise in Sri Lankan cases by summarizing the stories of two asylum seekers who, despite the extreme persecution they claimed to have experienced, were initially refused asylum

by the Home Office, only to win their cases on appeal. All this serves as a necessary prelude to the fourth section, which analyses standardized IND assertions regarding the situation in Sri Lanka, as incorporated into most Reasons for Refusal Letters received by Sri Lankan applicants during the year in question. Expert witnesses and IND use broadly the same sources of factual information on Sri Lanka. What differs is how this information is interpreted and, as is made clear in these examples, IND assessments frequently seem highly questionable from the perspective of a 'country expert'. The final section clarifies the legal status of anthropological 'experts' in such contexts, and highlights ethical issues raised by producing such reports.

Applying for asylum in the UK

The 1951 Convention Relating to the Status of Refugees is the key international instrument covering asylum, but the Convention itself is not part of UK law. In the period covered by this chapter the relevant UK legislation was the Immigration Act 1971, as amended by the Asylum and Immigration Appeals Act 1993 and the Asylum and Immigration Act 1996. Implementation follows the *Immigration Rules* (HC395, as amended), and IND staff have – as already mentioned – their own 'office manual', the *Asylum Directorate Instructions*. This section of the chapter examines the July 1998 version (IND 1998), casting a critical eye on the criteria it uses in advising IND staff about how to approach the key issues in asylum cases.

Would-be refugees may apply for asylum on arrival or when already in the UK. Applicants are interviewed, and on the basis of that interview they may be granted full refugee status, or given Exceptional Leave to Remain in the UK on compassionate or other grounds. The *Handbook* of the UN High Commissioner for Refugees specifies that the examiner should 'use all the means at his disposal to produce the necessary evidence *in support of* the application' (my italics). In particular, applicants should be given the benefit of the doubt if their account appears credible (1992: 196) – if, in other words, it is 'coherent and plausible', and does not 'run counter to generally known facts' (1992: 204). By contrast, though IND's manual does indeed mention the gathering of further evidence, Home Office procedures seem designed to undermine credibility rather than verify it. For example, despite the traumatic past experiences of many refugees with officialdom, and the clandestine circumstances under which many have travelled, staff are told to query their credibility if they have not applied for asylum 'forthwith' (IND 1998: 1, 2, 11.1). Moreover, although many genuine applicants have to travel on forged papers which are retained by an agent, their credibility is routinely questioned if they fail to produce a passport, or produce an invalid passport without admitting this. Most importantly, although the initial asylum interview plays a crucial role in assessing credibility, many applicants complain of not being allowed to raise some matters (Asylum Aid 1999:

59ff.), and most do not realize this may be their only chance to tell their story to officialdom (Crawley 1999: 13). Given the applicant's likely emotional state straight after arrival, the interviewer's unfamiliarity with their country and culture, and the involvement of an interpreter, there is great scope for misunderstanding even when interviews are conducted properly, which is by no means always the case (Asylum Aid 1999; Judge David Pearl, in Crawley 1999: vii).

The great majority have their applications refused, and are sent a Reasons For Refusal Letter (RFRL) explaining why. Many refused asylum seekers appeal against this decision, and their appeals are heard in public by adjudicators belonging to the Immigration Appellate Authority, an independent judicial body.[4] Most asylum seekers are represented by barristers (solicitors in Scotland), and the Home Office by Presenting Officers who are not legally trained. Hearings are not subject to strict rules of evidence because of applicants' understandable difficulty in producing corroborative evidence.

The adjudicator produces a written determination, which must include a credibility finding and state what evidence is and is not accepted. The standard of proof, regarding both evidence of past harm and assessment of prospective harm if returned, is lower than the normal civil 'balance of probabilities', and is expressed in terms of 'a reasonable degree of likelihood' (*Sivakumaran v. Secretary of State for the Home Department* [1988] Imm AR 147). The losing party may usually seek leave to appeal and, if granted, there is a further hearing before a three-person Tribunal containing at least one legal member. This either decides the claim, or remits it to be reheard by another adjudicator.[5] Tribunals rarely overturn adjudicators' findings on fact or credibility, but decisions are vulnerable to appeal if they contain factual errors; fail to decide all substantial issues raised; do not give sustainable reasons; ignore appropriate laws and precedents; or apply incorrect standards of proof.

Convention criteria

The Convention had been drafted with post-war Europe in mind, so it was later broadened by a 1967 Protocol. A 'refugee' is now defined as someone who:

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.
>
> (Art. 1A[2])

This definition has received extensive and evolving legal interpretation, but this section is not concerned with current UK case law; rather, it examines

the criteria which IND's (non-legally trained) staff are told to apply in deciding asylum claims. Strikingly, whereas UNHCR's *Handbook*, to which IND staff are also referred, generally starts from positive statements which are then glossed, inviting active consideration of whether applicants qualify under each provision, IND's manual consistently starts with negative statements, hence the charge that the UK treats the Convention as 'a check-list for exclusion' (Justice 1997: 21). Let us examine briefly how the manual approaches the four main components of the Convention definition.

(a) unable or . . . unwilling to avail himself of the protection of that country

Unwillingness seems a prerequisite for a genuine refugee, while inability implies 'civil war or other grave disturbance' which prevents the country of nationality from providing effective protection (UNHCR 1992: 98). Oddly, IND's manual does not address 'protection' directly, but it arises implicitly in relation to the so-called Internal Flight alternative. People who can find refuge in another part of their own country without being persecuted do not normally qualify as refugees. The Court of Appeal ruled that the issue is not only whether there is a part of the country where they would not have a well-founded fear of persecution, but also whether it would be 'unduly harsh' to expect them to live there; relevant factors include accessibility; whether travelling to or staying there would involve undue hardship; and whether protection would meet human rights norms (*R. v. SSHD ex parte Robinson* [1997] Imm AR 568). Separation from family and friends is not in itself unduly harsh (*R. v. SSHD ex parte Gunes* [1991] Imm AR 278). This argument is often invoked by the Home Office in Sri Lankan cases, claiming that, even if someone was persecuted in the war zone, they will be safe in Colombo.

(b) owing to well-founded fear

The difficulty is to reconcile objective 'well-foundedness' and subjective 'fear'. UNHCR's long discussion concludes that wealth, status, character and personality should be taken into account, with the actual in-country situation only a secondary factor (1992: 37–45). In UK law, however, fear must be objectively well-founded. In *Sivakumaran*, the House of Lords stated that there must, objectively, be a 'reasonable likelihood' of the fear being realized should the applicant be returned. IND's manual comments: 'The phrase "reasonable likelihood" is vague but reflects the Courts' recognition that given the variation between cases and circumstances a more specific test would be impractical' (1998: 1, 2, 7). Because of this vagueness, there is always scope to debate whether fear is 'well-founded', and one common task of an expert is to draw attention to relevant objective evidence.

(c) of being persecuted

UNHCR asserts that 'threat to life or freedom' is always persecution if it is for a Convention reason (see [d] below); beyond that, 'interpretations . . . are bound to vary', and it may arise from the cumulative effects of measures not in themselves amounting to persecution (1992: 51–3). IND's own definition: 'sustained or systematic failure of state protection in relation to one of the core entitlements which has been recognised by the international community' (1998: 1, 2, 8), seems to derive from Hathaway (1991) rather than UNHCR. It adds that breaches which definitely constitute persecution are 'unjustifiable attack on life and limb', and 'slavery, torture, cruel inhuman or degrading punishment or treatment'; examples include 'unjustifiable killing, or maiming' and 'physical or psychological torture, rape and other serious sexual violence'. Slavery apart, *all* these violations routinely figure in Sri Lankan cases, with torture claims especially common. Actions which *may* constitute persecution include violations of rights to freedom of thought, conscience, religion, expression and association; freedom from arbitrary arrest and detention; privacy; and access to food, clothing, housing, medical care, education and employment. However, government restrictions of such freedoms are not persecution unless done in a discriminatory manner; ill-treatment must be 'persistent and serious', striking at 'a fundamental part' of one's existence and making life intolerable. The relevant 'agents of persecution' are normally government authorities, but may be other groups if the authorities are unwilling or unable to offer protection against them; for example, many Tamils are more at risk from the Liberation Tigers of Tamil Eelam (the LTTE or 'Tamil Tigers') than from the government.

The fact that Sri Lanka is experiencing 'civil war' raises other issues regarding persecution. The UNHCR *Handbook* suggests that civil war *may* create grounds for recognition as a refugee (see [a] above). As usual IND puts the point in negative terms: civil war 'does *not* automatically give rise to a well-founded fear of persecution *unless* the claimant's life and liberty are at greater risk than that inherent in the war' (1998: 1, 2, 6.5; my italics). There must, in other words, be 'differential impact' on the claimant. The law moved on after the manual was drafted, however, following a House of Lords decision (*R. v. SSHD ex parte Adan* [1998] Imm AR 338). The issue was whether civil war in Somalia, involving 'widespread clan and sub-clan-based killing and torture', could give rise to a well-founded fear of persecution even if the claimant was at no greater risk than other clan members. The Lords ruled that even if civil war is fought on religious or racial grounds, those involved are not, as such, entitled to Convention protection; afterwards, however, 'the vanquished' may qualify as refugees if 'ill-treated by the victors'. Even if this makes sense for Somalia, the 'civil war' in Sri Lanka is different; one is not a combatant merely by being Tamil or Sinhalese, and one warring party is internationally recognized as the

legitimate government. Refusal letters to Sri Lankans often denied that civil war was, in itself, grounds for asylum, but in *Juvenathan v. SSHD* (Court of Appeal, SLJ 1999/7051/C; 17 November 1999) counsel argued that *Adan* should not apply to Sri Lanka as both sides were publicly committed to the rules of war. Otton LJ agreed that this was arguable, but reached no definite conclusion as he decided the appeal on other grounds.

(d) race, religion, nationality, membership of a particular social group or political opinion

Fear must arise for one of these five 'Convention reasons'. IND's definitions of 'race', 'religion' and 'nationality' closely paraphrase the UNHCR *Handbook*, with one crucial difference in every case. For example, the *Handbook* discusses 'race' as follows:

> 68. Race . . . has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as 'races' in common usage. Frequently it will also entail membership of a specific social group of common descent forming a minority within a larger population . . .
>
> 70. The mere fact of belonging to a certain racial group will normally not be enough to substantiate a claim to refugee status. *There may, however, be situations where, due to particular circumstances affecting the group, such membership will in itself be sufficient ground to fear persecution.*
>
> (UNHCR 1992; my italics)

UNHCR adds similar riders in the other two cases, but although IND's manual reproduces 68 almost verbatim, it ignores the italicized passage in 70, retaining only the negative part, a modified variant of which prefixes its discussion of all five reasons:

> Merely belonging to a particular race, religion, nationality, or social group, or holding certain political opinions will not normally be enough to substantiate a claim to refugee status, as the applicant must also show a well-founded fear of persecution on account of that reason.
>
> (1998: 1, 2, 9)

'Political opinions', too, must not merely differ from those of the government, but must lead to a well-founded fear of persecution. Moreover, fear of punishment resulting from political *action* does not make one a refugee unless the anticipated punishment is excessive, arbitrary, or does not conform to the general law of the country. No definition of 'political' is provided, however, begging the key question of how to distinguish such opinions or actions from others judged 'criminal' or 'terrorist', clearly crucial in assessing groups like the LTTE.

Citing legal precedents,[6] IND's manual defines 'social group' in terms which irresistibly recall past anthropological debates on descent and corporateness:

> (a) the group is defined by some innate or unchangeable characteristic of its members analogous to race, religion, nationality or political opinion, for example, their sex, linguistic background, tribe, family or class; *or* (b) the group is cohesive and homogenous. Its members must be in close voluntary association for reasons fundamental to their rights (e.g. trade union activists). Former members of such a group are also included; *or* (c) the particular social group was recognised as such by the public.
>
> (1998: 1, 2, 9.4).

However, during a subsequent appeal against one of the cited decisions in the House of Lords (*Islam v. SSHD; R. v. IAT & another ex parte Shah* [1999] Imm AR 283), the Home Office tried to disavow part (a) of its own definition, arguing that (b) was in fact the crucial test! Mss Islam and Shah had been thrown out by violent husbands in Pakistan and claimed asylum, fearing accusations of sexual immorality under Sharia law if returned. At the Court of Appeal their appeal failed on the grounds that women in their situation had no innate characteristic in common and were not a cohesive group. However, the Law Lords agreed unanimously with Lord Hoffman's argument that 'cohesion' or cooperation was not a necessary precondition for refugee status:

> 'race' and 'nationality' do not imply any idea of co-operation; 'religion' and 'political opinion' might, although it could be minimal. In the context of the Convention it seems to me a contingent rather than essential characteristic of a social group.

They decided by a majority that 'women in Pakistan' did indeed form a social group, thereby reasserting the validity of (a). A cynic might suspect that the Home Office attempted to drop this criterion because it embraced too many other potential applicants.

Clearly, the criteria to be used by IND staff, according to its own manual, appear in some cases to contradict the spirit of the UNHCR *Handbook*. The next section focuses on the so-called 'objective evidence' available to both IND staff and expert witnesses in connection with the claims of Sri Lankan asylum seekers. Such information affords even more scope for interpretation than does the Convention itself and, as we shall later see, IND again adopt their own distinctive perspective on it.

Expert reports on ethnic conflict and human rights in Sri Lanka

Asylum decisions are based on current circumstances, rather than those when the asylum claim was made, so reports must contain up-to-date information and one cannot rely solely on conventional academic sources. The internet is the prime source of information. There are websites belonging to Sri Lankan groups of every political persuasion, constituting a vast database of valuable information. Many contain crass propaganda, however, so reports by Amnesty International (AI), UNHCR, Canada's Immigration and Refugee Board (IRB) and the US State Department (USSD) carry more weight in general.

IND's own *Country Assessments*, updated every six months, are based on similar sources. Unlike some others the Sri Lankan *Assessment*[7] is free of basic errors; it is more a matter of 'distancing from reputable sources, where they detail abuses' (Asylum Aid 1999: 48). For example, the unqualified assertion that 'The Sri Lankan government generally respects the human rights of its citizens in areas not affected by the conflict', is immediately followed by '*according to the US State Department* . . . the ongoing war continued to be accompanied by serious human rights abuses committed by the security forces' (1999: 5.1.1; my italics). That apart, it is so even-handed that Presenting Officers do not always seek to rely on it! Consequently, it is generally not the facts themselves which are in dispute, but the conclusions to be drawn from them.

Most reports by 'country experts' reflect their general professional knowledge rather than familiarity with the appellant's personal circumstances, though there are exceptions – I have twice written reports on former MPs well-documented in the media. Reports give the historical background to the Sri Lankan conflict and assess the human rights situation there. Classic anthropological themes like caste, purity, marriage patterns and domestic relations, sometimes arise regarding questions posed by solicitors on Tamil attitudes to rape; the social status of widows; or the difficulties of living far from kin and community networks. Experts are generally called upon because there is some specific issue not covered by sources already familiar to the courts or legal representatives, but even so it is necessary to summarizes the general background, if only to justify one's opinions. The remainder of this section summarizes background information routinely included in my expert reports in late 1999, given here for illustrative purposes and to provide context for readers.

Sri Lanka's population mainly comprises Sinhalese (74 per cent), Tamils (18 per cent) and Muslims (7 per cent). Most Sinhalese are Buddhists, and most Tamils are Hindus, though there are Christians in both communities. Sinhala is the language of the Sinhalese, while Tamil is spoken by Tamils and Muslims. Most Sinhalese live in the centre and south-west, while Tamils live mainly in the north and on the east coast, as do most

Muslims. There are also 'Indian' Tamils on highland tea-estates, descended from nineteenth-century indentured labourers. The Dry Zone between the main Sinhalese and Tamil areas previously had a sparse, ethnically mixed population, but resettlement schemes brought an influx of Sinhalese farmers, causing Tamil resentment. The rhetoric of Sinhalese–Tamil hostility draws on semi-mythic accounts of each group's arrival in the island, intended to demonstrate historical primacy. However, although both sides now interpret past events on the assumption that Tamils and Sinhalese were always clearly demarcated, ethnic categories were permeable until recently (Nissan and Stirrat 1990). Ethnic polarization really began hardening after introduction of the universal franchise in 1931.

Early United National Party rule under DS Senanayake departed little from colonial policies (Nissan 1996: 11); even so, dissatisfied Tamils formed the Federal Party, seeking a Tamil state within a federal structure. Recognizing the political clout of the Sinhalese masses, SWRD Bandaranaike left the UNP in 1951 to found the Sri Lanka Freedom Party, and won power in 1956 with support from the rural Buddhist intelligentsia. To counterbalance legislation making Sinhala the sole official language, he signed a pact with the FP leader Chelvanayagam, giving limited regional autonomy for Tamil areas. Following anti-Tamil riots this was abrogated, but Sinhalese dissatisfaction led to Bandaranaike's assassination by a Buddhist monk in 1959. In 1960 a re-elected UNP government under Dudley Senanayake (son of DS) quickly fell and a second election returned the SLFP under Bandaranaike's widow Sirima. She proposed making Buddhism the state religion, and peaceful Tamil protests were met with mob violence aided by the police and armed forces, now Sinhalese-dominated. In 1965 Senanayake formed a national government with FP support; he proposed limited autonomy for Tamil districts, but again riots caused the plan to be dropped and the FP quit the government in protest.

Mrs Bandaranaike's Left Front coalition came to power in 1970, combining austere economic policies with an expensive social welfare programme. Ironically, many educated but unemployed youths created by such policies supported a 1971 insurrection by the JVP, a radical Sinhalese movement. In 1972 her government adopted a republican constitution and changed the country's name to Sri Lanka. In 1974, resentment caused by the introduction of ethnic quotas for university admission led to the formation of the Tamil United Liberation Front (TULF). It won several seats in the 1977 elections, but the overall victor was the UNP under JR Jayawardene, who became executive president in 1978. The election was followed by widespread violence in which many estate Tamils were killed. Militants began advocating a separate Tamil state (Eelam), and the first 'Tamil Tiger' attacks occurred. The government introduced the Prevention of Terrorism Act in 1979 (Nissan 1996: 16). The PTA and Emergency Regulations allow arrest without warrant and detention of suspects for 18 months without charge;

confessions made to police with no magistrate present are admissible, and the burden of proof that these were obtained coercively lies with the defendant (USSD 1999). This has facilitated widespread use of torture ever since (Amnesty 1999).

In July 1983 the Liberation Tigers of Tamil Eelam killed 13 soldiers, triggering anti-Tamil riots with 3,000 deaths; 100,000 Tamils fled to southern India. In 1985, the LTTE, Tamil Eelam Liberation Organization, Eelam Revolutionary Organization and Eelam People's Revolutionary Liberation Front formed a united front; only People's Liberation Organization of Tamil Eelam did not join. Militants massacred 146 Sinhalese civilians in Anuradhapura and there were retaliatory killings of civilians by security forces in Jaffna, increasing Tamil support for militant activity. The LTTE under Prabhakaran, the largest, most ruthless group, was soon at odds with other groups, however, and killed many of their leaders.

In 1987 the LTTE launched its first suicide bomb attacks and, when the government mounted a retaliatory military strike, India intervened. Rajiv Gandhi and Jayawardene signed an accord and an Indian Peace Keeping Force (IPKF) landed in Jaffna to supervise LTTE disarmament and the election of Tamil provincial councils. Instead, it spent two years fighting the LTTE. Surviving members of TELO, PLOTE and EPRLF fought on the Indian side. Meanwhile, spurred by chauvinist opposition to the IPKF, the resurgent JVP mounted a terror campaign. The government waged its own counter-terror campaign and overall tens of thousands of Sinhalese were murdered. Prime Minister Premadasa was elected President after promising to negotiate the removal of Indian troops and the IPKF withdrew ignominiously in March 1990. The LTTE thus became de facto government of Jaffna and continued its strategy of eliminating rival militias and constitutional politicians. Rajiv Gandhi was killed by an LTTE suicide bomber in 1991, while President Premadasa and presidential candidate Gamini Dissanayake were killed in 1993 and 1994, respectively.

The 1994 election was won by the People's Alliance under Chandrika Kumaratunge. Later that year she was elected president and her mother, Mrs Bandaranaike, became PM again. Talks were initiated with the LTTE, but broke down in April 1995. After fierce fighting the army captured Jaffna in December 1995. The army suffered a major defeat when the LTTE overran Mullaitivu camp in July 1996, but Killinochchi, the last LTTE-held town, was taken in September. Further small gains were negated by an LTTE counter-attack in November 1999. Meanwhile, the PA's plans to put Tamil areas of the north-east under a single, devolved regional council got a positive response from moderate Tamil politicians but, even after amendments to allay UNP objections, there seemed no prospect of a two-thirds majority.

The LTTE continued to carry out attacks in the south. Suicide bombers destroyed the Central Bank in January 1996, with heavy loss of life. Soon afterwards the main oil depot was destroyed. After a bomb attack at the

World Trade Centre in October 1997, Colombo was shut down and searched by 8,000 security personnel. As a result, 965 Tamils were detained, though half were later released. In July 1999, human rights activist and TULF MP Neelan Thiruchelvam was assassinated, while the Elam People's Democratic Party's Ramesh Nadarajah was killed in November 1999. There was an assassination attempt against UNP presidential candidate Ranil Wickremasinghe and, just before the December 1999 vote in which she was narrowly re-elected, President Kumaratunge lost an eye in a suicide bomb attack on an election meeting. Following a bomb attack on the Prime Minister soon afterwards, the entire capital was again searched.

Tamil refugees

Every upsurge in fighting sparks off an increase in the rate of departure of refugees. The vast majority flee to Tamil Nadu, but Indian generosity, though considerable initially, had its limits, and popular sympathy was alienated by violence among militant groups based in Chennai. Moreover, escape to India is dangerous; the straits are patrolled by the Sri Lankan navy; unscrupulous boat owners sometimes deposit refugees elsewhere on the Sri Lankan coast, or even abandon them at sea; and accidents are common.

About 200,000 refugees have reached Europe over the past 15 years. They came mainly to France, Germany and Switzerland, but of 372,310 refugees arriving in the UK in 1990–9, 27,290 were Sri Lankans, the third largest group after former Yugoslavians and Somalis (UNHCR 1999: Table VI.6). Since the introduction of visas and sanctions against carriers, most can only leave Sri Lanka by paying agents to arrange false passports and plane tickets. This provokes scepticism and weakens the position of genuine refugees, but such trafficking requires migrants 'to make huge sacrifices and to run substantial risks', and many people who need protection have no other way of leaving (UNHCR 1995). Consequently, they often have no genuine documents on arrival. Even so, they should initially receive the benefit of any doubt, and most are given temporary entry into the UK. Subsequent decisions are subject to long delays, however, and by January 2000 the refugee backlog exceeded 102,000.

Two examples

Summaries of statements by two actual asylum seekers will provide context for the remaining discussion. Pseudonyms are used and other details left vague, because of the admittedly extreme nature of their experiences. Ms X's fear of other Tamils learning about her ordeal stopped her from revealing the full story at her asylum interview, or even to her first (Tamil) solicitor; among other things, my report had to account for her reticence by explaining Tamil views on kinship, sexuality and purity.

1 Ms X's name appeared in LTTE documents because she was involved in fund raising, so when the army captured the area she was arrested. She was interrogated by two soldiers, with a militiaman as interpreter. She kept silent about her LTTE links, but the militiaman decided she was lying. After he left the soldiers attacked her with a belt and rifle, then raped her. Next day the same three questioned her. She was stripped and raped by both soldiers, who ordered her not to dress, and interrogated her naked. That evening they returned in a drunken state, burned her legs with cigarettes and cigarette lighters, and raped her again. One day she was raped by the militiaman; on another, the soldiers cut her wrists with a knife. She was forced into oral and anal sex. The soldiers burned their initials on her pubic area and inner thigh. She was punched and hit with a rifle butt, losing several teeth. She has scars consistent with all these attacks. Finally the camp came under LTTE attack, and in the confusion she escaped.
2 Mr Y, who worked for an NGO, was arrested in 1983 along with a friend from a militant group. The police opened fire, hitting Mr Y in the thigh. The wound became infected. In hospital he was tortured with needles and his companion was tortured to death. Although he denied terrorist links, he was forced to sign a confession. He underwent a mock execution in which bullets were fired into his arm and shoulder. Later he was shot in the thigh and his leg was broken with a rifle butt. In a third incident he was shot through the head, yet survived. He escaped, but was caught and his leg was rebroken. Medical evidence supports these claims. Assaults continued after he was moved to prison. He was later moved to Batticaloa, from where many political prisoners escaped, carrying Mr Y with them as he could not walk. He made his way to India, where he got hospital treatment. With some reluctance he joined a militant group, but it was riven by internal feuds and murders, so he escaped to another part of Tamil Nadu. He returned to Jaffna after the IPKF's arrival and helped monitor human rights violations by the army and LTTE. He fled to India to escape the LTTE, but Indian intelligence officers forced him to return and join Q, a pro-IPKF group. He escaped to Jaffna, but was interrogated and tortured by the IPKF as a suspected LTTE sympathizer. After the IPKF withdrew, he fled to India to escape the LTTE. He was rounded up after Rajiv Gandhi's assassination, kept in custody for two years, then deported to Sri Lanka. Security personnel questioned him, assaulting him until he admitted his identity. He was handed over to R (a pro-government militia group) and took part reluctantly in identifying LTTE sympathizers. Before the elections he fell out with R after publicly stating that it intended to rig the voting. He tried to flee the country, but was handed back to R, who assaulted him and confined him for two years. Finally he escaped and a friend arranged his flight.

Both had their initial asylum claims refused. In Ms X's case, this must be understood in the light of her not having revealed the sexual assaults at that stage. It consequently appeared to IND that the basis of her claim was 'merely' a single detention and interrogation; as she admitted assisting the LTTE, this was seen as justifiable and not to constitute persecution. Whether reasonable or not, that is far less astounding than Mr Y's refusal, which reduces his story to 'your claim that you had been arrested, detained and *ill-treated*' (my emphasis). It adds that the authorities clearly had no further interest in him because he was released without charge (not mentioning that he was not freed, but handed over to R).

The Reasons for Refusal Letter

If asylum is refused, the applicant receives a letter giving reasons: it is generally agreed that the general quality of RFRLs is abysmal. For consistency, IND staff are encouraged to rely on standard paragraphs, many of which are not country-specific (IND 1998: 11, 1). Those which do refer to Sri Lanka comprise mainly generic statements, often only tangentially relevant or even wholly inapplicable to the applicant's circumstances; they sometimes contain factual errors or cultural misunderstandings. This discussion considers some particularly tendentious country-specific standard paragraphs in use during 1999–2000, and the kinds of evidence needed to call them into question when they seem mistaken or misguided. Each is a real example, but similar versions recur in many letters.

(i) The Secretary of State, having considered all the available evidence, does not consider Tamils, or any other group in Sri Lanka to be a persecuted group who have a claim to refugee status under the 1951 Convention.

This is the ultimate fall-back position. While it is undoubtedly true that not all Tamils qualify for refugee status, in practice applicants never seek asylum merely on general ethnic grounds. There are always specific instances of persecution at the core of their claim, and if these fall within the scope of the Convention, this reservation is beside the point.

(ii) The Secretary of State remains of the view that members of the civilian population, including Tamils, have nothing to fear from routine actions and enquiries by the authorities.

Virtually every refusal letter contains this statement. Applicants' own experiences, if they are to be believed, suggest quite the contrary; they did indeed have much to fear from the authorities. As this is a general assertion rather than one concerning the applicant's own circumstances, it is appropriate to cite general evidence calling it into question.

For example, massive human rights violations occurred during UNP rule between 1977 and 1994. Thousands were detained under the PTA, and widespread use of torture caused many deaths in custody. There were many extrajudicial executions. The consistent failure to punish personnel committing human rights violations created a 'climate of impunity'. Surviving victims were too afraid to seek legal redress; relatives, lawyers and witnesses were threatened with death if they pursued the cases, and some were indeed killed (Amnesty 1995). Following international pressure on the UNP government, a Human Rights Task Force was established in 1991 to safeguard detainees' rights, but it was regularly obstructed by the security forces.

Soon after gaining power, the PA issued directives to safeguard detainees' rights, but during 1995 at least 55 people disappeared after arrest. Thirty-one bodies were found in Colombo, bearing evidence of torture. Members of an elite police unit were arrested, but later resumed duties and – despite repeated assurances – never faced trial. Forty Tamils were extrajudicially executed, as reprisals for LTTE attacks. In 1997 the government replaced the HRTF with a Human Rights Commission, which should be notified within 48 hours of all arrests under the PTA, though concerns have been expressed about its independence and effectiveness (UNHCHR 1998; USSD 1999). It regularly visits authorized detention centres, but some prisoners are held in unauthorized places. While recognizing that the legal position had improved, Amnesty (1996) expressed concern that the PA was 'not living up to its stated commitment to human rights' by refusing to amend laws to meet international standards. Treatment of detainees failed even to meet local legislation; Senior Defence officials stated that directives safeguarding detainees' rights were not observed and 'were not practical'.

Supreme Court medical officers continued to document torture of detainees (Amnesty 1998b; Refugee Council 1997) and one judge complained publicly that torture in police stations was continuing. The Medical Foundation (2000), reporting on Tamils tortured since 1997, found that some had worked voluntarily or under duress for the LTTE; others were arrested because they had scars which aroused suspicion of LTTE involvement. Some were forced to identify Tigers among newly arrested youths and pointed people out at random to escape further assault. Those identified were then tortured in turn. Methods included 'electric shock, beatings (especially on the soles of the feet), suspension by the wrists or feet in contorted positions, burnings, and near drownings' (USSD 1999).

The UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) had recorded 12,000 'disappearances' by 1992, the highest for any country; after 1990 these were mainly young Tamil men. Numbers then fell until only 36 cases were reported in 1995, still one of the highest totals worldwide. However, the 648 disappearances in the north after the retaking of Jaffna were described by Amnesty as 'outrageous' (press release, 11 April 1997). UNHCR described the human rights situation in conflict areas as

'precarious' (1997: 4). Senior officers promised to bring those responsible to account, but by the end of 1997 no one had been prosecuted (USSD 1999). A Board of Investigation into disappearances in the north-east identified 548 people as unaccounted for, but its findings were not published and no one was charged (USSD 1999), though UNWGEID later claimed that perpetrators had been identified in 25–30 cases (IPS news agency, Colombo; 30 October 1999).

In 1998, according to the US State Department's annual assessment, there were at least 33 extrajudicial killings. In addition, at least 36 people 'disappeared' while in custody and torture remained a serious problem. The report continues:

> Arbitrary arrests . . . continued, often accompanied by failure . . . to comply with some of the protective provisions of the Emergency Regulations (ER). Impunity for those responsible for human rights abuses remained a serious problem. No arrests were made in connection with the disappearance and presumed killing of at least 350 LTTE suspects in Jaffna.
>
> (USSD 1999)

Summarizing this passage, IND's *Country Assessment* (1999: 5.1.1) accepts that security forces committed 'serious human rights abuses'. In short, the response to this paragraph is that treatment of detainees often does not conform to local legislation, let alone international standards. Prisoners are held in unauthorized detention; torture is still widely practised; and there are still disappearances and extrajudicial killings.

(iii) With regard to your claimed difficulties with members of the LTTE, the Secretary of State, in general, takes the view that such individuals or groups cannot normally be regarded as 'agents of persecution' under the 1951 Convention. In order to bring yourself within the scope of the Convention you would have to show that the actions of such individuals or groups towards you were not simply random actions but were a sustained pattern or campaign of persecution directed at you which was controlled, sanctioned or condoned by the authorities, or that the authorities were unable, or unwilling, to offer you effective protection.

The LTTE targets Tamils who do not support it, especially so-called 'traitors', so clearly some applicants are more at risk from them than from the security forces. The key questions are: (i) is the government able and willing to protect them from the LTTE (or pro-government militias), and (ii) do any of these bodies constitute 'agents of persecution'?

Jaffna Tamils called the LTTE 'our boys', and identified with them as their defenders against government repression. However, it later forfeited much sympathy through its ruthless suppression of other groups and assassinations

of democratic Tamil politicians. Moreover, according to one critical view, it funds its activities by extorting money from civilians, including expatriates with relatives in LTTE areas (Mackenzie Institute 1995). Even so, in the 'quasi-state' of Tamil Eelam the LTTE fulfilled core functions of government, including justice, economic development and social reform. Despite having no electoral mandate, it 'enjoyed the active co-operation of a substantial proportion of the civilian population' and 'raised revenue through a range of conventional methods from road vehicle taxes to the provision of passes'; before men could leave Jaffna, they had to pay Rs 10,000 for an 'exit visa' and find another man to stand surety for them (Wilson and Chandrakanthan 1998). Tamils travelling into government-controlled areas had to carry LTTE travel passes and were warned that family members faced punishment if they did not return (IND 1999: 5.4.10).

In short, between 1990 and 1995 the government could not offer 'effective protection' to citizens in north and east Sri Lanka because the LTTE functioned as the de facto government. The argument that the LTTE were 'agents of persecution' during 1990–5 is often accepted. For example, the adjudicator in *R. v. (1) IAT, (2) SSHD ex parte Kamalakkanan* had agreed that 'the hold that the LTTE exercise, and were deliberately allowed to exercise by the authorities, in the Jaffna region before the present offensive was such that they were capable of acting as agents of persecution . . . for a political reason'. The *Country Assessment* now acknowledges that the LTTE run 'a parallel administration to that of the elected government' (IND 1999: Annex B), so a strong argument can be made that the LTTE were 'agents of persecution' even after 1995.

Slightly different issues arise regarding pro-government Tamil militias policing the north and east. The *Country Assessment* notes that they 'act independently of government authority', and run detention camps (IND 1999: 4.20, 5.2.29). This facilitates human rights violations, especially when militias screen civilians to weed out supposed LTTE infiltrators. Many have been killed, including 'civilians who failed to comply with extortion demands' (USSD 1999). Human rights violations by militiamen may indicate government 'unwillingness' to offer effective protection, since it has devolved responsibility to these bodies, which have thereby become its 'agents'. Thus, in Mr Y's appeal the adjudicator ruled that

> there is no doubt that [militia group R] and the Sri Lankan security forces were acting in co-operation . . . I have no difficulty in finding that [R] were indeed 'agents of persecution'. It is simply unrealistic to suggest that the Appellant could have sought protection from the 'proper authorities' against the actions of [R] when it was agents of the Sri Lankan authorities themselves . . . who placed him in the custody or care of [R].
>
> (Adjudicator's unpublished determination)

(iv) The Secretary of State recognizes that members of the civilian population . . . have been killed in indiscriminate shellings and bombardments. The Secretary of State takes the view, however, that in this situation innocent civilian casualties and damage to property are inevitable, and the Secretary of State cannot accept that the conduct of the Sri Lankan army towards Tamil separatist groups constitutes sufficient grounds for granting asylum. . . . The Secretary of State further understands that the military offensives carried out in the Jaffna Peninsula by the Sri Lankan armed forces in the latter half of 1995 were not accompanied by any decline in the observance of human rights standards by the Sri Lankan Government. This view has been endorsed by UNHCR, the International Committee of the Red Cross (ICRC) and other human rights organizations.

Versions of this appeared in most RFRLs, but in this instance the applicant had never set foot in Jaffna in his life and belonged to a group, the Muslims, ordered by the LTTE not to go there under pain of death. Even when applied to more apposite cases, the claim that human rights standards did not decline is tendentious at best; no specific statements by international bodies are cited, and at the time they seemed to be saying the opposite – not surprisingly, in view of the dramatic *upsurge* in disappearances and killings in Jaffna during the specified period.

Reintroduction of civil administration to Jaffna was delayed by frequent LTTE infiltration. EPDP, PLOTE and EPRLF eventually opened Jaffna offices in early 1997, and Douglas Devananda of EPDP was appointed Chair of Jaffna District Co-ordinating Committee. His party was accused of favouring its own supporters, but was popular for its proactive approach to cases of detention and disappearance during a period which saw what the UNHCR called an 'almost total loss of accountability in Jaffna. The ease with which persons could go missing is alarming' (1997: 4). In July 1996, for example, just after the LTTE attacked Mullaitivu camp, 40 young men disappeared after being rounded up in Kaithady. By the end of 1997 at least 740 people had been extrajudicially killed or had 'disappeared'. With one exception discussed below, no security personnel had been convicted for any of these crimes. Although the HRC opened a Jaffna office in January 1998, 'security forces sometimes breached the regulations and failed to cooperate', and there were undeclared detention centres (USSD 1999).

'Fear of rape by soldiers was as pervasive as concern about disappearances' (USCR 1997). Amnesty (1996) believed that documented rapes were only a fraction of the true number as women were reluctant to testify, especially as no one was ever brought to justice. In just one well-publicized case, 18-year-old Krishanthy Kumarasamy was taken into custody at a checkpoint near Kaithady in September 1997. Her mother, brother and friend disappeared after being taken into custody while inquiring about her whereabouts. Their bodies were later found and in July 1998 four soldiers and a policeman were sentenced to death for rape and murder, the first such

conviction ever. The defendants accused senior officers of responsibility, claiming they could locate mass graves of Tamils killed in 1996. Investigation was delayed by the failure of both government and LTTE to provide assurances over safety; moreover, courts in Jaffna were closed by LTTE death threats. Digging began in June 1999 and by 15 October bodies had been found, but no mass graves.

It must be assumed that more human rights violations would have emerged had there been freer access to journalists and independent observers. Even so, far more was known than for other Tamil areas, and this readily available objective material called into question the Home Office assertions cited above (see p. 109).

(v) While it is recognized that young male Tamils may be rounded up in Colombo, this is almost always for the purposes of establishing identity, and the majority of those concerned are treated in a fair and humane manner by the authorities. . . . These arrests, although ethnically based, are directed not to the oppression of Tamils as such, but rather to the maintenance of public order. . . . Colombo is safe for the vast majority of the 500,000 Tamils who live there. . . . Discrimination against Tamils remains a factor in everyday affairs but the Secretary of State does not accept that this amounts to persecution.

Most RFRLs use this 'internal flight' argument, and many cite the statement in IND's *Country Assessment* that 'Tamils fleeing persecution . . . generally find a safe haven in the areas under government control' (1999: 5.3.21) to imply that Colombo is safe for Tamils, though this begs the question of who persecuted them initially.[8] Nearly all reports therefore have to discuss Colombo's Tamil residents, to consider whether there are grounds for thinking this particular applicant would be at risk there.

The position at that time was that every Tamil in Colombo had to register with their district police station. There was no central register, however, so a person registered in one district and detained in another might be held for days until cleared and then be rearrested at another checkpoint. Police rarely issued proper receipts to cleared detainees to prevent rearrest and often fail to report detentions to the HRC. Many detainees were subject to extortion or intimidation, though treatment varied according to social status (IRB 1997). The Justice Minister had announced the creation of a computer database to prevent repeated arrests, and that Tamil-speaking police would be appointed to assist detainees (*Daily News*, 22 October 1998), but these seemingly did not happen. In December 1998 new security regulations increased problems for Tamils in Colombo. Those in rented accommodation had to submit two photographs to police and carry a registration form issued by the Ministry of Defence through their landlords. Visitors had to be added temporarily to the form and if they lacked photographs they faced detention.

The provenance of the claim that 500,000 Tamils live in Colombo is unclear, but it may be exaggerated and certainly oversimplifies the situation by conflating different categories of Tamil speakers. At the 1981 Census, Colombo contained 9.8 per cent Jaffna Tamils, 1.3 per cent estate Tamils and 8.3 per cent Muslims (Nissan 1996: 9). Many fled after the 1983 riots, but some returned and others moved there. The Census Department estimated Colombo's population as 623,000 in 1991, plus 187,000 in the contiguous Dehiwala-Mount Lavinia area. These figures suggest that Greater Colombo contains some 79,000 Jaffna Tamils, 10,500 estate Tamils and 67,000 Muslims. These are separate communities, differentially at risk of human rights abuse.

Those detained are mainly young Tamils speaking little Sinhalese, especially if they have no identity papers, were born in the east or Jaffna, or cannot give valid reasons for being in Colombo (Amnesty 1996; IRB 1997). Others likely to be held are people recently arrived from the war zone and those related to known LTTE members, or suspected of membership themselves. According to official figures, 8,652 Tamils were arrested in Colombo between July 1996 and July 1997 (Amnesty 1998a). The Government justified these arrests on security grounds, but many Tamils viewed them as harassment. At the end of 1997, 1,200 people were being detained without charge under the PTA, 400 having been held for over two years (USSD 1999). The risk of torture was greatest for those held for long periods in unauthorized detention centres (Amnesty 1998a). A Tamil MP estimated that 5 per cent of detainees suffered 'severe torture' (IND 1999: 5.2.23).

In the circumstances of some claimants such evidence is persuasive. For example, one tribunal (*Thevarajah v. SSHD*, 15575, 6 October 1997) applied the '*Robinson* test' and decided that the appellant would indeed suffer 'undue hardship' in Colombo. Citing a Home Office statement similar to (v), it commented:

> We are of the firm view that it is no comfort to return Mr Thevarajah to Colombo only to tell him that the risk of his being 'rounded-up', arrested and detained (albeit for short periods) is 'almost always' to establish his identity and that Colombo is safe for the 'vast majority' of Tamils, though 'discrimination' will be a factor in his everyday life.

Jackson (1999: 438n) says this Tribunal 'clearly erred in applying an essentially subjective assessment', but subjectivity seems confined to the emotive wording ('no comfort') rather than the factual conclusions.

(vi) Tamils continue to live outside the conflict zone and . . . it continues to be the case that conditions there are reasonably safe and normal for Tamils, and others. Although there is no formal discrimination against Tamils, and many are prominent in the business, legal and political community, discrimination against Tamils is often

a factor in everyday affairs but the Secretary of State does not accept that this amounts to persecution within the terms of the 1951 United Nations Convention, and he therefore sees no reason why you could not have moved to another part of Sri Lanka.

This broadens the internal flight argument to cover the whole country, but in fact problems in Colombo were just one instance of stringent checks on movement of Tamils. Within Jaffna there were '19 checkpoints on the road between Pallai and Jaffna Town, making the 40 km journey take approximately six hours', an arrangement perceived by the populace as 'punitive, rather than rational' (IRB 1998: 3.2). Other difficulties included 'obtaining identification; registering with police or other authorities and/or obtaining security clearance before travelling [and] the need for fixed-term passes to travel to certain destinations' (ibid.: 2).

After losing Jaffna, the LTTE began allowing freer movement into government areas (USSD 1999). Tamils travelling to Colombo had their LTTE travel passes checked at the LTTE border-crossing. Next came a PLOTE checkpoint for identifying supposed LTTE activists – subject to the abuses detailed earlier – and finally the army checkpoint. Travellers needed proof of purpose for the journey and guarantees from relatives or business contacts. Some days over 2,000 people were sent to transit camps in Vavuniya while their claims were verified (UNHCR 1997: 2.3) They often had to pay bribes. If a travel permit holder wished to travel to Colombo, another person had to surrender their permit and remain in Vavuniya to ensure their return (IRB 1998: 6.2). They had to report to Colombo police on arrival and produce their Vavuniya pass (IND 1999: 5.4.12). Similar problems arose elsewhere (IRB 1998), and there were thus country-wide restrictions on movement, particularly for young male Tamils from the north-east. UNHCR said that the 'internal flight alternative may be difficult, and in many instances impossible to apply in the context of Sri Lanka' (1997: 4.4).

Finally, one might have thought that the phrase '*and others*' in the quoted passage reflected recognition that this applicant was a Muslim, were it not that the rest of this RFRL comprised generic statements about Tamils (one was quoted earlier as paragraph [iv]), taking their relevance for granted. In fact they apply, if at all, only with significant modification and qualification. 'Muslim' is an ethnic category, not simply a religious one. They believe they are descended from Arab traders who married local Tamil women, which explains why they are Tamil speakers. They are certainly *not* regarded as Tamils, however, as shown by their expulsion from Jaffna by the LTTE. Muslim men are distinguishable from Tamils by their names and clothing, but it is easy enough to change both, so the security forces regard all Tamil speakers with suspicion. Conversely, the LTTE view them as potential government informers. Muslims therefore have the worst of both worlds in many respects.

(vii) The Secretary of State is satisfied that, in the unlikely event that there are any charges outstanding against you, and if these were to be proceeded with on your return, you would receive a fair trial from Sri Lanka's independent and properly constituted judiciary.

The RFRL may elaborate by noting that criminal trials take place in public before juries; that defendants are told about the charges and evidence against them; and that defendants have other standard legal rights. All this is true for the ordinary legal system in Sri Lanka, but if failed asylum seekers are to be charged with any offence on their return, this will probably be under the PTA. In this case, the outlook is entirely different. Delays are considerable; obtaining confessions by coercion and torture is facilitated if not actively encouraged; the burden of proof lies with the defendant; and trials do not involve juries.

(viii) The Secretary of State is further satisfied that there is no evidence to suggest that failed asylum seekers returning to Sri Lanka have faced persecution from the authorities; they are, in fact, encouraged to return to their normal way of life.

Given the alleged experiences of many claimants it is hard to imagine their 'normal way of life'. Moreover, despite this assertion, there were documented cases of returned asylum seekers being mistreated (Refugee Council 1997: 25–6). For example, Thambirajah Kamalathasan, one of 192 refugees returned by Senegal in February 1998, was released on bail on 17 March, but returned to Colombo on 13 July to attend court. He was arrested on 15 July and two witnesses saw him being beaten and ill-treated in Pettah police station. He was subsequently held in police headquarters and visits were not allowed (Amnesty press release UA 216/98).

Expertise and advocacy

Asylum lawyers use anthropological experts to give authoritative comment on cultural contexts 'outside the knowledge or experience' of the tribunal: to show how human rights abuses impact on persons with this particular background; or to comment on statements in RFRLs or prior determinations (Henderson 1997). The previous section illustrated the kinds of evidence to be considered in formulating expert assessments of such matters and in assessing the plausibility of claimants' accounts. It also considered the main generic arguments used by the Home Office in 1999 and, hence, also the questions most commonly put to experts by solicitors representing Sri Lankan asylum seekers. But the very fact that these questions come from one party in an adversarial process of legal decision-making raises forcibly the question of what exact role the expert is expected to play.

In most jurisdictions, designating witnesses as 'experts' allows them to offer opinions otherwise inadmissible under strict rules of evidence, but, as these rules do not fully apply to immigration courts, writers of reports for asylum cases are not experts in the full legal sense:

> The question whether or not to classify [a person] as an 'expert' is not in point . . . the evidence is undoubtedly admissible. The question is whether, in the context of all the evidence in the case, it is this evidence which is to be preferred.
>
> (*Kapela v. SSHD* [1998] Imm AR 294)

Such evidence is given most credence if the experts' CVs are available and show that they have first-hand experience of the country and region concerned; and if they cite sources for facts and opinions expressed (*Chinder Singh et al. v. SSHD* [1999] Imm AR 551). If these conditions are met, adjudicators and tribunals *must* take such evidence seriously; in *Karanakaran v. SSHD* ([2000] Imm AR 271), where the four experts included two anthropologists, the Court of Appeal said the tribunal had been 'completely wrong . . . to dismiss considerations put forward by experts of the quality who wrote opinions on this case as "pure speculation"'.

The Civil Procedure Rules for English courts stress that an expert's duty to the court overrides their obligations to the party instructing them, as specified by Cresswell J in the '*Ikarian Reefer*' case (*National Justice Compania Naviera v. Prudential Assurance Co. Ltd* [1993] 2 LLR 68). That is easier said than done. One will presumably not accept the task if convinced that the claim is invalid, but that does not of course imply being convinced of its validity either; it is the expert's duty to draw attention to general evidence that supports (or not) the applicant's account, or seems to call into question (or not) assertions in the RFRL or appeal determination, but it is most definitely *not* the expert's role to decide the claim. The line between balanced assessment and advocacy proves uncomfortably blurred, however, and the discomfort increases the more convinced one is that an asylum claim is justified.

When examining claimants' statements one is assessing coherence and plausibility rather than confirming truth, though that distinction too is clearer in principle than practice. Consequently, experts tread something of a tightrope when drawing specific conclusions. There is a big difference between showing that Jaffna Tamils are especially likely to be detained during Colombo round-ups and stating that this particular appellant would be especially at risk, yet the court might view failure to assert this as a tacit rejection of the appellant's case. Judging what may happen if a person is returned cannot ever be more than an assessment of future probabilities; again, however, if a report fails to say persecution *is* reasonably likely, the court may conclude that the expert thinks it is not. Yet experts who appear to take over the judicial function by pronouncing directly on the validity of the

claim – interestingly, a charge levelled more at doctors than anthropologists – are likely to attract criticism and their views may be given little weight. The expert's scope is particularly limited in relation to the adjudicator's crucial finding on credibility, since this is based not merely on a hearing at which the expert was not present, but on the adjudicator's subjective assessments of the appellant's demeanour and personality. For these reasons, perhaps the most fatal error an expert can make is to describe an asylum seeker's account as 'credible'!

There is no published work on anthropological expert witnesses in the UK immigration system and no professional code of conduct to guide their activities. The ASA's ethical guidelines say little about applied work or consultancy and nothing about testifying in court. Some general precepts clearly do apply, such as the need to be clear about the limitations of anthropological interpretations, especially when these 'bear upon public policy and opinion', but even this is not straightforward. Stuart-Smith LJ stated in the '*Ikarian Reefer*' case that an expert was entitled to weigh probabilities by 'making use of the skills of other experts or drawing on his general . . . knowledge', so the principle that expert witnesses can address professional issues outside their first-hand expertise is partly accepted in law, which further complicates the issue of the bounds of disciplinary competence. The ethical issues are particularly serious because of the vulnerability of many asylum seekers, so further clarification of anthropologists' responsibilities seems desirable.

Notes

1 Alvarez and Loucky (1992) and Mahmood (1996) are among the few (North American) exceptions.
2 For refusals made after 2 October 2000, human rights and asylum appeals are considered together.
3 Funded under ESRC Research Grant R000223352.
4 First-tier appeals rose from 250 in 1994, the first year of operation of the 1993 Act, to 6,830 in 1995 and 27,134 in 2000 (http://www.iaa.gov.uk/Statistics/receipts2000.pdf).
5 Either side may appeal, subject to leave, to the Court of Appeal or Court of Session for judicial review.
6 *Savchenkov v. SSHD* [1996] Imm AR 28; *SSHD v. Shah* (Court of Appeal QBCOF 97/0033/D; 23 July 1997).
7 This chapter cites the March 1999 version.
8 This is the only occurrence of the word 'persecution' in the entire *Country Assessment*.

Bibliography

Alvarez, L. and Loucky, J. (1992) 'Inquiry and Advocacy: Attorney Expert Collaboration in the Political Asylum Process', in R.F. Kandel (ed.) *Double Vision: Anthropologists at Law* (NAPA Bulletin, No. 11), Arlington: American Anthropological Association.

Amnesty International (1995) *Testimony by James F. McDonald on Behalf of AI USA*, House Committee on International Relations, 14 November, Washington DC, available at http://www.lacnet.org/srilanka/issues/ai1.html.

Amnesty International (1996) *Sri Lanka: Wavering Commitment to Human Rights*, ASA 37/08/96, available at http://web.amnesty.org/ai.nsf/Index/ASA370081996?OpenDocument8of=COUNTRIES\SRI+LANKA.

Amnesty International (1998a) *Annual Report 1998: Sri Lanka*, available at http://amnesty.org/ailib/aireport/ar98/asa37.htm.

Amnesty International (1998b) *Torture of 19 Year Old Man*, ASA 37/19/98, available at http://www.minihub.org/mailinglists/siarlist/msg00578.html.

Amnesty International (1999) *Sri Lanka: Torture in Custody*, ASA 37/10/99, available at http://web.amnesty.org/ai.nsf/Index/ASA370101999?OpenDocument8of=COUNTRIES\SRI+LANKA.

Asylum Aid (1999) *Still No Reason at All: Home Office Decisions on Asylum Claims*, London: Asylum Aid.

Crawley, H. (1999) *Breaking Down the Barriers: A Report on the Conduct of Asylum Interviews at Ports*, London: ILPA.

Hathaway, J.C. (1991) *The Law of Refugee Status*, Markham, Ontario: Butterworths.

Henderson, M. (1997) *Best Practice Guide to Asylum Appeals*, London: ILPA.

Immigration and Nationality Directorate (1998) *Asylum Directorate Instructions*, London: Home Office.

Immigration and Nationality Directorate (1999) *Country Assessment: Sri Lanka, March 1999*, available at http://www.homeoffice.gov.uk/ind/cipu1.htm.

Immigration and Refugee Board (1997) *Information from Four Specialists on Current Conditions in the North and East, the Vavuniya Area and Colombo*, Ottawa: IRB Research Directorate.

Immigration and Refugee Board (1998) *Sri Lanka: Internal Flight Alternatives: an Update*, Ottawa: IRB Research Directorate.

Immigration Law Practitioners' Association (1993) *Directory of Expertise on Conditions in Countries of Origin and Transit*, London: ILPA.

Jackson, David (1999) *Immigration Law and Practice*, London: Sweet and Maxwell.

Justice (1997) *Providing Protection: Towards Fair and Effective Asylum Procedures*, London: ILPA.

Mackenzie Institute (1995) *Funding Terror: the Liberation Tigers of Tamil Eelam and their Criminal Activities in Canada and the Western World*, Mackenzie Institute: Toronto.

Mahmood, C.K. (1996) 'Asylum, Violence, and the Limits of Advocacy', *Human Organization* 55: 493–8.

Medical Foundation (2000) *Caught in the Middle: A Study of Tamil Torture Survivors*, Medical Foundation: London.

Nissan, E. (1996) *Sri Lanka: A Bitter Harvest*, London: Minority Rights Group.

Nissan, E. and Stirrat, R.L. (1990) 'The Generation of Community Identities', in J. Spencer (ed.) *Sri Lanka: History and the Roots of Conflict*, London: Routledge.

Refugee Council (1997) *Protection Denied: Sri Lankan Tamils, the Home Office, and the Forgotten Civil War*, London: Refugee Council.

United Nations High Commissioner for Human Rights (1998) *Report of the Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions*, 12 March. (E/CN.4/1998/68/Add.2), Geneva: UNHCHR.

United Nations High Commissioner for Refugees (1992) *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva: UNHCR.

United Nations High Commissioner for Refugees (1995) *The State of the World's Refugees: in Search of Solutions*, Oxford: Oxford University Press.

United Nations High Commissioner for Refugees (1997) *Background Paper on Refugees and Asylum Seekers from Sri Lanka*, Geneva: UNHCR Centre for Documentation and Research.

United Nations High Commissioner for Refugees (1999) *Refugees and Others of Concern to UNHCR: Statistical Overview*, Geneva: UNHCR Statistical Unit.

US Committee for Refugees (1997) *Country Report: Sri Lanka*, available at http://www.refugees.org/world/countryrpt/scasia/past/sri_lanka.ht.

US State Department (1999) *Sri Lanka Country Report on Human Rights Practices for 1998*, available at http://www.state.gov/www/global/human_rights/1998_hrp_report/srilanka.html.

Wilson, A.J. and Chandrakanthan, A.J. (1998) 'Tamil Identity and Aspirations', in *Demanding Sacrifice: War and Negotiation in Sri Lanka* (*Accord*, vol. 4). London: Conciliation Resources.

Chapter 6

Voices from the margins

Knowledge and interpellation in Israeli human rights protests

Richard W.J. Clarke

> When you ruin somebody's house, it's not to destroy [structures] as the Civil Administration (*haminhal*) says, and you read it all the time in the paper – 'We ruined three structures (*mivnim*)'. They're not structures but those are people's houses and the wound (*hapetza*), the wound, the human tragedy of the family and the children is so deep. . . . It's very difficult to transmit that (*leha'avir*) to Israelis, when we actually live in 'the first world', what happens in 'this third world', that the army, with the weapons and all the violence and all the threats (*hafrada*), all this machinery comes down on you, because you wanted to build a house. . . . Sometimes, [the authorities] come every day, and we are not aware of that in Israel.
>
> (Press conference held by an Israeli human rights group)

Introduction

There is a moment during Claude Lanzmann's epic film history of the IDF,[1] *Tsahal*, when an Israeli soldier describes the experience of travelling back to Tel Aviv from the Suez Canal, during the 'War of Attrition' with Egypt:

> We were coming to Tel Aviv once [every] two months by air, by planes, landing in Tel Aviv in Ben Gurion Airport and by crossing Tel Aviv with our vehicles that took us home, we have seen something new, something that doesn't understand, that doesn't accept, that doesn't know that a war exists only 30 minutes by flight by an aeroplane. All the Israelis along the streets, sitting in the cafés, drinking coffee, eating cakes, going to movies, to theatres, life was running on as [if] . . . there were not battles along the canal and it was so funny, something that we, the officers, couldn't understand. How come we are fighting, we are eating, as I would say, shit day by day, killing Egyptians and the Egyptians are killing us, helping our friends that were wounded, going to the graveyards with our dead friends and here, in Tel Aviv, it was like the last days of Pompeii, you know? They didn't understand; they

> couldn't understand, maybe, what we were feeling and, with a second thought, I would say maybe this is the strength of the Israeli nation. It is maybe 'un-normal' but this gives us the power to live in such a crazy country.
>
> (Quoted in Lanzmann 1994)

The soldier was concerned that, despite the apparent importance of the war, information seemed not to be reaching the Israeli 'centre' from its 'margins', or at least not affecting 'ordinary' Israelis in the way in which he had expected, despite the fact that the war was only 30 minutes' flight from Tel Aviv. This amazement that wars could take place so close to home and yet have such little effect there is something that echoes the experiences of British soldiers during the First World War, evoked by Paul Fussell, when he writes of 'the ridiculous proximity of the trenches to home. Just seventy miles from "this stinking world of sticky trickling earth" was the rich plush of London theater seats and the perfume, alcohol, and cigar smoke of the Café Royal' (1975: 64). In one sense, these margins are physical, in that 'the front' in both cases represented concrete, dangerous boundaries. However, these margins were also metaphorical, their distance in part created by the events taking place there. The distancing of the War of Attrition was exacerbated by the apparent ignorance of the Israeli general public. The soldier's words evoke an eerie experience of almost walking among ghosts, who could not understand what he has just seen and been asked to do in their names.

Perhaps the most consistent example of this experience, in Israeli discourse, has been the public treatment of 'the territories' (*hashtachim*).[2] In 1967, Israeli forces captured land on the West Bank of the Jordan River, the Golan Heights and the Gaza Strip. These areas, which contained a large number of Palestinian Arab refugees who had fled the fighting that had established the State in 1948, now saw an influx of more refugees who were accommodated in United Nations camps. For years, the situation in the territories remained at an impasse, with Israel building large Jewish settlements in key strategic locations and refusing to countenance the return of the land without recognition from the surrounding Arab nations. By 1987, the Palestinian population had grown in number and anger and exploded in a political uprising, the Intifada (in Arabic literally 'the throwing off'). Israeli troops were poured into the territories in increasing numbers; a young Israeli man growing up in the 1980s could expect to serve a period of military service in the burning refugee camps of the West Bank and Gaza. The Intifada also fundamentally altered Israeli public perceptions of safety in relation to travelling in the territories. The West Bank and Gaza became places travelled to almost entirely by soldiers and settlers.

In 1993, as part of the Oslo Agreement, Israel allowed Yasser Arafat's Palestine Liberation Organization to establish an autonomous 'government' – the Palestinian National Authority (PNA) – in small enclaves in the West

Bank and Gaza. Bypass roads were built to carry Israeli traffic to Israeli settlements while avoiding the PNA areas. Israelis continued to stay away from the territories but they were now joined by soldiers who were withdrawn from their bases in the Palestinian cities. Stories about the territories fell away from newspapers and the television. As far as most Israelis were concerned, they had left. More than at any other period in Israeli history, the Palestinians had become marginalized. An Israeli could drive from Tel Aviv, through Jerusalem and on to the large settlement of Kiryat Arba, just outside Hebron, and only pass small Palestinian villages en route.

A small number of Israeli activists, however, were angered by this situation. They argued, and continue to argue, that the occupation of most of the territories has continued and that Palestinians are now trapped in, at best, semi-autonomous cantons and, at worst, Bantustans. They believe that the territories must be held in front of the Israeli general public, to remind them of the situation there. Like the soldier quoted by Lanzmann, they too are disturbed by the fact that spaces can become so marginal while being so apparently close to the centre of the State. Ramallah, the headquarters of the PNA on the West Bank, is ten minutes drive north of Jerusalem and yet is *terra incognita* for most Israelis.

This theme of margins and centres, both physical and metaphorical, I shall argue in this chapter, is central to much Israeli socio-political experience and is of particular importance to Israeli protest groups, with whom I worked between 1998 and 1999 while conducting my Ph.D. field research.[3] Marginality is a core motif that can be found in the rhetoric of all of the projects whose varied fortunes I followed while in the field. It can be seen in their warnings that the experiences of Palestinians are becoming increasingly marginal and that the occupation more broadly is becoming marginalized in Israeli public discourse but also in their descriptions of themselves. The voices of human rights activists are themselves marginal inside Israel; however, if they are to have any effect their messages must reach the 'centres' of Israeli life. This experience, I shall suggest, is one shared by other groups within the peace movement and also other, broader groups inside Israeli society. Israel can be seen, I think, as a complex and shifting set of margins and centres, according to the perspectives of those who are analysing a given situation – and this includes both anthropologists and Israelis themselves. Hence, from one perspective the people with whom I worked seem to exemplify the margins of the Israeli nation, both in their behaviour (travelling to the margins) and their position within Israeli society. However, looked at from the perspective of Jewish settlers in the territories and Sephardim,[4] for example, they appear much more central. An attempt to 'educate' the Israeli general public about the occupation and the situation in the territories necessitates a structured management of symbols related to marginality and centrality, cores and peripheries, something that has been a key theme in the activities of many Israeli human rights groups.

However, as a number of writers have observed, human rights claims are communicated through a variety of techniques and media (e.g. Cohen 2001; Wilson 1997b). In the Israeli case, as with many other contexts around the world, these techniques coexist within one, highly diverse 'Israeli human rights movement'. In this chapter, I discuss those Israeli groups whose actions are designed to highlight what they see as the unacceptable suffering of Palestinians in the occupied territories. In this sense, much of what I describe might also be presented as activities of the 'Israeli peace movement'. The two movements are far from simply interchangeable, however, and Israel has a varied, vocal and wholly internal human rights movement that focuses on, for example, women's rights, the treatment of gay men within Israeli society and ideals of secular humanism in the context of 'the Jewish State'. Many of the fundamental characteristics of the various human rights groups in Israel are similar while others have been developed to deal with particular contexts.

The claims I describe below are articulated within Israel but in reference to conditions within the territories; they are claims in both senses of the term, in that they seek to stake a claim for better treatment of Palestinians by Israelis but, in order to do so, they make claims about the situation in the territories which are frequently challenged by other Israelis. As I shall discuss, it is around this latter sense of the term that many of the activities of the Israeli human rights movement have coalesced. In articulating knowledge claims, they adopt differing techniques. Some Israeli human rights activists have chosen what could be described as an academic, legalistic stance towards knowledge and have sought to educate Israelis by supplying them with data on what they see as human rights abuses in the West Bank and Gaza. This is the principle aim of B'Tselem, by far the most famous Israeli human rights group. B'Tselem, in line with other international groups such as Human Rights Watch, regularly publishes newsletters, reports and statistics in order to document the violence of the occupation. I shall return to the transnational character of such groups in my conclusion.

However, the groups with which I worked followed an alternative strategy. With varying degrees of intensity, they sought to 'interpellate' (Aretxaga 1997), to challenge Israelis and to shake them out of their (literal) ignorance about events taking place so close to their lives. It is this strategy on which I shall focus throughout this chapter, before turning in my conclusion to an attempt to assess why such techniques will not always succeed. Understanding how such challenges are expressed, however, requires first some discussion of the politics of protest in Israel.

Margins and protest

In his extensive review of political activism and protest in Israel, Lehman-Wilzig argues that 'Public protest is one of the most ubiquitous socio-political phenomena to be found in Israel – not merely today, but from

virtually the inception of the State' (1990: 1). Previous studies of protest in Israel, he suggests, have tended to overemphasize the importance of political parties and underestimate the role of small groups that gather to protest against a key issue and frequently disband rapidly afterwards. In common with one of the dominant views in Israeli politics and sociology, he argues that the 'overburdened polity of Israel', to borrow Horowitz and Lissak's (1989) phrase, means that a 'blockage' is created in the conventional political system, necessitating the emergence of 'protest politics' across the political spectrum (see Wolfsfeld 1988). From settlers to peace activists and from Orthodox women to tomato farmers (Lehman-Wilzig 1990: 53), Israeli groups who perceive themselves as disadvantaged engage in public protests more than almost anywhere else in the world.

For such a comparatively small country, these protests are frequently framed in terms of 'margins' – settlers protest that they are being left on the edge of Israel, near to the PNA without adequate security protection; Bedouin from the Negev complain that their education system is being ignored by the central government; and Palestinian citizens of Israel in the Galilee voice their concern over lack of funding for services in their towns and villages. In order to get their messages across, these protests often move to the 'centre' of Israeli life. They deliberately frame themselves as marginal and as travelling from what they present as the peripheries of the nation to its core. In this sense, they (and I) parallel Yaron's examination of the phenomenon of *Dybbuk* spirit possession, when she writes that she intends 'to examine the relationship between what I metaphorically refer to as "Jerusalem" and "Dimona", meaning the center and the periphery' (2000: 2). However, as I shall argue below, the characterization of this relationship, *pace* Lewis (1971), as one of authority at the core and protest on the periphery, so powerful in her case, becomes problematic when applied to my case study.

For most of my time in Israel, at least one group of protestors maintained a permanent presence outside the office of the Prime Minister. When interviewed in the media, their message was always the same, regardless of the issue they addressed and the political position from which they addressed it – namely that the Prime Minister needed to be reminded of their views; that the problems of settlers/farmers/Ethiopian Jews needed to be put on display in front of him, so that they could not be ignored. This tactic has become particularly popular across the Israeli peace movement, with activists arguing that the territories need to be held before the Israeli consciousness. This need to ensure, as far as is possible, that people know what is happening is predicated either on the view that they do not know now or as a reminder that knowledge carries responsibility.

The power of knowledge, as both a rhetorical and a constructive tool, is not unique to the context of the Israeli human rights movement. Writing on the experience of reproductive technologies, Strathern notes that, in cases of parental claims, knowledge can have the ability both to challenge but also

to confirm and even create relationships (1999). Knowing that an individual is your child, the discursive argument runs, creates a relationship and a set of obligations. An attempt to achieve just this experience, I would argue, can be found in the methodologies of transnational human rights movements. Cohen devotes much of his discussion of 'knowing about atrocities and suffering' (2001) to the techniques adopted by those who seek to force an obligation on individuals. Once one knows about suffering, one cannot simply turn away – the obligation to assist, appellants hope, becomes too powerful. Hence the careful positioning of appeals in the middle of newspapers, to be digested uncomfortably at the breakfast table.

These appeals can either be direct challenges to action – 'you must do something now' – or they can follow the (perhaps more uncomfortable) technique of angrily condemning an anticipated future denial; Cohen quotes from an appeal for assistance for aid in Bosnia: 'Take a good look. Don't ever say, "I didn't know it was happening"' (ibid: 202).

In the following section, I shall describe some of the ways in which Israelis have sought to transmit information about the territories to others on the prosperous streets of Tel Aviv and Jerusalem. Such claims, I believe, can be placed along a continuum, from legalistic appeals at one end to more disruptive, interpellatory challenges at the other.

'Don't say you didn't know'

Since the beginning of the occupation, and particularly following the start of the Intifada, there have been Israelis who feel that they have access to information and experiences which they cannot ignore and which they feel Israeli society has a responsibility to consider. B'Tselem, which I introduced on p. 121, can be described in these terms, as can the Alternative Information Centre, one of the founders of which described its early days to me:

> The fact that people didn't know [about the territories] was not because of censorship but simply because of laziness from the media. They didn't make the effort to try to understand. The first generation of Arab experts was tired and the second generation was completely ignorant and you could see absurdities in the newspapers, at the factual level . . . and our assumption was that if we provided the tools, on the factual level first of all – in the beginning we were a kind of press agency – mainly to the media, then addressing through the media, a much wider audience, we could somehow help to refocus, a little bit, the understanding.

The work of one of my case study groups, the Israeli Committee against Home Demolitions (ICAHD), which protests against the systematic destruction of Palestinian homes in the territories, also focuses on the notion of 'education' and correcting misunderstandings:

> If you take home demolition as an example, one of the problems with Israeli information is that, or opinion here, is that information is outdated. For example, most Israelis still imagine that these homes are being demolished because these are families that have had some connection with terror and they don't realise that it's about just containing the population, keeping villages from growing, it's totally civil, not military.
>
> (Israeli activist)

Their aim, therefore, becomes to supply Israelis with the information necessary to understand what is really happening in the West Bank. In doing so, they draw on the images of marginality and distance, as the framing quotation on p. 118 demonstrates.

However, one key Israeli voice from the territories, more than any other, demonstrates the discursive power of the relationship between 'the margins' and 'the centre' – the Israeli soldier. With the outbreak of the Lebanon War and the Intifada, some soldiers sought to 'educate' the Israeli general public about what they were being asked to do in their names. Again, the imagery of 'the voice from the margins' permeated their protests.

> Soldiers Against Silence was also an Ad Hoc group. . . . The soldiers felt betrayed by the government and wanted to bring their version of the [Lebanon] War to the general public.[5]
>
> (Wolfsfeld 1988: 124–5)

Wolfsfeld quotes from one of the leaders of the movement and the twin themes of knowledge and responsibility can be seen clearly: 'We let the other [Israeli government] ministers know what was going on in the field, and a really tough cabinet meeting began. . . . Our tactics were very clear: if we go into Beirut, *let no one say he didn't know*' (ibid: 129; emphasis added).[6] The group disbanded when, in the words of one of its leaders, 'we felt that there was no more point to it, the lies had all come out, we had said what we had to say' (ibid: 129).

Other Israeli soldiers were able to use their skills and contacts as journalists to try to publicize events on the margins. Yossi Klein Halevi, an Israeli journalist who published a diary of his experiences as a reserve soldier in Gaza, was amazed by how little Israelis 'at home' knew about what was going on. As he put it to me in an interview:

> I came out of reserve duty and I went back to [the newspaper] and these are all people, they're my friends there, they're journalists, they're all people who know Israel. So, I wrote up the diary and I took excerpts and I showed it to them and people were shocked. Journalists, veteran Israelis were shocked, just to read it. It was written in a very direct, simple way. It was really just a recording of hour by hour in Gaza, what it felt like, what it looked like . . . and we violated military censorship.

> We decided we were not going to even submit it to the army . . . we felt . . . that we all really wanted the Israeli civilian public, the home front, to know what a generation of its young men were experiencing . . . *I wanted to break the innocence, the ignorance, because I felt we didn't have a right to that innocence any more. With the Intifada, we lost our innocence.*
>
> (Author's interview with Halevi; emphasis added)

Another journalist, Ari Shavit of *Ha'aretz*, was also able to use his career to publicize his reserve duty in the Gaza Beach internment camp. He writes: 'In my case, I can write an article for my newspaper. A comfortable alibi. But what will the others do? And what shall we do – we, all of us, the "good Israelis"?' (1991: 6). Again the language of silence and responsibility permeate his text:

> Whether he does anything about it or not, a person who has heard the screams of another person being tortured incurs an obligation. . . . One out of every hundred Israeli men has been here (or maybe one out of every seventy, or one out of fifty). And the country has been quiet. Has flourished. . . . And [then Israeli Ambassador to the US] Benjamin Netanyahu has reminded [US newscaster] Ted Koppel time after time that Israel is the only democracy in the Middle East. And no one has arisen to silence them, in shame. No one has brought them a cassette with the screams. Ten thousand (if not fifteen thousand, if not twenty thousand) Israelis have done their work faithfully – have opened the heavy iron door of the isolation cell and then closed it. Have led the man from the interrogation chamber to the clinic, from the clinic back to the interrogation chamber.[7]
>
> (Ibid)

Such accounts were read widely among liberal Israelis but their impact was mitigated by the narrow nature of their distribution and the voluntary element of choosing to read such articles. Others have pursued a more immediate strategy of seeking to disrupt the lives of ordinary Israelis as they go about their daily lives.

Women in Black *(Nashim Beshahor)* – one of whose slogans heads this section – has met, every Friday afternoon from 1 p.m. to 2 p.m., at fixed locations around Israel, since January 1988.[8] Although originally planned as a mixed protest, with men in white, it soon became an all-female gathering, with five additional minimal requirements from all participants – that they should gather at the same time, carry the same signs, wear black clothing, meet at the same place and remain silent. In their study of Women in Black, Helman and Rapaport argue that this simplicity of framed image allows for a variety of opinions to be held among the participants, without disrupting the central message of the protest – '*Dai Lakibush*' (Stop the Occupation):

'The first principle [individual interpretation] is metaphorically manifested in the fact that all participants hide behind the "Stop the Occupation" sign. This allows each protestor to zealously guard her own view on the occupation's causes, ramifications and solutions' (1997: 687).

It also means that the protests maintain constancy over time. Every Friday, as Jerusalem prepares for the Shabbat, the women stand in Paris Square *(Kikar Paris)*, in silence, and hold the territories before the passing Israelis as they sit in the city's legendary traffic jams. They consciously bring the discursive periphery of the nation to its bustling, commercial centre, a silent reminder of events taking place only a few minutes' drive away. Sharoni recalls how, in the early days of the Intifada, Israeli women peace activists sought to counter the invisibility of the territories in cities such as Tel Aviv:

> women involved with the feminist magazine *Noga* collected slides taken by journalists in the Occupied Territories and installed a generator and projector on a busy Tel Aviv street to show scenes from the West Bank that were prohibited by the Israeli military censor. Their main objective was to pierce the apathy and indifference of the average Israeli to the brutality of the Occupation.
>
> (Sharoni 1995: 112)

Needless to say, their presence offends many in Israeli society. Helman and Rapaport quote from a taxi driver whom they interviewed:

> Ok. So you're allowed [to demonstrate], but not over a period of a year or two or three or four or five. It's ok, say, if it happens once or twice or three times. But what's going on here? Did they sign up for an extended tour of duty? What do they think, that they own the square? It's a central public square and they insist on standing out there and reminding us of it every Friday.
>
> (Helman and Rapaport 1997: 691)

Hostility from passing drivers and pedestrians often spills over into verbal attacks, frequently involving references to gender and sexuality (ibid: 690).

However, the experience of Women in Black is not unusual. In May 1999, B'Tselem, in conjunction with a number of other Israeli human rights groups, including the Public Committee Against Torture in Israel, organized a protest in the heart of West Jerusalem. Its aim was to heighten Israeli public awareness of the methods used by the Shabak, the internal security service, in torturing Palestinian suspects. They decided to carry out a piece of 'guerrilla theatre', a technique which originated with Latin American protest groups and which uses live, acted 'demonstrations' of torture, etc.[9] An Israeli man was to play the Palestinian prisoner and an American volunteer the Shabak agent. I was curious to see how passing Israelis would react. This extract is from my field notes:

It was a hot afternoon and, when I arrived, there were only a few people hanging about in the square. Dan[10] was there already, with a few other people, handing out leaflets. . . . They started setting out signs and getting people to stand round in a semicircle, so that they were all facing the *Bank Hapoalim*. The signs were interesting – in Hebrew and English – they read 'Silence Equals Collaboration', among others, and some had extracts from testimonies of Palestinian prisoners under sections detailing 'cruel and unusual punishment' etc.

Hannah spoke to the demonstrators and emphasized how important it was not to get involved in arguments or to provoke people. An American guy was the first to start something. As Dan was having a sack put on his head and [the man playing the Shabak agent] was putting him in the various [torture] positions, the man tried to intervene and began to shout. Hannah tried to stop him and spoke to a nearby police-woman, who looked pretty ineffectual. The man who, I think coincidentally, had only one arm, was shouting things about them being traitors, that they should see what Arafat and Rajoub [the head of security in the PNA] do in PNA areas etc.

There were 4 or 5 soldiers in the crowd at one point, who gazed slightly incredulously at the scene in front of them. A [boy] . . . came up and asked his friends 'What's all this about?' One of them explained to him – 'Good', he said. 'They should torture Arabs'. 'What's the point anyway?' one of them asked, 'it's them against all of these people around here who don't care.' I noticed that, as Hannah was handing out leaflets, at least one woman handed them back. . . . The American man tried again – 'you're betraying your country. Go and see what Rajoub does to his own people!' . . . His wife jumped up behind me, somewhat alarming some people in the crowd, and started shouting – 'He loves the truth, my husband, he hates lies. . . . Come on Brad, you spoke the truth, it's up to them.' As his wife led him off, a man in [a] black *kippa*[11] . . . said '*kol hakavod*.[12] Somebody has to say something'. . . .

I told [the man in the kippa] . . . that I was from England and could I ask him what he thought of [the demonstration]. 'First of all, how do I know it's true?' he asked. 'All the world now knows about what the Arabs have done to the Jews. The Israeli left has to pick on this one little thing because it's the only thing it can find.' He also said that he thought that this kind of treatment acted as a deterrent to other Arabs who might be thinking of throwing stones. 'Otherwise', he said, 'you'll find that Arabs will arrive in prison and the "Leftists" will have changed it so much that there'll be no deterrent effect – they're helping the Arabs.' Only last week, he said, someone in his neighbourhood had his car turned over. Does the demo. have any effect, I asked. 'No, it only affects the people who dressed up to come along today.'

Once again, the emphasis of the demonstration was on simplicity. Although one of the organizers spoke with some members of the public, the rest of the demonstrators were encouraged to remain quiet and simply focus on the message that they were trying to get across.

The notion that images should 'speak for themselves' and that comfortable ideas should be disrupted can also be seen in the ways that Israeli protest groups play on notions of proximity and distance. One village on which ICAHD focused its protests lies in a valley immediately below the Hebrew University of Jerusalem. From the ruins of one of the demolished houses, it was possible to see directly into the university's main library. A student protest group working with ICAHD organized a leaflet campaign to highlight the close proximity of this 'different world'. They stopped students as they passed the library and encouraged them to lean out of the window to see the village below.

These images can also be seen in the publicity material for a trip to the West Bank organized by ICAHD for interested Israelis:

> Before our eyes an actual country called Palestine is slowly, painfully but steadily emerging. In many ways it is a country as foreign to us as Thailand or Brazil, struggling for its own definition. It is a country with a history, a culture, a cuisine, an historical geography rich in sites, a diverse people. It is a country that we, as Israelis, should and must come to know. Palestine is both our neighbour and, sharing our geographic, historical and cultural space, is part of ourselves.

These activities parallel those of Israeli protest groups against torture, who spent several evenings visiting bars situated immediately next to 'the Russian Compound', notorious among Palestinians for its torture and located in the heart of downtown Jerusalem, and distributed leaflets, in Hebrew and English, emphasizing how close the drinkers were to the Compound:

> Comfortable? Warm enough? Are the toilets clean? Enjoying the music? Drinks OK? A stone's throw from here, in the Russian Compound's Interrogation Rooms, torture takes place on a routine basis: detainees are denied sleep, access to food and basic hygiene, medical facilities . . . .

Central to these demonstrations is the idea of a refusal to allow Israeli life to be 'normal' and instead continually to remind Israelis of the situation in the territories. As Helman and Rapaport argue, with reference to the quote from the taxi driver cited on p. 126:

> The people of Israel, the cabby suggests, do not want to think of black. They do not want to be afraid or feel insecure about living here or to be threatened by danger and death – but the women will not allow them to

> forget this. Thus, by merely serving as a reminder of the national conflict, the Women in Black undermine the effort to maintain a routine life. (1997: 692)

Writing on women's activism in Northern Ireland, Aretxaga has called this process interpellation. The Oxford English Dictionary, she writes, defines interpellate as 'to appeal, to interrupt in speaking, to break in or to disturb':

> I see Clar na mBan [the group with whom she worked], and the political practices that I describe . . . as constituting precisely such irruptions in political discourse, disturbing presences that break the order of historical narratives and in so doing raise questions about the nature of such order. (1997: 5–6)

The events I have outlined above, I would argue, are precisely such interruptions, attempts to challenge Israelis in Tel Aviv and Jerusalem and efforts to disrupt ordinary life. Hence, the importance of visibility, a concern also identified by Jean-Klein in her study of Palestinian women's committees: 'one of the aims behind the demonstrations that make up the intifada . . . [is] "so that people will see" – rendering the occupation visible in the eyes of the masses of ordinary [Palestinian] people and so to mobilise against it' (1992: 53).

The central aim of such actions becomes to force contexts in front of people who would otherwise ignore them. They represent attempts to break a cycle of ignorance and artificial normality that pervaded the streets of Israeli Jerusalem when I conducted fieldwork. It is no coincidence that protests were organized outside shopping malls, in cafés and in university libraries; they were deliberately positioned in order to maximize the contrast between the normality of everyday Israeli life and the violence of the occupation, apparently hidden just out of sight.

Elsewhere in my work (Clarke 2001), I have employed Bourdieu's (1977, 1979, 1990) notion of the habitus to describe an embodied, discursive avoidance of the territories on the part of Israelis. Ignorance of Palestinian life in the West Bank and Gaza is not simply a product of a lack of media attention or a fear of travelling to the territories, important components though these are; it is also formed from a more subtle and pervasive habitus of avoidance. Interpellatory protests are designed to force Israelis to acknowledge what the Israeli State is doing in their names; however, as I shall argue in my conclusion, such actions face the problem of the resilience of the habitus. Real interpellation, if it is to have any effect, must disrupt the habitus of the individuals whom it seeks to challenge.

What all of these varied strategies and accounts share is an emphasis on knowledge and the duties that arise from its possession. Hence the importance of reminding Israelis about the territories, something that lies at the

heart of the narratives of the Women in Black; the need that Soldiers Against Silence felt to rouse ordinary Israelis and tell them what was happening in Lebanon; and Halevi's and Shavit's questions over what they can do to show the people back 'at home' what they were being asked to do in the territories. All of these rhetorical devices are attempts to deal with the fact that 'ordinary Israel' is remarkably skilful at blocking out events taking place only a few minutes drive away from their homes and being conducted by Israelis who could be their sons, their friends or even themselves.

However, these protests also prompt the question of how successful such strategies can hope to be. The first step, however, in explaining what I interpret as their frequent lack of success is to return to the notion of marginality with which I began.

Israeli margins

In one sense, 'margins' and 'marginality' are comfortable and productive labels to use when describing the situation of what might loosely be termed 'the Israeli human rights movement'. These are people, marginalized within their society in that they find it difficult to get their message across, protesting about marginal spaces, in that most Israelis do not visit the territories and know little about what happens there. Discursively marginal(ized) people travel to the centre of the State to protest about its spatial margins. However, marginality is a much more complex and varied phenomenon than simply a straight division between those who are able to make their voice heard and those who are not, or indeed the distant peripheries and the established centre.

Margins in Israel are continually shaped by power struggles and the strategies of different interest groups. Having said that, however, certain fairly clear groups have been usefully identified by sociologists of Israel as peripheral to the ideological core of the State. These include, for example, Palestinian citizens of Israel, women (both Jewish and Arab), Sephardim, residents of development towns in the south of the country and Ethiopian immigrants. These groups are usually presented in contrast to the socio-political elite of the State, the Ashkenazi[13] pioneers and their descendants, who were able to formulate the ideals and ideologies of the nascent State and who protected these ideals for generations (Cohen 1983).[14]

In many ways, this Ashkenazi hegemony is as strong as it has ever been. A potent mixture of cultural heritage, growing up in the right *kibbutz*,[15] knowing the right people (*proteksia* – sometimes shortened in Hebrew to *Vitamin P*) and serving in one of the elite IDF units are still the key building blocks of 'the successful Israeli'. However, other groups in Israeli society are beginning to realize their political power and influence. Russian immigrants are a classic example of this phenomenon. There are currently over 50 Israeli newspapers published in Russian and 'the Russian vote' has

become a powerful political force. Political activism has also become evident among the children and grandchildren of the *Mizrachi* immigrants (see note 4) – stories have emerged of *olim* (recently arrived Jewish immigrants to Israel) being sprayed and cleansed with pesticides on arrival, of children being taken from their parents and only today beginning to be reunited. The foundations of the Ashkenazi hegemony, from some perspectives, are beginning to look decidedly unstable.

At the same time, while marginal spaces in the State can still legitimately be identified, the capacity of certain groups to move between the margins and the centre has never been more marked. During Netanyahu's premiership, the settler leadership would regularly visit Jerusalem and would receive politicians in Hebron, Beit El and throughout the West Bank. The settlement movement, particularly since the election of Ariel Sharon, has also shown that not all margins are powerless.

However, there remains one crucial area of 'the Israeli experience' in which it can usefully be argued that a core–periphery relationship exists – the transmission of 'knowledge'. I argued earlier that Israeli public knowledge of the situation in the territories is socially and politically constructed. The same can be said of many of the state's other margins. I once interviewed a middle-aged Israeli professor who had been involved in the peace movement during the Intifada. I asked her my standard opening question – how much did she know about what was happening in the West Bank and Gaza? Her answer was initially typical, 'Oh, almost nothing', but then she paused. 'Mind you', she said, 'I don't know what's happening in the settlements, the development towns or the Orthodox neighbourhoods either.' Marginality in Israel is not a simple relationship between a core and its geographically distant peripheries; many Israelis in Jerusalem told me that they felt far closer to Tel Aviv (an hour's drive away) than Ramallah or East Jerusalem (ten minutes' or two minutes' drive away, respectively).

Every aspect of the Israeli national collective is highly contested – from what can be said legitimately to constitute 'being Israeli' to whether sections of the territories should be handed over to the PNA in return for pledges of peace. There are even voices, growing in feeling, who argue that Israel should not even exist – from the non-Zionists and 'ultra-Orthodox' anti-Zionists who argue that only the Messiah can create the Jewish State, to the many individuals in the groups with which I worked, who argued that the Zionist experiment had failed and should be abandoned in favour of a secular, democratic State. These multiple, competing voices are literally inscribed on the physical spaces and bodies of the State, on bumper stickers, banners, T-shirts and placards.

It is clear that positioning one's views in this context requires analysis of these competing voices and careful attention to presentation of the self. This is particularly true if one wishes to try to influence 'the Israeli on the street'.

The exilic intellectual: rethinking marginality and protest

Edward Said, in his *Representations of the Intellectual*, argues that the experience of 'exile' is something shared by all marginal intellectuals, regardless of whether their exile is from a nation or within a nation. Exile, he argues, can be both an actual and a metaphysical condition. Some intellectuals adapt to changing and dominant ideas, while some 'cannot, or more to the point, will not make the adjustment, preferring instead to remain outside the mainstream, unaccommodated, unco-opted, resistant' (1994: 52):

> A condition of marginality, which might seem irresponsible or flippant, frees you from having always to proceed with caution, afraid to overturn the applecart, anxious about upsetting fellow members of the same corporation . . . to be as marginal and as undomesticated as someone who is in real exile is for an intellectual to be unusually responsive to the traveler rather than the potentate, to the provisional and risky rather than the habitual, to innovation and experiment rather than the authoritatively given *status quo*. The *exilic* intellectual does not respond to the logic of the conventional but to the audacity of daring, and to representing change, to moving on, not standing still.
>
> (Ibid: 63–4)

On the one hand, the activists with whom I worked might seem to fit Said's image of 'the exilic intellectual' perfectly. They travel to the margins of the State and bring back stories of what they see as 'the truth' of what happens there; they deliberately challenge the current situation and the power of national consensus, refusing to be quiet when it might be more convenient for them to do so. They operate from within a discursive, rhetorical ideal of being outside the consensus, of being 'voices from the margins'.

However, this view of marginality becomes problematic when we look at their position in terms of the complex situation I outlined on p. 131. Most peace movement organizers are middle-class, Ashkenazi, well-educated and usually live in the centre of the State (Jerusalem, Tel Aviv etc.). Helman and Rapaport conducted a survey of participants at a Women in Black meeting – 90 per cent were secular, 99 per cent were Ashkenazi, 85 per cent held an academic degree and 85 per cent worked for a living (1997: 683).

This means that comments concerning the occupation and the future of Israel must be carefully tempered if they are not to seem simply the naiveties of 'bleeding-heart liberals'.

During an ICAHD house rebuilding protest on the West Bank, I was passing building blocks along a line of volunteers. A combination of the heat and my lack of exercise until then conspired to make my arms increasingly heavy as we passed the blocks from person to person. As a form of excuse,

I apologized to the man next to me that I wasn't used to this kind of work, being a soft academic. 'Ha!' he said. 'Who here is not an academic?' A brief head-count along the line revealed that the overwhelming majority of us were postgraduate students and at least one of us was a philosophy professor.

Situations like this do not help to enamour the group to settlers and the Sephardim, both constituencies who often explain that they *really* 'understand Arabs', having lived with them. Ashkenazi peaceniks, they suggest, help nobody, and are simply naive and misguided. At the worst extreme, as we have seen above, this attitude can spill over into verbal or physical violence against demonstrators.

Activists, across the wide spectrum of the Israeli peace movement, must carefully manage 'the presentation of the Self' (Goffman 1969) if they want their message to be heard. Here, Said's two options for the intellectual – moving to the centre or staying on the margins – become pertinent. Peace Now, by far the largest Israeli peace group, has become increasingly establishment in its outlook – Avraham Burg, the current speaker of the Israeli parliament, describes himself as 'a founder of the Israeli peace movement'. However, this very centrality, which guarantees Peace Now the ear of senior politicians, comes at a price. It has been criticized by the more (self-styled) 'radical fringe' of the peace movement, the people with whom I worked. They very much adopt Said's second path, occupying the margins of Israeli experience, a position from which they can more comfortably criticize and comment.

However, this seemingly clear positioning is something of an illusion. Israelis who wish to try to get information out from the territories, through whatever technique they choose to follow, must be skilful in 'the feel for the game', to borrow Bourdieu's formulation, of being Israeli. Bourdieu originally developed his analogy of social practice as 'the feel for the game' *(le sens de jeu)*, to analyse the complexity of the Kabyle honour 'system' (1977, 1979) and in his later work to describe a broader capacity of subjects to strategize and use the habitus which has, in part, produced their attitudes and perspectives: 'The good player, who is so to speak the game incarnate, does at every moment what the game requires' (1990: 63).

The image of the game, with rules which constrain but also allow for skilled play, can be coupled to his other common analogy of a jazz musician, again constrained by the rules of music but, within those rules, free to produce a virtuoso performance that is the product of his or her unique perspective. What Bourdieu's formulation of the habitus, developed and refined through his analyses of specific fields of social production, allows for is a vision of individuals who are, in part, the result of the contexts in which they live but are also able to improvise and strategize.

Some of the human rights groups with which I worked can be seen as particularly skilful at 'playing the game' of being Israeli but they face the recurring problem of marginal activists – position yourself too close to the margins and you marginalize your own narrative, too close to the centre and

you lose the novelty, and potential rhetorical impact, of your marginal position. Can such protests ever really alter perspectives?

Conclusion

'What if someone were to sneak a hidden camera in here?' Shavit asks (1991: 6). The irony, of course, is that nobody would need to (see Cohen 2001: x–xi). As he explains, thousands of Israeli soldiers served tours in the territories during the Intifada. The information was available to Israelis but it had no real effect in breaking down the constructed separation of the territories from 'ordinary' Israeli life. Hence, the power of a narrative such as Shavit's comes not from its content but from its potential interpellatory impact – knowledge which disrupts, renders uncomfortable, challenges and interrupts. The analogies are with rousing people and breaking silences rather than simply informing. Projecting images of beatings on to office buildings in Tel Aviv is not designed to transmit information; it aims rather to provoke reactions, to force Israelis to consider the political context of their ignorance of, and blindness towards, events in the West Bank and Gaza. The leaflets distributed in Jerusalem bars serve the same purpose – to remind people of the violence hidden so close to their everyday lives.

'[The] power to show', Bourdieu writes, 'is also a power to mobilise' (1998: 21). These images and challenges, it might be expected, would force Israelis to rethink their attitudes to the territories. If the West Bank and Gaza are continually hidden from the view of ordinary Israelis, then these activities might make them realize the implications of the events that take place there. Two points should be made in response. First, as Cohen (2001) notes in his wide-ranging study of 'states of denial', refusing to acknowledge such appeals can be as easy as simply walking past or turning away. Even if an image has some impact it can easily be sidelined through what he calls 'the politics of denial' (ibid: xi) – information is 'registered', he suggests, but it is not fully 'digested' (ibid: xii). Israelis, for example, are temporarily shocked by images of torture but it soon becomes normalized, acceptable precisely because it appears so often (ibid: 59). The national consensus is so strong that people simply return to the fold of national blindness.

In addition, information can be ignored more easily if the individuals seeking to transmit that information are perceived as a naive elite. The words of Helman and Rapaport's Israeli taxi driver are pertinent once more:

> These women, standing there, just looking at their shit faces pisses me off. These Ziggies [a slang expression which mocks the German origin of Ashkenazi intellectualism by playing on German names – Sigmund, Siegfried] with their glasses, they're all Ashkenazi and the first thing they say is *'Oh, Peace'* [said in a phoney, affected tone].
>
> (1997: 693; bracketed sections in original)

Before the Israeli habitual disposition towards the territories can be challenged, this initial frame must be broken. Demonstrations and activities that take place in the heart of Jerusalem expose themselves to taunts and attacks, as the example from my field notes demonstrates. While they offer the opportunity to try to reach more 'mainstream' Israelis, outside the Israeli 'liberal elite', such people are also more likely to react negatively to Ashkenazim and women. As Chazan (1991) and Sharoni (1995) note, a number of Israeli peace groups have presented themselves explicitly as women's movements. While it could be argued that this has not always been their primary aim, all-women projects might be said to have a particular rhetorical power. However, they must also break through Israeli discourses over 'womanhood' (Yuval-Davis 1980) before they can get their message across.

Similarly, in the context of the increasingly transnational nature of human rights claims (Wilson 1997a), Israeli protestors can become seen as 'outsiders', a dangerous position for those who wish to influence others. Israeli human rights activists must present themselves as both Israeli, at the centre, and bringing news from the margins. As I have argued, this can be a complex balance to achieve.

Such activities will also generally fail unless they are able in some sense to disrupt the discursive habitus through which images of the territories as separate, distant, complex and unreachable are lived. It may be true that most Israelis can understand the situation of Palestinians if exposed to them but they must first be prepared to open themselves to a more visceral form of engagement with their lives. These kinds of interpellatory practices might be effective for some but they suffer from the problem of being so easy to ignore. Elsewhere (Clarke 2001), I have discussed more radical attempts to challenge habitual dispositions, through trips to the territories, resisting home demolitions and travelling over military checkpoints with Palestinians. Such reflexive willingness to challenge one's own habitus must be the first step to engaging with the lives of ordinary Palestinians in the West Bank and Gaza.

Epilogue

Every Thursday evening during my fieldwork, I and a group of Palestinian, European and American friends would visit a café in Ramallah. For some time, a small group of Israelis and Palestinians had been performing live jazz together and young, 'liberal' Israelis from Tel Aviv had begun to travel in regularly to listen to the music and drink in the relaxed setting.

Within weeks of my return to England, the situation in the region had deteriorated to the point where the café had closed. As I prepared the first draft of this chapter for the ASA conference, the situation was such that all but one of the peace groups with which I had worked had cancelled their

activities. There has, perhaps, never been a more important time for Israelis to challenge the habitus of avoidance that permeates their society but, at the same time, there has never been a time when it has been more difficult to do so. If there is to be change in Israel, I am increasingly convinced that it will only come from within, from the voices of figures such as those I have discussed above.

Notes

1 The Israel Defense Forces (Hebrew – *Tsahal*). Except where indicated, all italicized words in the text are Hebrew.
2 Various labels can be used to describe the areas of land captured by Israel during the 'Six Day War' of June 1967 (the West Bank of the Jordan River, the Gaza Strip and the Golan Heights). The least politically problematic term seems to me to be 'the Occupied Territories' or 'the Occupied Palestinian Territories'. I use the emic term 'territories' as a literal translation of the Hebrew '*shtachim*', the word most commonly used by the 'Dovish', liberal Israelis with whom I worked. Simply describing them as 'Palestine' seems to me politically problematic and misleading, until a viable Palestinian state is established there (if ever). Other terms, such as Judea-Samaria (*Yehuda-Shomron* in Hebrew – sometimes combined with *Azza* (Gaza) and shortened to *Yesha*) are used by religious Jews, settlers and many Israelis to the right of the political centre (and are still used in much official Israeli documentation). The implication of the term is that the area was always part of *Eretz Yisrael*, the Land of Israel.
3 My research focused on Israeli public knowledge of the territories (Clarke 2001). I would like to thank all those individuals with whom I worked while in the field, particularly Jeff Halper, Yossi Klein Halevi, Eyal Ben-Ari and Dani Rabinowitz. Special thanks to Yael Navaro-Yashin.
4 Jews from Spain, North Africa and the Middle East. Jews from Middle Eastern countries are also sometimes known as *Mizrachim* (lit. Easterners) but the term can have a derogatory feel.
5 A useful parallel to the experience of these soldiers is that of VVAW, Vietnam Veterans Against the War, a group formed by US veterans of the war in Vietnam. Many of the themes, techniques and concerns of the group are shared by Soldiers Against Silence etc., notably the concern to bring the margins to the centre. Zaroulis and Sullivan note that 'determined to make themselves heard, the veterans decided to hold a march on Washington . . . to awaken their fellow countrymen and women to the nature of the war'; 'We're finally bringing the war home', one of them observed (1984: 355). On 28 December 1967, in Washington, activists from the VVAW 'marched through the city and dropped bags filled with blood ("to bring the bloodbath home") at the White House gates' (ibid: 374).
6 The Vietnam parallel is useful again. Zaroulis and Sullivan describe Gary Rader's 'teach-in' for US troops: '[they] had no choice but to listen . . . [Rader] had become hungry to know, and now he described his efforts to find out. For many of the troops who heard him, this was their first real news of the war' (1984: 140–1 – the words are from a report in *Liberation*).
7 The disturbing parallels with the Nazi camps (however controversial) are not glossed over by Shavit: 'Some Israeli soldiers are struck – and deeply shaken – by the similarity between these [camp watchtowers] and certain other towers, about which they have learnt at school' (1991: 3).

8 For analyses of Women in Black, see Helman and Rapaport (1997), Sharoni (1995: 110–30), Espanioly (1991), Micaleff (1992) and Chazan (1991).
9 In their wide-ranging account of US public opposition to the Vietnam War, Zaroulis and Sullivan note that some activists organized a 'guerrilla theater' presentation of combat on the steps of the Capitol Building (1984: 357).
10 All names in this section of the text are pseudonyms.
11 A small skullcap, worn by orthodox Jewish men, sometimes also known as a *yarmulke*. The style of the *kippa* can often tell an observer much about the individual wearing it. A small, black *kippa* suggests that the wearer is 'orthodox' (or 'ultra-orthodox') and probably Sephardi. When I went to Jerusalem to buy a *kippa*, to wear when visiting synagogues, I was given lengthy instructions on which ones would make me look like a settler, a *Shasnik* (a follower of the Sephardic Orthodox political party, Shas) etc. See Boyarin and Boyarin (1995).
12 'Well done', 'good for you' or 'congratulations'.
13 Jews from Eastern Europe.
14 For other treatments on living on the peripheries of the Israeli state, see Yiftachel (1994, 1997), Peled (1992), Peled and Shafir (1996), Shafir and Peled (1998), Rouhana (1997) and Minns and Hijab (1990). Yuval-Davis's (1980) treatment of the position of women in Israeli society remains a powerful critique and is enhanced by Espanioly's (1991) discussion of the position of Israeli and Palestinian women. Shohat's (1988) presentation of the Sephardim as 'Zionism's Jewish victims' has become highly influential – see Alcalay (1993).
15 Communal farm. (The importance of this element of identity is fading rapidly.)

Bibliography

Alcalay, A. (1993) *After Jews and Arabs: Remaking Levantine Culture*, Minneapolis, MN: Minnesota University Press.

Aretxaga, B. (1997) *Shattering Silence: Women, Nationalism and Political Subjectivity in Northern Ireland*, Princeton, NJ: Princeton University Press.

Bourdieu, P. (1977) *Outline of a Theory of Practice*, Cambridge: Cambridge University Press.

Bourdieu, P. (1979) *Algeria 1960*, Cambridge: Cambridge University Press.

Bourdieu, P. (1990) *In Other Words: Essays towards a Reflexive Sociology*, Cambridge: Polity Press.

Bourdieu, P. (1998) *On Television and Journalism*, London: Pluto Press.

Boyarin, D. and Boyarin, J. (1995) 'Self-Exposure as Theory: The Double Mark of the Male Jew', in D. Battaglia (ed.) *Rhetorics of Self-Making*, Berkeley CA: University of California Press.

Chazan, N. (1991) 'Israeli Women and Peace Activism', in B. Swirski and M.P. Safir (eds) *Calling the Equality Bluff: Women in Israel*, New York: Pergamon Press.

Clarke, R. (2001) 'The Politics of Knowledge: "Understanding", Reflexivity and Engagement on the Israeli-Palestinian frontier', unpublished Ph.D. dissertation, University of Cambridge.

Cohen, E. (1983) 'Ethnicity and Legitimation in Contemporary Israel', *The Jerusalem Quarterly* 28: 111–24.

Cohen, S. (2001) *States of Denial: Knowing about Atrocities and Suffering*, Cambridge: Polity Press.

Espanioly, N. (1991) 'Palestinian Women in Israel Respond to the Intifada', in B. Swirski and M.P. Safir (eds) *Calling the Equality Bluff*, New York: Pergamon Press.

Fussell, P. (1975) *The Great War and Modern Memory*, Oxford: Oxford University Press.
Goffman, E. (1969) *The Presentation of the Self in Everyday Life*, London: Penguin.
Helman, S. and Rapaport, T. (1997) 'Women in Black: Challenging Israel's Gender and Socio-political Orders', *British Journal of Sociology* 48(4): 681–700.
Horowitz, D. and Lissak, M. (1989) *Trouble in Utopia: The Overburdened Polity of Israel*, New York: SUNY Press.
Jean-Klein, I. (1992) 'The Animation of "Community": An Anthropological View from the Israeli-occupied West Bank Town of Ramallah', unpublished Ph.D. thesis submitted to the University of Manchester.
Lanzmann, C. (1994) *Tsahal*, (film).
Lehman-Wilzig, S.N. (1990) *Stiff-Necked People, Bottle-Necked System: The Evolution and Roots of Israeli Public Protest, 1949–1986*, Indianapolis: Indiana University Press.
Lewis, I.M. (1971) *Ecstatic Religion*, London: Harmondsworth.
Micaleff, R. (1992) 'Israeli and Palestinian Women's Peace Movements', in E.W. Fernea and M.E. Hocking (eds) *The Struggle for Peace: Israelis and Palestinians*, Austin, TX: University of Texas Press.
Minns, A. and Hijab, N. (1990) *Citizens Apart: A Portrait of the Palestinians in Israel*, London: I.B. Tauris and Co. Ltd.
Peled, Y. (1992) 'Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State', *The American Political Science Review* 86(2): 432–43.
Peled, Y. and Shafir, G. (1996) 'The Roots of Peacemaking: The Dynamics of Citizenship in Israel, 1948–1993', *International Journal of Middle East Studies* 28(3): 391–413.
Rouhana, N. (1997) *Palestinian Citizens in an Ethnic Jewish State: Identities and Conflict*, New Haven, CT: Yale University Press.
Said, E. (1994) *Representations of the Intellectual*, New York: Vintage.
Shafir, G. and Peled, Y. (1998) 'Citizenship and Stratification in an Ethnic Democracy', *Ethnic and Racial Studies* 21(3): 408–28.
Sharoni, S. (1995) *Gender and the Israeli-Palestinian Conflict: The Politics of Women's Resistance*, Syracuse, NY: Syracuse University Press.
Shavit, A. (1991) 'On Gaza Beach', *The New York Review of Books* 37(13): 3–6 (originally published in Hebrew in *Ha'aretz*).
Shohat, E. (1988) 'Sephardim in Israel: Zionism from the Standpoint of its Jewish Victims', *Social Text* 19/20: 1–35.
Strathern, M. (1999) *Property, Substance, Effect*, Cambridge: Cambridge University Press.
Wilson, R.A. (1997a) 'Human Rights, Culture and Context: An Introduction', in R.A. Wilson (ed.) *Human Rights, Culture and Context: Anthropological Perspectives*, London: Pluto Press.
Wilson, R.A. (1997b) 'Representing Human Rights Violations: Social Contexts and Subjectivities', in R.A. Wilson (ed.) *Human Rights, Culture and Context: Anthropological Perspectives*, London: Pluto Press.
Wolfsfeld, G. (1988) *The Politics of Provocation: Participation and Protest in Israel*, New York: SUNY Press.
Yaron, H. (2000) 'The Dybbuk: Gender, Mysticism and Cross-cultural Context', unpublished manuscript submitted in consideration for an M.Phil. degree, University of Cambridge.
Yiftachel, O. (1994) 'Regional Mix and Ethnic Relations: Evidence from Israel', *Geoforum* 25(1): 41–55.

Yiftachel, O. (1997) 'Israeli Society and Jewish-Palestinian Reconciliation: Ethnocracy and its Territorial Contradictions', *Middle East Journal* 51(4): 505–19.

Yuval-Davis, N. (1980) 'The Bearers of the Collective: Women and Religious Legislation in Israel', *Feminist Review* 4: 15–27.

Zaroulis, N. and Sullivan, G. (1984) *Who Spoke Up? American Protest Against the War in Vietnam 1963–1975*, Garden City, NY: Doubleday and Company.

Chapter 7

The uncertain political limits of cultural claims

Minority rights politics in south-east Europe*

Jane K. Cowan

In this chapter I explore how the increasing prominence of both 'culture' and 'rights' on the international stage has resulted in a reframing of political struggles. I focus upon two political events in post-1989 south-east Europe: one in the Republic of Macedonia in 1997, a second in the Macedonian region of northern Greece in 1995. These events involved the public display of collective symbols – an Albanian flag, and a sign that included the Cyrillic script of the Macedonian 'mother tongue' – by individuals who define themselves as belonging to non-dominant groups and who perceive themselves to be oppressed by the state in which they live. In the two cases I present, activists' deployment of symbols of their 'otherness' elicited controversy and resulted in violence. Human rights NGOs, along with the individuals and organizations involved, subsequently represented these incidents by drawing on an imagery of the repressive state violating the rights of a victimized minority to legitimate cultural expression.

The distressing nature of such incidents, and the deep commitment of anthropologists to champion the less powerful, have often led us to take at face value reports of human rights violations. Yet human rights reports, written with the intention of galvanizing readers to take action, offer decontextualized, morally one-dimensional narratives of 'oppressors' and 'victims' (see Wilson 1997). They do not enable us to comprehend and, indeed, usually ignore, the perceived 'threat' of cultural claims to their addressees. In the two cases examined here, controversy over claimants' gestures hinged upon a fundamental uncertainty around the political implications of cultural claims in a region where 'nation' remains a powerful and naturalized political concept, yet where its significance was, and still is, in the process of being redefined. In the mid-1990s, this uncertainty was terrifyingly heightened by the violent and confusing dissolution of Yugoslavia and the complex political responses it unleashed. My analytical objective in this chapter is to grasp the nature and force of minority rights claims in such a context. These claims must be understood as products of a dialogical relationship between a state and those who claim to represent a minority group.

The relationship is not merely dyadic, however. Increasingly, rights claims are asserted and answered in full view of a global audience, and in anticipation of its response. This (albeit internally differentiated) 'third party' also influences rights claims. The *global character* of claims-making processes can be understood only by taking into account such phenomena as transnational communities, electronic (especially internet) communication and new forms of governance, such as those entailed in the evolving structures of the European Union, as well as in regional and international agreements. Political movement activists are often the product of transnational networks. Even where they are 'home-grown', they need to operate effectively in quite varied niches of a global field, manoeuvring between multiple audiences. These can include neighbours who may or may not be co-nationals, compatriots in the international diaspora, representatives of local government, members of the local, national and international press, human rights monitors from Geneva or Brussels, and an unseen internet audience of 'concerned' world citizens. The very uncertainty around activists' intentions that disturbs their opponents may be pragmatically necessary to them, given these multiple audiences, and leads to a distinctive use of ambiguous symbols. Employing symbols that can be read in multiple ways strategically enables activists to 'say', yet also 'not say', important but contentious things, and thus to keep the support of diverse constituencies.

Culture and political claims

The attempt to ensure the capacities of individuals to enjoy their 'culture' (their language, traditions, religion, etc.) was a primary rationale for nineteenth- and twentieth-century nationalist movements. It subsequently became the rationale for minority rights: most elaborately, in the League of Nations' interwar minority treaties system, and later, in the resurrection of minority rights instruments internationally, but especially in post-1989 'Europe'. It is important to remember that the post-First World War peace settlement established the nation-state as the international political norm. 'Minorities', though 'created' by a nation-state system, were nonetheless a conceptual embarrassment to it (Jackson Preece 1998). The interwar history of minority rights in Europe, which I am currently researching, testifies to the difficulty of implementing minority rights in a world governed by the logic of the nation-state (see, e.g., Azcarate 1945; Innes 1955; Macartney 1934). This is because, within a nation-state system, a fundamental uncertainty will almost always exist around the political motives for, and implications of, cultural claims: do they signal a group's desires to enjoy their culture within the established borders of a state dominated by another group? Or do they constitute an anti-state project (that is, of autonomy, secession, or some other challenge to state authority)?

Under the League minority system, some minority individuals and organizations, unhappy with the new borders, did attempt to use minority rights to press for autonomy or union with a 'kin state'. Others who sought only cultural accommodation, such as schooling in their native language, often found themselves viewed with suspicion by young, fragile and usually authoritarian states. Hitler's manipulation, as a pretext to invade Czechoslovakia, of the 'plight' of the Sudeten Germans – a politically powerful and economically affluent community who had benefited from one of the most liberal minority regimes in Europe – seemed to encapsulate the bitter ironies of minority rights. It led many to judge it as a 'failed experiment' best abandoned and replaced by a regime of universal human rights.

A new generation of minority rights instruments and monitoring mechanisms, both international and regional (i.e. pertaining to 'Europe'), was devised in the 1980s and 1990s, partly in response to the break-up of large confederations like the USSR and former Yugoslavia, and the tumultuous and often violent establishment of new national states in which new 'minorities' found themselves stigmatized. These minority rights provisions require states not merely to refrain from discriminating against, but to 'protect and promote', minority cultures. The uncertainty around the political limits of cultural claims – no less an issue today than in the past – is, I would argue, insufficiently acknowledged by those at the legal or institutional end of the new generation of minority rights, for instance individuals involved in formulating provisions or monitoring their implementation.[1] They stress that the Helsinki agreement of 1975, which founded the CSCE (later renamed OSCE, or Organization for Security and Cooperation in Europe), is based on the principle of the inviolability of international borders. Like the 1992 United Nations Declaration on the Rights of Ethnic or National, Linguistic and Religious Minorities, this agreement involves, they emphasize, an absolute distinction between minority rights and rights of self-determination. The latter are bestowed only to 'peoples', that is, not to 'minorities, including national minorities'.

The problem is that, international agreements notwithstanding, the distinction has not always been honoured, even by the Helsinki signatories. As a result, the 'West' has played a key role in facilitating the new nationalisms it hastens to condemn. Susan Woodward places considerable blame for the break-up of Yugoslavia on the European Community's doorstep when, despite Helsinki commitments, it recognized *internal* boundaries of the Yugoslav federal republic (i.e. the boundaries of 'national' republics) as *international* boundaries of nationally-defined states (1995: 213). This, she notes, raised insecurity about boundaries elsewhere; once one border was open to revision on the basis of self-determination claims, all others could be, too. Arguments for political and even cultural autonomy in this region in the 1990s, while not *necessarily* involving a challenge to state boundaries, did have a tendency to escalate, sometimes to full-blown state-seeking

projects. The logic, captured by the Yugoslav satirist, Vladimir Gligorov, during the Serbo-Croat conflict, was simple: 'Why should *we* be a minority in your state, when *you* could be a minority in our state?'

Strategic ambiguity: flagging cultural heritage or anti-state aspirations?

The post-1989 period in many parts of the formerly socialist world, and in adjacent states affected by its transformations, saw efforts by many different groups to reposition themselves within a radically altered and still unstable political field. This entailed renegotiating the meaning of identities, the nature of the political claims they entailed and the place of cultural difference (largely defined as *national* difference) within new systems of political power. 'Resurgent nationalisms' is a crude gloss on a widely varied array of movements whose character was shaped by the specific political organization of cultural difference of each socialist state prior to 1989, by local conditions and by an unfolding and unpredictable political situation. The complexity of the situation has baffled analysts as much as persons caught up in its processes, or those witnessing from close range. Arguably, divergent interpretations notwithstanding, all would have observed the 'dynamic of disintegration' (Woodward 1995: 333–73) in which borders were being fought over and redefined and emergent political units were being consolidated around national symbols. Those living in the region, such as inhabitants in the new Macedonian republic and across the border in northern Greece, were continuously exposed to profoundly distressing television, radio and print images. The relentless mass-media images intensified sensations of chaos and existential threat at their door. It also provided proof that 'the West', too, was closely watching events.

It is within this scenario, saturated with the anxieties of war and the collapse of states but also perceptibly under the gaze of the West, that the two events examined in this chapter were situated. Both occurred in the Macedonian region but in two different states. 'Activists' (as I shall call the persons involved in the renegotiation processes in south-east Europe referred to in the previous paragraph) appear to have been fully aware of the visibility of their actions to many socially, culturally and politically diverse, as well as geographically dispersed audiences. Their understandable desire to enlist the sympathy and support of such varied audiences inevitably posed challenges. One tactic that activists adopted was a strategic use of ambiguity in their symbolic action. They selected symbols which could be read as 'merely cultural' and non-political, on the one hand, and on the other as 'national' and aggressively political, indeed, as signalling an anti-state project or, at the least, a challenge to state legitimacy. They chose, precisely, to play, or perhaps, to gamble, with the uncertainty surrounding the political limits of cultural claims.

Albanian flags

The Yugoslav war, and the international community's insistence that new republics guarantee minority rights, had left the status of the Albanians in former Yugoslav territories uncertain. Under the Yugoslav constitution they had been designated a *narodnost*, 'nationality', with cultural rights but, since they were perceived to have a 'kin-state' outside the Yugoslav federation, without rights to self-determination and territorial autonomy (the latter were enjoyed by members of a *narod*, one of the 'peoples' or 'nations' who constituted the federal republic: namely, Serbs, Croatians, Macedonians, Montenegrins, Bosnians, Slovenians). With the renegotiations produced by the conflict, many Albanians in both Kosovo and Macedonia sought to change this status and to be recognized by the international community as *narod*, thus as equivalent to and with the same rights to self-governance as other 'constituent' 'peoples' (Woodward 1995: 340). Although international responses to questions of sovereignty in Kosovo were confused, contradictory and shifting, a host of states and supranational bodies (the CSCE, European human rights groups, two international conferences), 'in the name of human rights for minorities and of a stable solution to internal communal conflicts' paid considerable attention to the rights of Albanians in both Serbia and Macedonia (Woodward 1995: 342). Failing to recognize the crucial distinction in the Yugoslav context between human rights and national rights, international actors seemed to give 'encouragement and even legitimation to Albanian national aspirations' (Woodward 1995: 343).[2]

Within the Macedonian republic in the mid-1990s the Albanian community continued vigorously to debate what kind of political future they should struggle for. Opinions ranged from those who advocated the necessity of going beyond a politics of group affiliation and supporting the project of a truly civic Macedonia, to those (increasingly dominant voices) seeking greater recognition for the Albanian community as a political subject in its own right. The goals of those holding the latter position continue to vary substantially right up to the present:

> Some advocate a federal-type solution with greater autonomy for areas with a local Albanian majority, while others call for a 'two-nation' state, with equal recognition and support for Albanian and Macedonian languages, without ties between the state and one religion. There has also been a more radical discussion of partition, and the possible future creation of a greater Albania.
>
> (Brown 2000: 129).

As well as pursuing intra-communal argumentation on this question, Albanians have confronted and fought, but also cooperated and sought alliance with, fellow Macedonian citizens. In a recent paper, covering the period 1994–9 (thus, not including the armed Albanian insurgency which

emerged in spring 2001), Keith Brown assesses the 'new zones of engagement' through which Albanian struggles have proceeded (2000). He identifies a style of action he calls, after David Easton (1965), 'parapolitics', a 'pursuit of politics by other means' in which actions carried out for apparently other-than-political purposes entail, nonetheless, a challenge to state legitimacy. I take one of his examples as my first case, and also draw upon his general analysis.

The first incident concerns a contentious display of the Albanian and Turkish flags at a local government building in Western Macedonia in July 1997. A politics of flags is well entrenched in south-east Europe. As national emblems, flags are locally read as literally 'flagging' collective identity, authority and property. When, a few years ago, both Greek and Turkish nationalists raised their respective national flags on the tiny uninhabited islet of Imia, a Greek possession in the eastern Aegean Sea near Turkey, war between their two governments was only just averted. In another, longer-standing case, the governments of Greece and the new Macedonian republic were locked in diplomatic conflict from 1991–5 over the latter's use on its new national flag of a 'star' (or in Macedonian perspective, a 'sun') pattern that Greece claimed belonged to its own heritage (Brown 1994). More recently, one of the projects of post-conflict Sarajevo, instigated by the UN mission, has been to design a new flag, for which 'there was only one design criterion . . . : that no one had died for it' (Brooks 2002).

In December 1996, Rufi Osmani, a young leader from the Albanian community in Macedonia and former member of the Macedonian parliament, was elected mayor of Gostivar, a town in the predominantly Albanian-speaking region of north-east Macedonia. Fulfilling an election pledge, Osmani arranged for signs in Albanian and Turkish languages to be posted, and for the two national flags to be flown, outside the town hall. Macedonian authorities objected and ordered Osmani to remove these flags. Despite repeated warnings, the flags remained flying, but in May they were removed by 'some individuals' (Abrahams quoting Mayor Osmani, 1998: 7, cited in Brown 2000: 131). Perry (1998: 124) reports the allegations that these were Macedonian security forces. Twenty thousand Albanians demonstrated in protest. The flags were subsequently rehoisted, protected by guards, 'in apparent defiance of a Macedonian constitutional court ruling, that declared the flying of foreign flags a violation of sovereignty' (Brown 2000: 131). The issue of flags was debated in the national parliament. On 8 July, the parliament passed a new law on foreign flags, decreeing that they could be flown 'on private property at any time and on state holidays in front of town halls'. Early the next day, the mayor was arrested; in the confrontation between police and demonstrators, three died and some 200 persons were injured.

For the Macedonian government, the flying of foreign flags constituted a provocation that it could not afford to ignore. President Gligorov, while regretting the loss of life, insisted that 'a state could (and should) protect its

national symbols' (Abrahams 1998, cited in Brown 2000: 131–2). Osmani was convicted of 'inciting national, racial and religious hatred' and sentenced to almost 14 years in prison.[3]

Significantly, Mayor Osmani himself denied that these gestures were meant as a political provocation. Rather, citing an article of the Macedonian constitution that grants members of nationalities the right freely to express, foster and develop their identity and national attributes, he identified the flag as a cultural artefact expressing attachment to a nation, rather than allegiance to a foreign state. Commentators in support of his position have argued that hoisting a flag emblazoned with the double-headed eagle, emblem of the fifteenth-century Albanian culture-hero, Skenderbeg, expressed merely Albanians' defensible pride in their heritage. They viewed police action in Gostivar as little more than 'state-sponsored terrorism, perpetrated with the support of a racist majority against a minority seeking only to exercise its cultural rights' (Brown 2000: 132). Albanian Macedonians were able to mobilize support from human rights groups, such as Helsinki-Human Rights Watch and Amnesty International, who proposed to adopt Rufi Osmani as a 'prisoner of conscience'. When the issue was debated in the European Parliament in September 1998, an Albanian internet news site reported that the Swedish Euro-deputy characterized Osmani's arrest as contrary to the most basic human rights, while noting how a second European parliamentarian also blamed Macedonian police violence as having caused Albanian reactions.

Many Macedonian citizens of Macedonian (ethnic) background view Albanian Macedonian declarations that the Gostivar flag display was merely a cultural expression of heritage and identity as duplicitous, and they lament the naivety of foreigners who believe such arguments. For them, the hoisting of foreign flags, especially when put together with a host of other small, antagonistic gestures, adds up to a political offensive to undermine the Macedonian state. Moreover, they see these not as the actions of a 'victimised domestic minority' but, rather, as 'a product of transnational agitation' (Brown 2000: 133).

Ethnic Macedonian concerns about transnational agitation are not unfounded. Diasporas typically provide the hothouse conditions where extreme nationalism can develop; such communities have been a key source of financial support of national projects, in both past and present times, including the 1990s' armed conflicts (see Danforth 1995; Woodward 1995). Conforming to this general pattern, sympathy for the project of a 'Greater Albania' is certainly strong among many Albanians living in Europe and North America. Although sentiments may now be shifting, interest in 'Greater Albania' has always been less strong among Albanian Macedonians, who recognize that, whatever their problems in the republic, they enjoy more prosperous lives and greater control over their community affairs than Albanians in Albania ever have (Perry 1998: 126). Links between Albanians

in Macedonia and in Kosovo are more intense, however, dating from the Yugoslav period; these continue to be undergirded by kinship ties, and were demonstrated by Albanian Macedonians' massive support for Kosovar refugees during the Kosovo crisis.

Perry argues that the distinct experiences of Albanians in the Macedonian republic, Kosovo and Albania – economically, politically and in their relations with state power – have given rise not only to 'at least three significantly different Albanian political and social cultures', but to different goals for each distinct group (1998: 126). While Perry underplays the diversity of goals *within* each group, the three state frameworks clearly have been decisive in shaping Albanian experiences. Yet this fact does not preclude the possibility that some version of a new Albanian political entity transcending existing state borders (e.g. one joining Western Macedonia and Kosovo) could be made attractive to Albanians in Macedonia. What all sides understand is that advocates of such a new model, or even of a Greater Albania, have an interest in keeping alive, and in exacerbating, Albanian Macedonian discontent. This conclusion has since been borne out by the experience of the Albanian National Liberation Army (NLA) armed insurgency initiated along the Macedonian/Kosovo border in February 2001. It started with thin support among Albanian Macedonians. Yet, by intentionally provoking state reactions that also affected Albanian Macedonian civilians, the NLA actions deepened that community's alienation from the state, a radicalization it hoped to – and to some extent, did – profit from (Garton Ash 2001; Judah 2001).

In the Gostivar town hall flag incident, the Albanian flag was strategically useful to activists as a symbol that could be read both 'culturally' and 'politically' – that is, as both 'legal' and 'state-neutral' and as 'anti-state'. To human rights groups, European media and representatives of 'Europe', Albanian Macedonian activists defended the flag's deployment within a framework of cultural rights and were able to mobilize considerable support. Profiting from the international community's discourse of cultural difference as benign (see Eriksen 2001), they persuasively constructed state reactions as unnecessarily harsh. To supporters and opponents on more local ground, activists presented this as a political offensive toward greater Albanian autonomy, in a state context where citizens of Albanian background suffered disadvantage and discrimination. While supporters saw no contradiction between cultural claims and pressure to revise the political status quo, opponents perceived the Albanian activists' rhetoric as a disingenuous use of rights talk within a larger project of state destabilization, as a bluff that the international community lacked either the will, or the wit, to call. Similar situations, repeated elsewhere in the period of transition from socialism, in which groups have claimed rights or alleged rights violations as a political strategy (both in the context of a politics of 'joining Europe' and of seeking to revise political borders – see Burgess 1996; Woodward 1995), have contributed to a cynicism about rights talk in the region.

Cyrillic signs

My second case focuses on an earlier incident, across the border in northern Greece.[4] Since the early 1980s a transnational movement centred on Macedonian human rights and minority recognition has been actively building what is, in important respects, both a new social category and a new social group in the northern Greek context. They have sought to persuade a complexly fractured population of persons of Slavic background, who today mostly opt for the neutral and ambiguous term 'locals' (*dopii*), to embrace the name 'Macedonian' for themselves, their language and their culture, and to think of themselves as a 'Macedonian minority' that is 'Greek', to borrow Walzer's (1994) terminology, only in the 'thin' sense of citizenship. Simultaneously, they have sought to consolidate the existence of the Macedonian national minority among the international law and human rights community and, in this way, are attempting to compel the Greek state to recognize that entity. Leaving aside the reactions of state authorities, the press and the larger national society, it is important to note that these efforts towards 'minoritization' (see Cowan 2001) have been controversial among members of the *dopii* population. While the movement enjoys support among some *dopii*, a majority of this population – for complex historical, social and political reasons – nowadays identifies as 'Greek', and is sceptical about the movement's objectives and/or its tactics.

The activities of various individuals and groups working toward Macedonian human rights in northern Greece commenced in the early 1980s, long before the break-up of Yugoslavia. Yet as the Yugoslav conflict unfolded, it reframed the wider Greek society's perceptions of the Macedonian activists and their motives. In 1991 the former Yugoslav Republic of Macedonia seceded from the Yugoslav federation and commenced its own bid for international recognition under the name of 'Macedonia'. As the long-frustrated dream of Macedonian independence, dating back to the late nineteenth century, began to look imminent, some extreme Macedonian nationalist groups within the Republic, with support in the Macedonian diaspora in North America and Australia, vociferously insisted that the whole territory of 'geographical Macedonia', currently divided between Yugoslavia, Greece and Bulgaria, should be politically 'united'. Many Greeks believed that acknowledging even the 'existence' of a Macedonian minority on Greek soil gave ammunition to the Macedonian irredentist argument, weakening the justification for Greek territorial sovereignty in the region. Whether or not they supported irredentist objectives, Macedonian activists in northern Greece who continued to agitate for recognition as Macedonians consequently faced vilification in the Greek national press (especially virulently in right-wing publications) as 'traitors' and 'foreign agents', petty harassments from the authorities and hostility from some of their neighbours.

In September 1995 the Yugoslav conflict was still raging. The Former Yugoslav Republic of Macedonia, having seceded peacefully from Yugoslavia but then facing the wrath of a Greek popular nationalism and two crippling embargoes, was negotiating in New York with the Greek government over the new republic's name. So charged was the 'name' issue that the new republic's president, Kirov Gligorov, received death threats. When his driver was killed and he was seriously injured in a car bomb explosion on 3 October, many speculated that the culprit's motive was anger at Gligorov's willingness to negotiate over this sacred symbol. On 6 September, the second incident examined in this chapter commenced in the provincial town of Florina, close to the Albanian and Macedonian republic borders. Florina (population 15,000) is an intriguingly complicated place: a polyglot market town with a population that includes Slavic-speaking *dopii*, 'refugees' from various parts of Turkey (since their explusion in 1923) plus their descendants, more recently migrated 'Greeks' from the ex-USSR, Vlachs (including Hellenised Vlachs from the town of Bitola [Monastir] in Yugoslavia, settled in Florina since 1913), Roma and Albanians and a smattering of foreign nationals. It is both 'cosmopolitan' and 'super-Greek' (in the way of communities whose 'hellenicity' is in doubt and thus has to be vigorously defended), its deeply religious population led for some 30 years by a dynamic, politically ultra-conservative Greek Orthodox bishop, yet also a centre of arts, theatre and writing, as well as a favoured location for the Greek film-maker, Theo Angelopoulos.[5]

In September 1995, in the centre of this townscape dotted with streets and monuments dedicated to Greek national heroes, the political organization Rainbow was preparing to celebrate the public opening of its party headquarters. Rainbow is a member of a larger European 'Rainbow Alliance' (now called the European Free Alliance) of small political parties. The Greek Rainbow party had been founded in January 1994 by certain members of the 'Macedonian Movement for Balkan Progress' (MAKIBE), the coalition formed in 1993 of those actively campaigning for Macedonian human rights. It called itself 'the Voice of the Macedonian Minority in Greece'. To mark its presence, Rainbow hung a sign outside its premises. In pride of place across the top, in large Cyrillic letters, was the Macedonian word, *Vinozhito* (rainbow), with the Greek words, *Ouranio Toxo* (rainbow), in Greek letters beneath it. Across the bottom ran the phrase, in Macedonian Cyrillic, *Lerinski Komitet* ('Lerin Committee') followed by *N.S. Florinis* ('Florina Local Office') in Greek.

In the hours and days that followed the hanging of the sign, many local Floriniots reacted with anger and indignation. There were altercations between Rainbow supporters and those who opposed their actions. Some residents demanded that local authorities intervene to have the sign removed. On the night of 7 September the office was broken into and the sign was removed. A new sign, however, was put up in its place. In the ensuing week,

tensions mounted in the town. Articles appeared in the national press. The extreme right-wing newspapers, *Adesmeftos Typos* and *Eleftheros Typos* (both translate as *Free Press*), condemned the 'insolence' and 'traitorous provocations' of the Rainbow leaders, who they labelled 'well-known separatists', 'Skopjanophiles' and 'agents of Skopje', whilst also criticizing the inaction of the local authorities (Greek Helsinki Monitor and Minority Rights Group – Greece 1998: 57–60).

On 13 September, the Public Prosecutor of Florina brought charges against the Rainbow party for violating Article 192 of the Penal Code by 'inciting citizens to disharmony among themselves'. She verbally ordered the removal of the sign:

> Following the refusal of the party cadres to do so, the police were ordered to seize the inscription as evidence, which they did at noon, without leaving relevant documents. In the evening, 'indignant citizens', led by the mayor of Florina . . . and with the tolerance of the police, attempted to break the door of the offices open in order to remove the new inscription; eventually this was given to them to avoid any unnecessary use of violence. In the early hours of 14th September, the offices were set on fire[6] by unknown persons, who naturally felt 'legitimized' by the actions which preceded and by the intolerant publications of a section of the press . . .
>
> (Greek Helsinki Monitor and Minority Rights Group – Greece 1998: 14)

What sparked such rage and indignation? The Rainbow party, and Greek Helsinki Monitor and Minority Rights Group – Greece (hereafter, GHM/MRG – Greece), the Greek NGO that has most actively defended it, portrayed the hanging of the sign as a 'peaceful expression of [the party's] views', which provided a simple translation of the Greek phrases into Macedonian. Whilst not attempting directly to explain the incensed reaction of some members of the local community, their statements implied that such individuals found the very use of the Macedonian language intolerable. A press release by GHM/MRG – Greece argued that leaders of the Rainbow party were 'indicted for the public use of their mother tongue' and they initiated a public campaign protesting against these events and seeking the support of other international NGOs and sympathetic individuals.

Given that the 'mother tongue' is spoken, day in and day out, in the Florina marketplace and in homes, shops and cafés in the surrounding villages, such a claim is unconvincing. Clearly, something more was at issue here. In 1998, GHM/MRG – Greece published a report, which it made available for downloading from its own and Rainbow's websites, called *Greece Against its Macedonian Minority: The 'Rainbow' Trial*. The report is a compilation of documents, translated by the NGO into English, related to

the 'sign' incident: a detailed account of the incident, press releases, letters of support, excerpts from national newspapers and excerpts from sworn statements of 'witnesses for the prosecution', all local residents.

The sworn statements are of particular interest. While some are personal statements of individuals and others are statements of persons as representatives of civic, commercial or political associations, they are complex public texts – performances of identity and affiliation in a context where the stakes were potentially high. Some read as artlessly indignant, others as pointedly polemical; still others, in their measured language, shrewdly strive for ambiguity, to assuage all sides. They articulate, predominantly, nationalist or at least pro-Greek positions, and emanate largely – but by no means, entirely – from those on the political right. By definition, the views of persons that Karakasidou (2000: 83) has called the 'nationally homeless' – those *dopii* who feel alienated from both Greek and Macedonian national projects – are not represented in this forum. While not constituting a full spectrum of Floriniot opinion, these sworn statements are useful for delineating some local, public reactions to the Rainbow sign incident and for the concerns and anxieties they express.

Read as a whole, the excerpts provided in this NGO document reveal that many of the Florina 'witnesses' were troubled by certain activities of some individuals associated with Rainbow: the publishing of a bilingual periodical (in Greek and Macedonian), the circulation of allegedly 'anti-Hellenic' maps (suggesting, according to FK[7] that 'our Macedonia belongs to Skopje'), the 'distortion of lyrics of old Macedonian songs' and the use of 'separatist songs' at public celebrations. Witnesses refer to Rainbow leaders and activists as 'Skopjan agents', 'anti-Hellenes' and 'propagandists' engaged in 'treacherous acts on behalf of a foreign government'. Some accounts hint darkly at even larger international conspiracies. The witness MT, representing the district organization of PASOK (Pan-Hellenic Socialist Movement, Greece's ruling party), after defending Rainbow's freedom of speech, worried that its displaying of a bilingual sign nonetheless 'serves some transatlantic third parties who "have a stake" in the destabilization of the broader area of the Balkans' (GHM/MRG – Greece 1998: 86–7).

Controversy centred, however, around the use of the word 'Lerin' and its inscription in Cyrillic lettering. Three different, though related, objections can be discerned from the sworn statements. First, the use of the word 'Lerin' was interpreted as a challenge to the Greek state's legitimacy, as expressed through its right to designate official place names within its legal territory. The feelings of sensitivity around this issue may be surprising to those unfamiliar with the southern Balkans. But in this region (as elsewhere), where states have sought to inscribe themselves on spaces, 'names' themselves have constituted 'claims' to those spaces. Alterations in national boundaries in the early twentieth century entailed – in Greece, Bulgaria and Yugoslavia alike – the renaming of towns, villages and even the surnames of resident populations, as a means to claim a historical legacy. Similarly,

maps have been major weapons in the struggle for Macedonia (see Wilkinson 1951). In such a context, the sign declaring the 'Lerin Committee' was easily read as a Macedonian *national* (in the sense of irredentist) territorial claim. The fact of being *written* made its claim appear, to certain witnesses, even more provocative. Unlike the routine and relatively uncontentious use of the term 'Lerin' in everyday verbal exchanges, its written form partook of the symbolic association of writing with officialdom and, in the eyes of some Florina residents, provided evidence of the sponsorship of Rainbow by the new Macedonian republic. For GM, though, it was the word itself that offended, because of the claims it implicitly carried:

> the word 'LERIN' . . . misrepresents the place-name of Florina and is mentioned as it exists in the maps of the Skopje publishing circles. . . . The problem, in my opinion, does not lie so much in a foreign language inscription (for that matter, there are very many inscriptions in foreign languages around us) as in the specific word 'LERIN' – which, as I said, conceals territorial claims on the part of the neighbouring country.
>
> (GHM/MRG – Greece 1998: 89)

A second line of argument running through the sworn statements highlights the degree to which Florina residents saw themselves and their town placed, unfavourably, in the international spotlight. Thus, some witnesses interpreted the written use of 'Lerin' as a statement directed towards an international audience at a critical moment of negotiations over the new republic's official name. TK saw the hanging of the sign as 'dictated purely by Skopjan propaganda centres with the exclusive aim in the future to persuade enemies and friends that there is a "Macedonian" ethnic minority' who "have a stake" in the destabilization of the broader area of the Balkans' (GHM/MRG – Greece 1998: 96). Resentful of the humiliation brought by the event ('they made us a laughing-stock internationally') CZ bridled at what he considered the misrepresentation of his community to the outside world. Several others, interpreting the sign as an attempt by Rainbow to claim to represent the 'native element', disputed this organization's right to do so. IN protested:

> I felt . . . flooded by a wave of anger and indignation and was wondering, who are these gentlemen who want to characterise and discredit an entire Prefecture and its People; and this because I am an indigenous Macedonian from Florina, I speak the local idiom of my area; but there is no way whatsoever that I will accept these very few 'gentlemen' to call themselves patrons and advocates of the native element and to appear as genuinely 'Macedonians'.
>
> (GHM/MRG – Greece 1998: 99)

Similarly, LN testified that '[my] fellow citizens were telling them [i.e. Rainbow] that they do not have the right to characterise themselves as

defenders of the local population'(GHM/MRG – Greece 1998: 93), while NF objected to Rainbow's 'attempt to present a picture that there is a separate entity of inhabitants in our area'(GHM/MRG – Greece 1998: 97).

Taking up a third point, a number of the sworn statements specified or alluded to the phrase 'Lerinski Komitet'. Although Rainbow and GHM/MRG – Greece statements present this phrase as an innocuous translation into Macedonian of 'Florina Committee' (in the sense of 'branch office'), it carries powerful historical associations. 'Lerinski Komitet' was the name of a military unit of a Macedonian revolutionary organization during the turn-of-the-century armed struggles wrestling for control of Macedonia. The name had later been appropriated by a local Macedonian unit participating on the side of the Left in the Greek civil war, a period to which the slogan 'Vinozhito' also referred.[8] This apparent symbolic claim was at the centre of the Florina Public Prosecutor's indictment against four members of Rainbow. The indictment asserted that they 'had caused and incited mutual hatred among the citizens, so that common peace was disturbed' when they hung the sign containing the words 'Lerinski Komitet'

> written in a Slavic linguistic idiom. These words, in combination with the fact that they were written in a foreign language, in the specific Slavic linguistic idiom, provoked and incited disharmony among the area's citizens. The latter justifiably . . . identify these words with an old terrorist organisation of Slavic-speaking alien nationals which was active in the area, and with genocide crimes, pillages and depredations against the indigenous Greek population, attempted the annihilation of the Greek element and the annexation of the greater area of the age-long Greek Macedonia to a neighbouring country, which at the time was Greece's enemy.
>
> (Florina Public Prosecutor, cited in GHM/MRG – Greece 1998: 16–17)

Ultimately, the leaders of Rainbow, dubbed the 'Florina Four', were formally indicted for 'inciting mutual hatred', while the 'mob' that broke into the Rainbow office, threw its equipment and furnishings on to the road and set them on fire on 13 September, has never been charged. The 'Four' were compelled to prepare a legal case, but the hearing of the case, set for two years after the event, was again postponed in October 1997 for another eleven months. This procrastination could be seen as evidence of rifts within the state: most of the top-ranking individuals in the ruling PASOK party, including the Foreign Minister George Papandreou (son of the former Prime Minister, Andreas Papandreou, and raised in Canada) are 'modernizers' who, many argue, wish to comply with human rights obligations. They are nonetheless hemmed in by their desire not to allow hardline nationalists in their own party to take political advantage of their 'softness' against 'national

enemies'. There is also the problem of 'the para-state' (in Greek, the *parakratos*), a shadowy network of individuals clustered around, but radiating outward from, the security and intelligence establishment and including both politicians and civil servants from the humblest to the highest ranks. They see themselves as defending the Hellenic motherland and, to this end, will resist or even sabotage directives from 'above' (see, e.g., Dimitras 1999). The fact that many of the Florina residents' sworn statements express impatience with the Greek authorities' 'inaction' during the September events strengthens the image of a state pulled in opposite directions, and thus reluctant to act.

In consequence, the Florina Four case dragged on for three years. During this time, Rainbow and GHM/MRG – Greece publicized their case through the internet, the national and international press and at international and regional human rights events. They sought, and received, support from international human rights organizations as well as other Greek NGOs, political and minority organizations, and individuals. A separate but related case involving the same network of Macedonian activists, concerning Greek authorities' refusal to grant permission for the opening of a 'Home of Macedonian Culture' in Florina, was also being considered by the European Court of Human Rights;[9] through these two cases activists were able to raise awareness within the European Union structure about Macedonian issues and to cultivate allies. Thus, in July 1998, two European parliamentarians, Mr Zan Van de Melenbrouke of the Belgian Party, Vu Vlaamse Unie, and Ms Hedy d'Ancona of the Dutch Socialist Party, raised the issue of the Rainbow trial to the Greek government, including the Minister of Public Order and the Minister of Internal Affairs. Unsatisfied with the answers they had received, Ms d'Ancona raised the issue again in the European Parliament. The campaign protesting against the injustice of the case of the 'Florina Four' was maintained until the trial was finally held in September 1998. At the end of a one-day trial, the Prosecutor declared that no evidence for the charges could be found. On her recommendation, the judge ordered that the indictment against the four members of Rainbow be dismissed.

Claiming rights in a global context

In his influential article on the peculiar construction of 'the real' in law, Clifford Geertz (1983) alerted us to the ways that law and legal argument require a 'skeletonization' and 'sterilization' of facts. Events are codified such that they address a universal template. Richard Wilson (1997) has noted the tendency in human rights reporting, such as that undertaken by organizations like Amnesty International, to adopt a 'legalist' mode of describing violations and victims. He considers how reports are authored to include only 'bare facts' of human rights violations shorn of additional contextualizing information. The quasi-legal, objectivist style that Wilson observed is remarkably widespread in the human rights talk produced by a diverse array

of NGOs lobbying for the rights of European minorities. Somewhat paradoxically, that talk typically exudes a tone of moral indignation, making it reminiscent of an earlier nineteenth- and early twentieth-century discourse of cruel despots and suffering nations, a discourse that was intended to shock and gain the sympathy of civilized European audiences. My own close scrutiny of local responses to alleged rights violations, while not meant to exonerate any party (including the state), has revealed a more complicated situation. Rather than a simple dyadic struggle between state and minority, one sees a multiply inflected debate, as well as strategic silences, indicating disagreements within the putative minority over goals, strategies and tactics and over the nature and meaning of collective identity itself.

The sparse style of human rights reports, mimicking legal discourse, is meant to confer upon them a quality of neutrality and authority. Yet it is also grounded in a radical conception of the nature of human rights. As Stanley Cohen has argued,

> neither decontextualisation nor the exclusion of biographical narratives is a mere artefact of human rights reporting. They are the deliberate results of the human rights credo that no context (circumstances, motives, etc.) can ever justify the violations of universal prohibitions.
>
> (Cohen, personal communication, cited in Wilson 1997: 149)

When I first learned about the Cyrillic sign incident in Florina, I was perplexed as to why an organization strenuously trying to establish itself as anti-nationalist would identify itself using Macedonian nationalist symbols, such as the words 'Lerinski Komitet' in Cyrillic letters. I oscillated between admiration at their political cunning, and indignation at what I saw as disingenuous protestations that they had been indicted 'merely' for using the mother tongue. A fellow anthropologist, familiar with this political movement, while assuring me that members of Rainbow were themselves not fully agreed on the wisdom of a 'politics of provocation', defended their actions in much the same terms as Cohen. For my colleague, freedom of speech was the key issue, and trumped other considerations.

One can make sense of this manner of claims-making by acknowledging Rainbow's need to satisfy a very *mixed constituency* of supporters. This constituency included some individuals, particularly in immigrant communities in Canada, Australia and northern Europe, who have long supported a Macedonian national project in its traditional territorial sense. Others in the Macedonian diaspora, though having little stomach for the violence that such a challenge to state borders would entail, nonetheless clearly felt it was time to stand up defiantly to the Greek authorities, to claim a name, a culture and its whole associated history – to claim an 'existence' as members of a 'Macedonian nation'. Apart from the Macedonian transnational community, Rainbow also had to address other audiences: the local and the Greek

national society, the network of international and European human rights agencies, the world public. These audiences not only had different interests; they also had different knowledges, different linguistic and interpretive competencies and different narratives about a state and dissident citizens. In view of these disparities, Rainbow employed symbols that pleased Macedonian nationalists, that infuriated Greek nationalists, that forced a reluctant state to take action and that simply *could not be read* by the international community. Just as the Albanian activists, two years later, were able to persuade many in the international community that the Albanian flag was nothing more than a symbol of cultural heritage, Macedonian activists marshalled the international community's outrage at the idea that individuals could be indicted simply 'for speaking their mother tongue'.

Rather than being unique to minority activists in this region, such tactics are a familiar necessity for actors who must court local and international support simultaneously. These include not only minority groups but states as well. Since the ethnic violence of the 1990s, European institutions have insisted that new nation-states arising out of former Soviet bloc states that seek membership within 'Europe' must provide constitutional and other guarantees regarding the rights of minorities. This has led to the kind of Jekyll-and-Hyde discursive split that David Laitin noticed when researching the new nationalizing states of the former USSR:

> The new nationalizing states played to diverse audiences. To international organizations, they had to show their civic face; but to their mobilized supporters (at home and in diaspora) they had to exhibit a more nationalistic visage. Sometimes government policies were benign and bureaucratic but were advertised in a way to impress nationalists, and thereby to offend Russians. Sometimes policies and practices themselves were discriminatory but were presented to international audiences as inconsequential.
>
> (1998: 93)

Human rights, minority rights and stable national borders

Human rights, especially for members of minorities, are an increasingly prominent dimension of the rhetoric of 'transition', as it is framed by the powerful western actors of the international community, in the post-socialist societies at the edge of Europe. That rhetoric also emphasizes democracy, civil society and the need to maintain stable international borders. Activists representing – or, in any case, claiming to represent – ethnic or national minority communities within a state have little choice but to embrace human rights language when speaking to the international community. From Commandante Marcos of the Mexican Chiapas to Ali Ahmeti of Macedonia,

the key words are the same: human rights, democratization and the rights to cultural difference.

Does it matter whether this is sincere or cynically pragmatic? A Foucauldian approach would posit the human rights regime as an element of a modern and global apparatus of power/knowledge, whose disciplinary force operates not only through external sanctions but by producing subjects who discipline themselves. I have argued that 'a discourse of "minority", "culture" and "human rights" dictates how difference can be formulated and defended, and is thus partially constitutive of the groups the international community purports merely to recognise' (Cowan 2001: 153). If my contention is correct, we should expect to see new or revised minority subjectivities evolving in relation to such concepts, not only in Europe but also further afield.

Strikingly, the current leadership of Rainbow has adopted what I call 'minoritization', rather than separatism, as the only realistic political strategy within the current conditions in Europe (Cowan 2001). It has been trying to re-channel Macedonian energies away from territorial claims and towards rights to culture and identity. In its published statements to both Greek and international audiences, Rainbow denounces nationalism and repudiates any contention that it desires to change Greek state borders.[10] Its explicit goal is, rather, to achieve a recognized status as a 'national minority' within 'Europe' – that is, a Europe organized on the principle of subsidiarity and decreased national sovereignty. The objectives of Osmani, and other Albanian activists in Macedonia, are less clear, partly because the political situation itself continues to evolve. Yet a recent report on the question of 'Greater Albania' suggests that Albanian activists, too, are increasingly distancing themselves from nationalist claims. 'Of course, Albanians would like a Greater Albania', a former spokesperson of the NLA explained to the journalist, Tim Judah, in March 2001. 'But we have to face reality. It is too late for that so what is important now is to make borders unimportant' (Judah 2001: 36). Judah's French travelling companion, the journalist Jean-Baptiste Naudel, summed up the new situation in south-east Europe:

> The film script has changed. Everything has changed since the fall of Milosevic. . . . The script is now: 'human rights, minority rights and no change of borders' and those who don't get the message are going to lose everything.
>
> (Judah 2001: 36–7)

Conclusion

Nancy Fraser has identified the 'shift in the grammar of political claims-making' from struggles for social equality to those for group recognition as 'a constitutive feature of the "postsocialist" condition' (1997: 2). It is also a

global trend. Close on the heels of a new 'human rights culture' (Rorty 1993), we are witnessing ever more confident appeals from social movements across the world for 'culture' as 'a human right'.

This reconfiguring of the relationship between 'culture' and 'rights' – probably the most surprising reversal in recent rights theory and practice – is only just starting to be explored (see Cowan *et al.* 2001a, and especially 2001b). Political theory conventionally posed Enlightenment rationalism and Romanticism as incongruous doctrines; the sense of their mutual incompatibility underpinned the long debate over universalism versus cultural relativism in relation to human rights. Contemporary political movements are today disregarding this either/or choice: it is precisely through universal human rights that they seek to protect cultural uniqueness. The new receptiveness of international institutions to a language of culture, diversity and multiplicity – an intriguing counterpoise to their deeper drive toward standardization – has made such a linkage possible and persuasive. Yet it is arguable that the new commitment to cultural difference rests on a naive conception of culture, seen only as a benign source of human richness, rather than also as an impetus or pretext for political conflict between groups (Eriksen 2001).

Within the political transformations in Europe from 1989 onwards, culture (especially national culture) was often claimed to provide the locus for new political unities. In many sites across the former socialist world, irredentist or state-seeking national projects coalesced around, and were articulated through, national symbols. Through a process initially condoned by American and European powers, many of these movements claimed territory and separated themselves, peacefully or violently, from the states to which they had previously belonged. Concomitantly, the political valence of culture shifted. The uncertainty around the political limits of cultural claims – which had never really disappeared – re-emerged as an urgent issue for those concerned about the stability of states. Ever since, those supporting the status quo have seen minority group demands for recognition as carrying, at least potentially, an implicit threat of political separation, even as those demands are legitimated through appeals to cultural diversity and human rights. These anxieties are not groundless, although they may be misplaced. Supporters of separatist or irredentist nationalist projects currently residing in the transnational diaspora do, indeed, frequently organize themselves as human rights committees working on behalf of the human and cultural rights of their national compatriots in the homeland. Nationalism and human rights have become inextricably intertwined.

Popular and NGO narratives of the 'plight of minorities' refuse, by and large, to acknowledge this perceived, potential and sometimes enacted threat; their remit, after all, is to defend minorities, not states. Wherever our political and ethical sympathies may lie, I contend that as anthropological analysts we must go beyond these sorts of accounts. We need, rather, to

strive for a better analytical grasp of the processual and mutually constitutive relationships between regional and international rights regimes, state policies and minority objectives, practices and identities. Minority activists must not be constructed as helpless *victims* but recognized as *agents* who, in the pursuit of specific aims, make strategic choices about what to do and how to represent their actions to others. Rather than accepting the 'minority' as a self-evident entity, we should interrogate it both as a category and a social constituency, just as we do with any other social and cultural entity. The relationships between minority activists, the minority they claim to represent and other community members are similarly crucial issues for investigation. The state, too, needs to be approached in a more nuanced way: not as a necessarily monolithic structure, but as an institution composed of multiple agents with divergent, even opposing, interests. Finally, the complicated political dimensions of minority claims-making *within a global field* must be more fully teased out. Thus, as in the cases considered here, the phenomenon of Balkan-minorities-accusing-Balkan-states within the realm of transnational human rights institutions needs to be seen in the context of an international discourse that *already* stigmatizes this region's peoples as 'driven by ethnic hatreds', with the consequence that both minorities and states are continually having to prove their multiculturalism, cosmopolitanism and commitment to civil society. If we genuinely want to support local efforts towards building tolerance for difference in such complex fields of power, the first thing we have to do is to climb down from our white horse.

Notes

* I am grateful to Keith Brown, Marie-Bénédicte Dembour, Charles Gore, Yannis Manos, Jon Mitchell, Yael Navaro-Yashin, Lina Sistani and Richard Wilson for very helpful comments on an earlier draft. Thanks also to Dimitris Theodossopoulos for flag stories. Comments by members of the ASA conference during the panel discussion were also stimulating. I am happy to acknowledge the financial support of the John D. and Catherine T. Macarthur Foundation, Princeton University's Hellenic Studies Program and the University of Sussex for the broader research project of which this chapter forms a part.

1 See, e.g., the views of the Chairman-Rapporteur for the UN Commission on Human Rights, Working Group on Minorities, Mr Asbjorn Eide (1996), and of the OSCE High Commissioner on National Minorities, Mr Max van der Stoel (1997).

2 This was probably unintentional in the case of the Republic of Macedonia. As the only republic to have seceded from the former Yugoslavia without bloodshed, and with its 'civic' constitution in a region of nation-states, it stood as a cherished image of multicultural harmony; there were strong western interests in seeing that this republic survived intact.

3 This sentence was reduced to seven years in February 1998 and, in February 1999, the Parliament approved an amnesty for Mayor Osmani and thousands of other prisoners.

4 Fuller discussions of the context of Macedonian human and minority rights activities in northern Greece are provided in Cowan 2001, Cowan and Brown 2000, Danforth 1995: 108–41, Karakasidou 1993 and Voskopoulos 1996.
5 Of two recent films by Angelopoulos, 'The Suspended Step of the Stork' was filmed almost entirely in Florina, unnamed but recognizable to persons familiar with the town, while several early scenes in 'Ulysses' Gaze' were filmed in Florina and referred to an actual conflict between the film-maker and the Bishop of Florina. Both films explore themes of nationalisms, borders, refugees and the shared Ottoman legacy and overlapping histories of Balkan societies.
6 This summary by GHM/MRG – Greece describes the offices as 'set on fire'. Other accounts, however, report that the offices were broken into and their contents (including files, a rug) thrown on to the street below, whereupon these objects were set on fire. See Zora Collective 1996 and Rainbow's website, http://www.florina.org.
7 Although full names are provided in the NGO document, I refer here to individuals whose words are cited through their initials only.
8 Although literally meaning rainbow, I was told that the term, in the context of the left-wing Resistance movement during the civil war, was also understood to signify 'wine' (*vino*) and 'grain' (*zhito*).
9 In 'European Court of Human Rights: Case of Sidiropoulos and Others v. Greece', the Strasbourg Court ultimately ruled in favour of the plaintiffs, and against Greece, in July 1998.
10 Most members of the Rainbow leadership have been critical of nationalisms from the start, and not simply as an opportunistic response to the sign incident. However, there has been disagreement over whether some nationalisms should be singled out, or whether all should be equally condemned, as well as different understandings of the genesis and meanings of the Macedonian 'nation'. This, and disagreement over whether Rainbow should remain a 'broad church' organization for Macedonians of varying political convictions, or should ally with 'progressive' (i.e. left-wing) parties in Greek society, was at the heart of a rift in 1996 between the Florina and the Aridea activists. Ultimately, the Florina group gained control of Rainbow and established a new (rival) publication to the erstwhile Rainbow publication, *Zora (Dawn)*, entitled *Nova Zora (New Dawn)*. The Aridea group withdrew, or was ousted, from the organization, but retained control of *Zora*. For the Aridea group's response, see Zora Collective 1997.

Bibliography

Azcarate, P. (1945) *League of Nations and National Minorities: An Experiment*, Washington, DC: Carnegie Endowment for International Peace.

Brooks, G. (2002) 'Back to Life', *The Guardian,* 5 February.

Brown, K.S. (1994) 'Seeing Stars: Character and Identity in the Landscapes of Modern Macedonia', *Antiquity* 68: 784–96.

Brown, K.S. (2000) 'In the Realm of the Double-Headed Eagle: Parapolitics in Macedonia, 1994–9' in J.K. Cowan (ed.) *Macedonia: The Politics of Identity and Difference*, London: Pluto Press.

Burgess, A. (1996) 'National Minority Rights and the "Civilizing" of Eastern Europe', *Contention* 5(2): 17–36.

Cowan, J.K. (2001) 'Ambiguities of an Emancipatory Discourse: The Making of a Macedonian Minority in Greece', in J.K. Cowan, M.-B. Dembour and R.A. Wilson (eds) *Culture and Rights: Anthropological Perspectives*, Cambridge: Cambridge University Press.

Cowan, J.K. and Brown, K.S. (2000) 'Introduction: Macedonian Inflections', in J.K. Cowan (ed.) *Macedonia: The Politics of Identity and Difference*, London: Pluto Press.
Cowan, J.K., Dembour, M.-B. and Wilson, R.A. (eds) (2001a) *Culture and Rights: Anthropological Perspectives*, Cambridge: Cambridge University Press.
Cowan, J.K., Dembour, M.-B. and Wilson, R.A. (eds) (2001b) 'Introduction', in Cowan, J.K., Dembour, M.-B. and R.A. Wilson (eds) *Culture and Rights: Anthropological Perspectives*, Cambridge: Cambridge University Press.
Danforth, L. (1995) *The Macedonian Conflict: Ethnic Nationalism in a Transnational World*, Princeton, NJ: Princeton University Press.
Dimitras, P. (1999) 'The Ocalan Trial: Greece, Ocalan and the Shadow State', *IWPR Balkan Crisis Report*, 5, 5 March.
Easton, D. (1965) *A Framework for Political Analysis*, Englewood Cliffs, NJ: Prentice-Hall.
Eide, A. (1996) 'Classification of Minorities and Differentiation in Minority Rights', United Nations internal document E/CN.4/Sub.2/AC.5/1996/WP.2.
Eriksen, T.H. (2001) 'Between Universalism and Relativism: A Critique of the UNESCO Concept of Culture', in J.K. Cowan, M.-B. Dembour and R.A. Wilson (eds) *Culture and Rights: Anthropological Perspectives*, Cambridge: Cambridge University Press.
Fraser, N. (1997) *Justice Interruptus: Critical Reflections on the 'Postsocialist' Condition*, New York: Routledge.
Garton Ash, T. (2001) 'Is There a Good Terrorist?', *New York Review of Books* 48(19): 30–3.
Geertz, C. (1983) 'Local Knowledge: Fact and Law in Comparative Perspective', in C. Geertz *Local Knowledge: Further Essays in Interpretive Anthropology*, New York: Basic Books.
Greek Helsinki Monitor and Minority Rights Group – Greece (1998) *Greece Against its Macedonian Minority: The 'Rainbow' Trial*, available at http://www.greekhelsinki.gr.
Innes, C. (1955) *National Minorities: An International Problem*, Boston: Harvard University Press.
Jackson Preece, J. (1998) *National Minorities and the European Nation-States System*, Oxford: Clarendon.
Judah, T. (2001) 'Greater Albania?', *New York Review of Books* 48(8): 35–7.
Karakasidou, A. (1993) 'Politicising Culture: Negating Macedonian Ethnicity in Northern Greece', *Journal of Modern Greek Studies* 11(1): 1–28.
Karakasidou, A. (2000) 'Transforming Identity, Constructing Consciousness: Coercion and Homogeny in Northwestern Greece', in V. Roudometof (ed.) *The Macedonian Question: Culture, Historiography, Politics*, Boulder, CO: East European Monographs.
Laitin, D. (1998) *Identity in Formation: The Russian-Speaking Populations in the Near Abroad*, Ithaca, NY: Cornell University Press.
Macartney, C.A. (1934) *National States and National Minorities*, London: Oxford University Press.
Perry, D. (1998) 'Destiny on Hold: Macedonia and the Dangers of Ethnic Discord', *Currrent History: The Journal of Contemporary World Affairs* 97(617): 119–26.
Rorty, R. (1993) 'Human Rights, Rationality and Sentimentality', in S. Shute and S. Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures, 1993*, New York: Basic Books.
van der Stoel, M. (1997) 'Minorities in Transition', *War Report: Bulletin of the Institute for War and Peace Reporting* 48: 14–17.

Voskopoulos, P. (1996) 'An Account . . .' (in Greek), *Zora* 9: 11–15.
Walzer, M. (1994) *Thick and Thin: Moral Argument at Home and Abroad*, Notre Dame, IN and London: University of Notre Dame Press.
Wilson, R.A. (1997) 'Representing Human Rights Violations: Social Contexts and Subjectivities', in R.A. Wilson (ed.) *Human Rights, Culture and Context: Anthropological Perspectives*, London: Pluto Press.
Wilkinson, H.R. (1951) *Maps and Politics: A Review of the Ethnographic Cartography of Macedonia*, Liverpool: University Press of Liverpool.
Woodward, S.L. (1995) *Balkan Tragedy: Chaos and Dissolution after the Cold War*, Washington, DC: The Brookings Institute.
Zora Collective (1996) 'The Burning of the Florina Office: Another Act in the Same Criminal Project' (in Greek), *Zora* 9: 7–8.
Zora Collective (1997) 'Rainbow's Adventure' (in Greek), *Zora* 11: 2–9.

Chapter 8

Using rights to measure wrongs

A case study of method and moral in the work of the South African Truth and Reconciliation Commission

Fiona C. Ross

Anthropological critiques of human rights take two conventional forms (see Messer 1993; Hastrup, this volume). The first, subsumed in the universal/particular debate, has to do with the range and limits of conceptions of law. The second concerns the epistemological conception of the person that underlies rights discourse. I attempt to move beyond these, prompted by a photograph of protesters at the Supreme Court of South Africa, whose hand-made placards identify them as urgent and accusatory in relation to the handling of matters of reparation and relief at the end of the work of the South African Truth and Reconciliation Commission (henceforth, the Commission). The Commission, whose work was predicated on a model that defined harm in terms of violations of human rights, has become an internationally acclaimed model in the 'transition' from authoritarian to democratic states. The work of its Human Rights Violations Committee, conducted between 1996 and 1998, offers a lens through which to consider the workings of 'rights' in relation to understanding individual and social damage. The chapter uses the Commission's work in relation to two sets of categories through which to understand harm; (i) 'gross violations of human rights' (GVHR), and especially the sub-category of 'severe ill-treatment'; and (ii) 'women'. Reflecting on these and the responses of political parties to the Commission's findings, the chapter explores the limits of elasticity and the boundaries of exclusion in rights discourse, and assesses the efficacy of rights discourse as a measurement of harm. It argues that human rights may be effective in securing everyday forms of protection and social guarantees underpinned by law, but is inadequate as a tool for measuring harm. The chapter suggests that the forms of identity that emerge from discourses of suffering may not be liberatory.

Defining harm

The post-amble to South Africa's (1993) Interim Constitution that ushered in democracy envisaged a future 'founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities

for all South Africans'. The post-amble also contained the amnesty provisions that were the basis for the Commission,[1] established through the Promotion of National Unity and Reconciliation Act No. 34 of 1995. The Commission's task was 'the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights' committed between 1960 and 1994. Its objectives were to identify the fate or whereabouts of the victims of such violations, to grant amnesty to those who qualified, to afford victims an opportunity to relate the violations they suffered, to devise recommendations on reparation and rehabilitation and to report its findings to the nation. The Act provided for a committee on Amnesty,[2] one on Human Rights Violations and one on Reparation and Rehabilitation. Through its tripartite structure the Commission was concerned with those who committed violent acts, those who suffered them, and with remedial action.

In reviewing the Commission's process and the literature to which it gave rise, the value accorded to human rights is striking. Few, if any, critics considered the Commission outside of the realm of human rights. Even the critique offered by liberation organizations centred on notions of a universal law and the rights and duties of the person derived from it. Critics and Commission members alike attempted to stretch rights discourse in diverse ways to accommodate a wide reading of Apartheid's differential effects.

The initial proposal for a state-led truth commission written by Alex Boraine in 1993 used 'violations of human rights' interchangeably with 'gross violations' (Boraine 2000). Stuart Douglas (2000) argues that 'gross violations' is a marker of a condition of excess that 'shattered existent representational registers and classificatory systems and authority' (2000: 19). Analysing descriptions of harm in the proceedings of two conferences on truth commissions[3] held in Cape Town, Douglas points out that the descriptors used – phrases such as 'the greatest abuses', 'heinous crimes', 'higher orders of evil', 'grave breaches', 'horrendous crimes', 'great evils', 'excesses', 'sickness', 'perversion', – are matters of degree. They mark 'an overlapping of law and medicine and religion' (ibid.), each of which has its own models of the quality and consequences of violence[4] and of the appropriate remedial action.

Event-centredness and a methodological focus on the individual characterized the Commission's work, as they do much human rights discourse (Wilson 1997). The parameters of violence laid down in the Act and their interpretation in practice did not address many of the forms of 'structural violence' or of the racial discrimination that characterized Apartheid. Violence was bifurcated into a concern with 'perpetrators' who committed or commissioned acts of violence, or who failed to intervene to prevent them, and 'victims' who suffered the consequences of GVHR. In terms of the Act, 'victims' were:

> (a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted; (b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and (c) such relatives or dependants of victims as may be prescribed.

The dichotomy, 'perpetrator'/'victim', was criticized for obscuring the roles of 'beneficiaries' in the perpetuation of political systems based on preservation of privilege (Mamdani 1996[5]). In addition, the dichotomy created a distinction between those defined by the Commission as victims and those other millions whom Apartheid had disadvantaged, a point to which I return later in the chapter.

Given the centrality of human rights in the South African Constitution, it is not surprising that the question of rights and their violation was central to the Commission's mandate. What is more surprising is the emphasis on the embodiment of harm, on materiality: notwithstanding provisions in the Act for recognition of pecuniary and other forms of damage, the Commission resolved that 'its mandate was to give attention to human rights violations committed as specific acts, resulting in severe physical and/or mental injury, in the course of past political conflict' (*Report of the South African Truth and Reconciliation Commission* 1998, Vol. 1: 64. Hereafter referred to as *Report*.). After a protracted wrangle within the Commission (Buur 1999), it was decided that there could be no victim without an act of violence and a perpetrator. In other words, the work of the Commission focused on the embodied consequences of authored events of violence. The *Report* retrospectively describes this as a concern with violations of 'bodily integrity rights':

> rights that are enshrined in the new South African Constitution and under international law. These include the right to life . . . the right to be free from torture . . . the right to be free from cruel, inhuman, or degrading treatment or punishment . . . and the right to freedom and security of the person, including freedom from abduction and arbitrary and prolonged detention.
>
> (Ibid.)

As with all law, the categories of harm that the Commission was empowered to investigate were contested and changed over time. Let me give but

one example, that of 'severe ill-treatment', which the Act did not define. In *Reconciliation Through Truth*, Kader Asmal *et al.* (1996) suggest that the category could accommodate a broad interpretation of Apartheid's harms, including forced removals. A coalition of NGOs concurred with their interpretation. In a submission made to the Commission in 1997, the coalition proposed that 'some violations of economic, social, and cultural rights constitute in and of themselves severe ill treatment, and thus are violations that the TRC must acknowledge' (Coalition of NGOs 1997: 1). Note that the coalition phrased its objections to the narrow scope of the Commission's work in terms of rights secured in the 1996 Constitution and especially in the Bill of Rights. Its complaint was not to do with the use of rights per se but rather with the narrow interpretation of rights in the Commission's work. A submission on gender made by Beth Goldblatt and Sheila Meintjies (1996) on behalf of the Centre for Applied Legal Studies gave a similar interpretation, drawing on human rights discourse to demonstrate how patterns of privilege systematically disadvantage women. For example, the submission initially describes patriarchy in terms of unequal distribution of *power* between men and women but is later rendered as the exclusion of women from *rights* afforded to men. They argue that severe ill-treatment should be widened:

> to include a wide range of abuses which took place under Apartheid. Detention without trial itself is severe ill-treatment. Imprisonment for treason against an unjust system is severe ill-treatment. Forced removals, pass arrests, confiscation of land, breaking up of families and even forcing people to undergo racially formulated education are all forms of severe ill-treatment.
>
> (1996: 21)

The submission continued:

> Whilst it is important to emphasise the killing and torture in our past and the extraordinary suffering of opponents of Apartheid, we need also to pause and recognise that the Apartheid system itself violated the basic rights of human beings in ways that systematically destroyed their capacity to survive. In addition, the gendered dimensions of this system had an added dehumanising effect on many people's lives.
>
> (Ibid.: 22)

According to both the NGO and gender submissions, unequal power relations – cast as a product of skewed access to rights – could be overcome through careful attention to the scope and the gendered particulars of access to and interpretation of human rights. In these representations, human rights discourse operates as a metanarrative: a discourse represented as universal, as

simultaneously accommodating, flexible and porous, and as one into which all experiences should be made to fit.

In the event, the Commission's final definition of severe ill-treatment was narrow and circuitous: 'Acts or omissions that deliberately and directly inflict severe mental or physical suffering on a victim, taking into account the context and nature of the act or omission and the nature of the victim.' Whether an act or omission constituted severe ill-treatment was thus determined on 'a case by case basis'. 'Severity' was construed as relative (*Report* 1998, Vol. 1: 80, footnote 24), and violence's consequences were therefore comparative and could not be measured in absolute fashion. The following violations were eventually considered to fall into the category of severe ill-treatment (ibid.: 81–2):

- rape and punitive solitary confinement;
- sexual assault, abuse or harassment;
- physical beating resulting in serious injuries;
- injuries incurred as a result of police action during demonstrations;
- 'burnings';
- injury by poisoning, drugs or other chemicals;
- mutilation;
- detention without charge or trial;
- banishment or banning;
- deliberate withholding of food or water to someone in custody;
- failure to provide medical attention to someone in custody;
- destruction of a house through arson or other attacks.

Even once the general contents of the category severe ill-treatment were decided upon, the specific application was flexible (Buur 1999) and open to dispute. Take, for instance, the problem, extensively debated within the Commission, of detention without trial, which initially was not considered a GVHR. The Commission then considered setting a minimum period beyond which detention would be considered a GVHR. However, on learning that the most aggressive periods of interrogation usually occurred within the first three days of detention, 'the Commission eventually agreed that detention without trial itself constituted severe ill-treatment, leaving the specific period open and assessing the individual cases on their particular circumstances' (Burton 2000: 18). Given that the South African Institute of Race Relations reported that 11,750 people were held in detention in 1985 alone and 25,000 in 1986, and that a large proportion of detainees were youths (LCHR 1986; Coleman 1998), the salience of the category to the Commission's work is clear. And given that it emerged that most women's experiences of GVHR were subsumed in the category 'severe ill-treatment' (constituting 85 per cent of women who made statements about their own experiences of GVHR), there was a clear need for careful attention to the contents of the category.

Identifying victims

The Commission explicitly linked narratives couched in human rights discourse with the restoration of civil and human dignity and the reconstruction of society in the aftermath of Apartheid. Those who had suffered a GVHR were invited to make statements to the Commission. Some named additional victims in their statements and amnesty applicants identified still more victims. By December 1997, the closing date for the submission of statements concerning GVHR to the Commission, 21,298 statements concerning 37,672 violations had been received (*Report* 1998, Vol. 1: 166). Africans[6] made 89 per cent of statements (ibid.: 168). Few well-known political activists made statements.

A proportion of deponents was invited to give public testimony at 76 hearings held across the country between 1996 and 1997. The statement-taking and hearing processes actualized a distinction between victim and witness. Sometimes witnesses were the same persons who suffered the violations about which they testified, but initially this was not universally or even usually the case. The distinction between victim and witness became more marked when the Commission differentiated between 'primary' and 'secondary' witnesses and victims. A primary victim was s/he who had suffered a GVHR. A secondary victim was someone affected 'indirectly' by the infliction of a GVHR on another (e.g. a woman affected by the death or incapacitation of a breadwinner). The subject position of a witness was complicated by the diversity of testimonial practices: sometimes people testified about their own experiences, at other times close family members or friends described the violations suffered by those defined as victims. In some cases, eyewitnesses to the events accompanied testifiers. In addition, people sometimes gave evidence in their capacity of what I characterize as expert witnesses (for example in Special Hearings or in some public hearings where the political contexts within which violation took place might not be widely known). They were not considered victims unless they made separate application.

As the Commission's work progressed, the differences between different kinds of victim and witness became unsustainable and the distinctions fell away. In part this was because Commissioners 'acknowledged the difficulty of distinguishing between, or weighting, the physical and psychological pain suffered by the direct victim and the psychological pain of those to whom this person was precious' (*Report* 1998, Vol. 4: chapter 10, paragraph 7), and also because, although the Commission's process allowed for combinations of all of these subject positions, its legal mandate did not: it was empowered to make findings only in respect of victims. And victims, as we have seen, were, for the most part, those associated with having suffered violations of the right to bodily integrity.

'Women' in the work of the commission

Testifiers' accounts were constructed by the rules of admission (such as the definitions of gross violations of human rights and of victims), the interpretation of these rules in process (see Buur 1999), cultural patterns of witnessing and the narrative forms of testimonies (Ross 2001). The convergence of the Commission's methodology and conventional practices of bearing witness produced marked patterns in testimonial practices, most distinctive of which was that women testified mainly about the violations suffered by men and initially seldom testified about their own experiences of GVHR.

Women made approximately half of the statements and 60 per cent of women deponents were African (*Report* 1998, Vol. 1: 169). Sixty-one per cent (23,020 instances) of the reported violations were committed against men. In approximately 14 per cent (5,458 cases of violation), the sex of the victim was not reported. The authors of the Commission *Report* argue that 'the violence of the past resulted in the deaths mainly of men' (ibid.). They continue:

> Men were the most common victims of violations. Six times as many men died as women and twice as many survivors of violations were men. . . . Hence, although most (*sic*) people who told the Commission about violations were women, most of the testimony was about men.
>
> (Ibid.: 171)

Approximately 44 per cent of female deponents were victims of GVHR (*Report* 1998, Vol. 4: 285), although the data presented show marked differences by region with more than half the female deponents in the Durban regional office reporting violations committed against themselves. (No data regarding 'racial classification' of deponents are provided.) By comparison, in the Cape Town regional office, which solicited statements from deponents in the Western and Northern Cape, 39 per cent of cases reported concerned GVHR committed against women. Of these, approximately 24 per cent concerned violations suffered by the women deponents themselves.[7]

A gender researcher, Beth Goldblatt, is quoted in the Commission's *Report* (1998, Vol. 4: 290) as stating that the data 'reflect the reality that women were less of a direct threat to the Apartheid State and were thus less often the victims of murder, abduction and torture' (see also ibid.: 259). She continues:

> This was due to the nature of the society that was, and is, structured along traditional patriarchal lines. Men were expected to engage with the state in active struggle while women were denied 'active citizenship' because of their location within the private sphere.
>
> (Ibid.: 256)

The distinction between public and private, endemic to liberal politics, obscures the fact that most Apartheid legislation was aimed at regulating the family and daily life, with devastating effects.

Prior to August 1996, women gave scant testimony about their own brutal experience. In the twelve week-long hearings that I attended,[8] at which 290 testifiers spoke of 416 incidents of violation, only 28 women spoke about violations they had suffered. Thirteen women reported having been injured: ten by police and three in bomb attacks instigated by the ANC or PAC. Fifteen women reported having been detained: ten were assaulted or tortured. Two of the women reported having been sexually violated while in detention and several others hinted at sexual violence.

Some Commissioners and feminist activists expressed concern that women did not report violations, particularly those of a sexual nature. The gender submission described earlier had been submitted to the Commission in March 1996, prior to the first hearings. The authors pointed out that it was unlikely that women would easily come forward to share their experiences of pain and argued that the Commission should reject a 'gender-neutral approach' in interpreting its brief and analysing the evidence, 'for without this [gender] framework, gender issues, and women's voices in particular, will not be heard and accurately recorded' (Goldblatt and Meintjes 1996: 1). The warning suggests that gender matters lay outside of conventional human rights frameworks, but, with care, could (and should) be incorporated into the metanarrative of human rights.

The submission seemed to have little effect on shaping how the Commission responded to deponents (Olkers 1996; Owens 1996), until the marked patterns in testimonial practices described on p. 169 were evident (Ross 2001). Researchers and activists argued that women's apparent silence about violation should not be read to mean that women did not suffer human rights abuses, but rather to indicate that a different kind of social intervention was necessary to extract stories of harm told by women about women.

Some Commissioners were sensitive to the interpretation that in the absence of women's 'stories' of their own violation the Commission was not capturing what it called 'the complete story', more frequently glossed as 'the Truth'.[9] They recognized that the operational definitions of the Commission's work seemed to preclude full analysis of Apartheid and its differential and gendered effects. Yet, despite suggestions that some of the definitions (such as that of severe ill-treatment – see p. 166–7) could accommodate a more complex reading of Apartheid, the Commission retained a narrow focus on infringements of the right to bodily integrity. By April 1997, the Commission had included a warning to women deponents:

> IMPORTANT:
> Some women testify about violations of human rights that happened to family members or friends, but they have also suffered abuses. Don't

> forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse.
>
> (Statement Concerning Gross Violations of Human Rights, Version 5, 1997: 3)

In addition, presuming that the absence of women had to do with the nature of the 'space' provided by the Commission, rather than with the requirement that people give voice to violent experience, the Commission devised alternative hearings – 'Special Hearings on Women'. The hearings, held in Cape Town (8 August 1996), Durban (24 October 1996) and Johannesburg (29 July 1997), were aimed at eliciting descriptions of women's experiences of violation, particularly rape. The Women's Hearings were an effort to capture the 'whole Truth': a supplementary act specifically devised to counter the phenomenon of women testifying as 'secondary witnesses'.[10] It is noteworthy that the Eastern Cape office of the Commission did not hold a woman's hearing. The author of the Women's chapter in the *Report* commented that this '. . . could, in itself, distort the picture as the Eastern Cape is known as an area in which treatment in prison was particularly brutal' (1998, Vol. 4: 283). A total of forty people testified or offered submissions to the Commission at the three Women's hearings. Thirty-eight were female, and 26 of them described violations they had suffered. Four were members of armed wings of liberation movements.

What I have briefly described here is the emergence of 'women' as a salient category within the Commission's workings. 'Women' was neither a natural nor neutral category in the Commission's work, but one that carried with it assumptions about the nature and severity of specific harms, particularly sexual violence. The focus owed something to the climate of violence against women and children in South Africa throughout the duration of the Commission's work. In 1997, the South African Police Service estimated that a woman is raped every 35 seconds (quoted in Shifman *et al.* 1997: 2). Rape and sexual violation were represented in the hearings and in public discourse as defining features of *women's* experiences of gross violations of human rights. Sexual violation was located as an experience about which women could and should testify, and about which they would testify under certain conditions. The Commission and members of civil society considered it incumbent upon women to describe in public the kinds of sexual harms to which they were subjected. For example, the gender submission suggested that insufficient attention had been paid to women's experiences of sexual violation and urged the Commission to create testimonial spaces that would enable women to speak publicly about sexual harm.

In the light of the emphasis on sexual violation, it is disturbing that men were not called to testify, despite the fact that the Commission's data suggest that men more often reported sexual violation than did women (Goldblatt 1997). The findings suggest that sexual violation was inflicted only on women:

> Women were abused by the security forces in ways which specifically exploited their vulnerabilities as women, for example rape or the threat of rape and other forms of sexual abuse. . . . Women in exile, particularly in the camps, were subjected to various forms of sexual abuse and harassment, including rape.
>
> (*Report* 1998, Vol. 5: 256)

There are no comparable findings for men. The *Report* also recorded that: 'The state was responsible for the severe ill treatment of women in custody in the form of harassment and the deliberate withholding of medical attention, food and water', and that women suffered 'threats against family and children, removal of children from their care, false stories about illness and/or death of family members and children, and humiliation and abuse around biological functions such as menstruation and childbirth' (ibid.). Once again, there are no similar findings for men. The report draws attention to social and biological reproductive functions and, by presenting them as natural attributes of one gender, naturalizes difference.

Political activism and the space of the ordinary

The understanding that Apartheid was a form of violation of rights, and that its violence produced victims, rather than, for example, heroes, created a profound moral dilemma for some political activists. The Commission's formulation offered two possible positions: 'to speak', thereby making known one's experiences of violation and actively claiming the subject position of victim; or to remain silent. Many activists, male and female, chose the latter, giving a range of reasons for their decisions. Among others, these included an antipathy to the individual-centred nature of the Commission's work; an unwillingness to be identified as victims or to speak publicly about the humiliations suffered; a desire to 'leave the past behind'; and a dissatisfaction with the political settlement that had produced the Commission. The emphasis on violations of bodily integrity also raised important issues for women in deciding whether to testify. Some women were reluctant to identify the self as a site of violation. Notions of social propriety,[11] a fear of public humiliation and pride in their roles in resisting the Apartheid State informed the decisions of many. Some people defined harm in ways that could not easily be accommodated within the ambits of the Commission's work. For instance, one young woman described to me her hurt when detained during a demonstration in 1985 at which police killed a friend of hers:

> They [the police] saw us and told us to take the body into the van. Can you imagine that? Three women to carry a dead person into the van. There was a roadblock at the entrance [to Zwelethemba]. They took us [captured us] at Tusha Street with the dead person. They kept us for

> three hours in the van with the dead body. We had already seen that he was dead. . . . We were taken to the mortuary and the body was put there. 'Your man is dead, so now you may go', they said.

She left out of her account the tensions and fear that would have accompanied the event: she had been detained and interrogated before and anticipated violent treatment in custody. In Xhosa tradition, witnesses to death are rendered vulnerable to its polluting qualities. The event she describes thus represents a layering of threat and vulnerability that does not easily fit into the measurements of bodily violation offered in the Commission's work.

What counted as violation posed one problem: another was posed by counting instances of harm. The Commission found that, on average, deponents described 1.4 instances of violation. It is not clear how these were counted. Take for example a description offered to me by a young woman who was whipped during protests, detained without trial, threatened with torture and forced to listen to her friends being tortured, and who suffered privation in the detention cells and was released without charge or trial. She did not make a statement and, although her experiences were described in a GVHR statement made by a friend with whom she was detained, she was not found to be a victim. In such cases, counting violation in terms of instances of harm seems at best misplaced, at worst absurd.

Assessments made in terms of violations of the right to bodily integrity focus the attention on the immediate effects of harm as they are manifest in the present. The narrative accounts of ten young women with whom I worked in a small town that had been the epicentre of resistance activities in the rural areas of the Western Cape did not focus solely on the embodied effects of political violence, dramatic and drastic as these were. The women, now aged in their early to mid-thirties, were involved to varying degrees in political activities in the town. One was a member of MK, the ANC's armed wing; another attempted to escape South Africa to train in exile, leaving behind her two small children; a third was captured and interrogated by police who tortured her for information about her cousin, a youth leader in the area. Three others were detained in random police searches. One was severely tortured in the hearing of her friends: she still finds it difficult to speak of her experiences, and one of the ten who was present at the time remembers with horror the screams of young men being tortured. Police whipped two of the women during school protests: they were whipped so badly that 15 years later they still bear the scars. Only two of the ten gave statements to the Commission; one after considerable pressure had been brought to bear on her by her colleagues. No victim finding has yet been made in respect of the latter, whose statement was submitted after the closing date for submissions. The former was found to be a victim, as was one of the two women detained with her whose names she had included in her statement.

When asked about the consequences of political violence, the women's accounts veered from the immediacy and intimacy of physical violence. They frequently described their frustration at their failed efforts to secure their futures and those of their children, and their anger that their activities in 'struggle' are not acknowledged or taken seriously. They feel that their stake in the future has been curtailed. During a workshop in July 1998, some of the women expressed their frustration:

Nokwanda: For that matter, you get people asking some questions, like, 'You said Nowi was active in 1980, 1985, but why today she is sitting there not having any jobs?' [Or people say] 'You said Nokwanda was very active but now she's sitting there, having nothing, just sitting with a baby she must feed.'

Ntombomzi: And then you get some questions from other people who were not active. And they will ask you, 'What has the struggle done for you?'

Nokwanda: (interjects) [They ask] 'What is the pay-back?'

Elsewhere (Ross 2000), I have suggested that the activities of political activists in this small town might best be understood as efforts to achieve an 'ideal everyday', a desirable ordinariness in the face of the possible ordinary or the permissible ordinary available to those enduring Apartheid. In a study of the female kin of male political activists incarcerated on Robben Island, Hylton White has argued that politics 'has to do with the local worlds of morality that occupy – and are occupied by – the daily concerns of social agents' (1994: 48). His argument is strongly reminiscent of Njabulo Ndebele's (1994) claim that it is in the ordinariness of life, identified through 'a forcing of attention on necessary detail' (ibid.: 53), that the potential for social change must lie. Pointing out that 'even under the most oppressive of conditions, people are always trying and struggling to maintain a semblance of normal social order' (ibid.: 55), Ndebele makes no claims about the efficacy of efforts to sustain and reconstitute the ordinary. Rather, his argument suggests that, by examining both the ways in which people attempt to reconstitute the ordinary and their assessments of the efficacy of their actions, we may come closer to an understanding of harm (see also Todorov 1999), recognizing that efforts at social reconstitution are not always successful.

Considering Apartheid in terms of excess phrased as violation of certain rights has the effect of flattening and homogenizing the complex moral terrain upon which resistance was built. The Act's focus on Apartheid's spectacular dimensions – torture, killing, disappearance and severe ill-treatment – has the effect of undervaluing, even disguising, the ordinary difficulties imposed by Apartheid and efforts to oppose it. In generating and sustaining resistance to the State, activists had to manage diverse ideas and trajectories, different commitments and multiple forms of activism. Their visions of the

future were neither homogeneous nor necessarily easily achieved over time. In confronting the State, the women activists with whom I worked drew on an awareness of harm and a determination to maintain social relations stretched to breaking by Apartheid policies and violence. Their efforts, losses and gains, and the complexity and effects of the resultant social forms have not yet been fully described or considered.

The underestimation of the ordinary did not go unnoticed by members of the Commission. For example, the author of the chapter on Women in the Commission's 1998 *Report* states:

> The Commission's relative neglect of the effects of the 'ordinary' workings of apartheid has a gender bias, as well as a racial one. A large number of statistics can be produced to substantiate the fact that women were subject to more restrictions and suffered more in economic terms than did men during the apartheid years. The most direct measure of disadvantage is poverty, and there is a clear link between the distribution of poverty and apartheid policies.[12] Black women, in particular, are disadvantaged, and black women living in former homeland areas remain the most disadvantaged of all. It is also true that this type of abuse affected a far larger number of people, and usually with much longer-term consequences, than the types of violations on which the Commission was mandated to focus its attention.
>
> (*Report* 1998, Vol. 4: 288)

Rights and measurement

The Commission's work raises questions about the construction of categories and the operation of terms of exclusion in rights discourse. Human rights discourse may be elastic, but, as I have demonstrated above, it seems an unrefined instrument for *measuring* harm. Julie Taylor, describing the workings of truth commissions in Latin America, describes how documentation of violence gives rise to a particular genre, 'a collectively recognisable shape of accounts of lives and experiences', that tends to reproduce dominant modes of discourse (1994: 201). Taylor's is not the first account to recognize the propensity of much representation (especially that to do with violence, horror and pain) to elide individual experiences (see Das 1997; Kleinman and Kleinman 1994) and cultural representations of harm and violence. Richard Wilson (1997) has suggested that the reformulation may be intrinsic to human rights discourse, which, he argues, makes its effect by centring on events, decontextualizing them, excluding subjectivity and making use of realist and legalistic language. His claim is important: such a mode of reportage 'inherently displaces questions of ethics and value from what is claimed to be an ethical endeavour' (Wilson 1997: 135).

Wilson argues that reportage on rights violations homogenizes and flattens violence. Yet, at the same time, rights talk is too pointed, too particular. The Commission's work and its operational definitions narrowed the assessment of violence to that which is inflicted on the body and, in relation to women, to the experience of sexual violation. Its focus was on Apartheid's spectacular dimensions. The effect is to detract attention from historical changes and from the scope of resistance. The latter effect is not unique: Taylor argues that truth commissions reconfigure individuals, their collective struggle, ideals and political motivations into 'innocent or transgressing individuals with individual rights and obligations' (1994: 197). Writing of the Argentinian truth commission: she comments, 'Collective facts and sociopolitical identities underwent a profound transformation as they were denuded of the political language that had made them accessible to social actors in Argentina' (ibid.: 197). Taylor notes the consequent effect of transforming individuals from political activists to victims (ibid.: 198).

The South African Commission's work produced a distinction between victims of GVHR and those who suffered Apartheid, resulting in new political subjects – 'victims' – a category produced through processes of inscription and a curious amnesia. To demonstrate, one needs look no further than the structural outcomes of the Commission's work. Those who receive amnesty no longer exist as 'perpetrators' – that is, have been 'forgotten' – while those who suffered particular forms of injustice are 'remembered' as a specific category of person, defined in terms of rights that differ from those of ordinary citizens. In comparison to the latter, victims simultaneously hold more and less rights (in that the state may be obliged to make reparation for those who have forgone the usual avenues for recourse against wrongdoers). For victims, the effect is to sever their immediate and individual links to law (by refusing usual recourse) and to redirect redress through the government (through the provision that Parliament must make reparation) – at least until such time as victims challenge the government through the courts.

Rather than commencing from the historical grounds of the constitution of the subject under Apartheid, the Commission considered its subject in terms of the violation of particular rights. The effect is an 'even-handedness' that was presumed to offer a neutral and objective stance towards violence and its documentation by stripping away context[13] and condensing suffering to its traces on the body. The chairperson of the Commission, Archbishop Desmond Tutu, was at pains to emphasize the Commission's objectivity in the face of accusations of partiality. Stressing the neutrality of human rights discourse, he argued that its strength lies in its universality, and, in particular, in the erasure of moral value in implementation:

> The section of the Act relating to what constitutes a gross violation of human rights makes no moral distinction – it does not deal with morality. It deals with legality. A gross violation is a gross violation,

> whoever commits it and for whatever reason. There is thus legal equivalence between all perpetrators. Their political affiliation is irrelevant.
>
> (*Report* 1998, Vol. 1: chapter 1, paragraph 52)

Human rights discourse, he suggests, does not require further moral judgement or judgement about morals.

The process of the Commission's work and the *Report*'s reception contest his interpretation. Various individuals and political parties disputed the work and findings of the commission. Former President F.W. de Klerk sought an interdict against publication of the sections that named him in the *Report*: the findings were censored in the 1998 *Report*. The ANC, too, tried to obtain a last-minute interdict against publication of the *Report*, claiming that its findings criminalized the liberation organizations. It failed. Debating the *Report* in Parliament on 15 February 1999, representatives of the ANC recalled that Apartheid was declared a crime against humanity.[14] Reminding the audience at the public debate that, 'there was no more gross violation of human rights than Apartheid itself', Thabo Mbeki asserted that the Commission's interpretation of GVHR contravened the Geneva Protocols that recognized the right of banned liberation organizations to oppose the Apartheid State. Mbeki's critique of the Commission's *Report* is striking in that he accuses the Commission of failing to recognize and acknowledge a universal imperative: 'Each of us', Mbeki said, 'has *the right* and the duty to rebel against tyranny' (my italics).

Such arguments critique the assumption that, in an investigation of violence, objectivity, neutrality, impartiality and relativism are interchangeable terms and desirable methodological tools.

An open ending: the politics of victimhood

Rights literature tends to depict victims as passive, the locus of inflicted power. The Commission itself operated with such a notion of quiescence:

> Victims are acted upon rather than acting, suffering rather than surviving. . . . [W]hen dealing with gross human rights violations committed by perpetrators, the person against whom that violation is committed can only be described as a victim, regardless of whether he or she emerged a survivor.
>
> (*Report* 1998, Vol. 1: 59)

The legalistic definition reinforces conventional assumptions about and stereotypes of the passive victim. The definition is constraining of the grounds of sociality, but not necessarily either deterministic or narrowly predictive.

Writing about how language – in this instance, hate speech – acts to constitute subjects, Judith Butler suggests that performativity's 'ambivalent

structure' 'implies that, within political discourse, the very terms of resistance and insurgency are spawned in part by the powers they oppose' (1997: 40). She argues that:

> The political possibility of reworking the force of the speech act against the force of injury consists in misappropriating the force of speech from these prior contexts. The language that counters the injuries of speech, however, must repeat those injuries without precisely reenacting them. (Ibid.: 40–1)

Earlier, I suggested that the Commission's categorization produced a category of legal persons whose recourse to law was specifically abrogated. While potentially injurious, the category does not subsume or preclude forms of resistance: constituted as 'victims', those who have been identified as having suffered particular forms of injury may mobilize to occupy the signs of injury in political ways. As the photograph to which I referred in opening illustrates, some of those identified as victims by the Commission have mobilized to make claims about their entitlement to reparation. Their claims were anticipated in the Constitutional Court decision that declared Parliament entitled to adopt a wide concept of reparations[15] in the face of an amnesty process that, although it abrogated individual rights to legal recourse for judicable disputes, was found to be justified.[16] In the Western Cape, some of those included in the loop of victim groupings are ex-political activists who made statements to the Commission. Drawing on skills of protest learned during periods of resistance and on strong international lobbies for victims and survivors of violence, victims may yet constitute a powerful political grouping, particularly in the face of the slowness of government's action on the Commission's recommendations for reparation. Victims and those acting on their behalf have led public protests, written letters to newspapers, devised petitions, lobbied government and international organizations and formed support groups. In short, victims have begun to articulate particular claims against the state by occupying signs of injury in new ways. And they often use the language of rights to do so.

Yet, scholars must ask about the implications of the politics that emerges from rights discourses. Comments made by Charles Maier are apt:

> I certainly believe that a person's victimhood should be recognised and repaired, but should the victim's status be a constitutive pillar of a new political order? I'm uncertain about that.
> (Quoted in Minow 1998: 168, note 41)

The emphasis on rights and their violation obscures the workings of diverse forms of power in producing differentially harmful effects. Too close a focus on particular facets of violence may obscure other dimensions of harm. An

emphasis on victimhood may displace from the historical record the agency of those who mobilized in the face of repression. The Commission's operational definitions, its interpretations of these and its methods had the effect of curtailing the understanding of harmful consequences. Measuring Apartheid's harm in terms of transgressions of rights to bodily integrity minimizes understanding of Apartheid's destructive effects, foregrounding the immediate present and relegating to the background additional and often more far-reaching kinds of suffering.

As my discussions of severe ill-treatment and of the emergence of women as a category of concern in the Commission's work demonstrate, rights talk, like all discourse, is elastic. Contention over the shifting boundaries of definitions of GVHR, the changing processes devised to solicit statements of harm and debate over the moral equation of Apartheid and the struggle against it point to efforts to accommodate different ethical and moral interpretations of the recent past. Not all were successful: the boundaries of rights discourse may be stretched only so far. The limits of that elasticity should however be a matter of concern. In the South African instance, the Commission's work and the state's limited response to its recommendations in respect of victims have foregrounded rights debates in the political arena in ways that deflect attention from larger and more general questions of oppression, inequity and redress, that is, away from a politics transformative of the everyday. As mechanisms to ensure protection, rights may work powerfully. But, pushed to their limits, the language of rights may reproduce conditions of constraint, narrowing the range of possibilities through which to enact sociality, predicating freedom on forms of difference that may be inimical, the countering of which may require great effort on the part of those who have suffered.

Notes

1 The Commission was one of a number of remedial efforts implemented by the newly elected democratic state. Others included the repeal of discriminatory legislation; implementation of a Constitution and Bill of Rights; institutional reform; a land claims and restitution process; revised welfare, housing and health policies etc.

2 Amnesty hearings, incomplete in October 1998 when the Commission presented its *Report* to the President, were completed in 2002. A further report detailing its findings has not yet been released to the public.

3 *Dealing With the Past* and *The Healing of a Nation?*: published proceedings of two conferences on truth commissions hosted by IDASA (of which Alex Boraine was head) prior to the establishment of the South African Truth and Reconciliation Commission. Alex Boraine was subsequently appointed as the Vice Chairperson of the Commission.

4 The overlap took concrete form with the appointment of Commissioners, most of whom had training in the legal, religious or psychological spheres.

5 Mamdani's critique is levelled at the Commission but applies more appropriately to the Act.

6 In order to identify patterns in violations, the Commission drew on the terminology of the now defunct Population Registration Act No. 30 of 1950. My use of the Act's terminology in no way implies acceptance of it.
7 The variation may reflect patterns of regional violence (for example, regional-specific conflicts between the ANC and IFP between 1990 and 1994), changes in political cooperation with the Commission (the IFP was initially opposed to the Commission and did not encourage its followers to make statements or to apply for amnesty until late in the process) and/or different patterns of statement collection (the Durban office undertook a more extensive 'statement-taking drive' than did the Cape Town office).
8 This figure constitutes 16 per cent of the total number of Victim Hearings the Commission held between 1996 and 1997 and 75 per cent of the Victim Hearings held in the Commission's Western and Northern Cape Region.
9 Many Commissioners had been involved in Human Rights organizations in the 1980s, and drew from their knowledge of violence to hypothesize about what was missing from 'the whole truth'.
10 Of course, the knowledge that women had been subjected to violence was not new. Documents published by the Detainees' Parents' Support Committee in the mid-1980s described violence inflicted on women (see DPSC 1988), as did 'alternative' newsletters such as *Crisis News*. The South African Institute of Race Relations' Annual Review of Race Relations has a limited record of women's experiences in detention (SAIRR 1960–94; see summary in Goldblatt and Meintjies 1996; Ross 2000).
11 In most African societies it is considered inappropriate for women to speak publicly or in mixed company about their bodies, bodily functions or about violence. For some, talk about past violence is considered suspicious: the symbolic pollution violence causes may contaminate the community unless purification rites are performed.
12 In similar statements, dotted throughout the five volumes of its report, the Commission attempted to create links with a broader political-economic analysis to widen the scope of its investigation. It justified doing so through the section of the Act that mandated it to investigate the nature, causes and extent of GVHR, 'including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings'. In addition, the Commission held special hearings into the roles of the media, prisons, business, legal and medical sectors in Apartheid. Political parties and representatives of the UDF made representation, as did the representatives of the South African Defence Force and South African Police.
13 Note that this applies only to the experience of victims. Those seeking amnesty for human rights violations had to demonstrate a political motive for their acts. The differentiation between political and criminal acts in the amnesty process suggests that violations were not considered to be of the same order.
14 Apartheid was described as a crime against humanity at a sitting of the General Assembly of the United Nations in 1966. The appellation was reiterated in 1968, 1970, 1973, 1983, 1989 and 1990. The declarations of various constituents of the United Nations (such as the Security Council) are summarized in Asmal *et al.* (1996: 194–7) and in the Commission's *Report* (Vol. 1: 94–102). The definition of apartheid as a crime against humanity is contested.
15 In a concurring judgement, Justice Didcott pointed out that the statute offers 'alternative redress' rather than 'legally enforceable rights in lieu of those lost by claimants whom the amnesties hit'.

16 The case, brought by AZAPO, Biko, Mxenge and Ribeiro against the President of South Africa, the government of South Africa, the Ministers of Justice and Safety and Security and the chairperson of the Commission, challenged the constitutionality of the amnesty provisions on the grounds that they violated individual rights to judicial recourse. The Court held that the epilogue to the interim Constitution sanctioned the limitation on the right of access to court.

Bibliography

Asmal, K., Asmal, L. and Roberts, S. (1996) *Reconciliation Through Truth: A Reckoning of Apartheid's Criminal Governance*, Cape Town: David Philip.

Boraine, A. (2000) *A Country Unmasked: South Africa's Truth and Reconciliation Commission*, Cape Town: Oxford University Press.

Boraine, A. and Levy, J. (eds) (1995) *The Healing of a Nation?*, Cape Town: Justice in Transition.

Boraine, A., Levy, L. and Scheffer, R. (eds.) (1994) *Dealing with the Past: Truth and Reconciliation in South Africa*, Cape Town: IDASA.

Burton, M. (2000) 'Making Moral Judgements', in C. Villavicencio and W. Verwoerd (eds) *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, Cape Town: UCT Press.

Butler, J. (1997) *Excitable Speech: A Politics of the Performative*, London: Routledge.

Buur, L. (1999) 'Monumental History: Visibility and Invisibility in the Work of the South African Truth and Reconciliation Commission', paper presented at the conference *The TRC: Commissioning the Past*, University of the Witwatersrand, 11–14 June.

Coalition of NGOs (1997) *Submission to the Truth and Reconciliation Commission Concerning the Relevance of Economic, Social and Cultural Rights to the Commission's Mandate*. Submission by NGOs including: Community Law Centre, University of Western Cape; Development Action Group; Legal Resources Centre; Black Sash; Centre for Human Rights (University of Pretoria); NGO National Coalition; National Land Committee; National Literacy Cooperative; People's Dialogue; Urban Sector Network. *Truth and Reconciliation Commission* website, reproduced on CD-ROM by Steve Crawford and the Truth and Reconciliation Commission, 1998.

Coleman, M. (ed.) (1998) *A Crime Against Humanity: Analysing the repression of the Apartheid State*, Cape Town: Human Rights Committee, Mayibuye Books and David Philip.

Das, V. (1997) 'Sufferings, Theodicies, Disciplinary Practices, Appropriations', *International Social Science Journal* 154: 563–72.

Das, V. (2000) 'The Act of Witnessing: Violence, Poisonous Knowledge and Subjectivity', in V. Das, A. Kleinman, M. Ramphele and P. Reynolds (eds) *Violence and Subjectivity*, Berkeley: University of California Press.

Douglas, S. (2000) 'Reconciliation and the South African Truth Commission: Final Report for the United States Institute of Peace', unpublished manuscript.

Detainees' Parents' Support Committee (DPSC). (1988) *Cries of Freedom: Women in Detention in South Africa*, London: Catholic Institute for International Relations. Previously published as *A Woman's Place is in the Struggle, Not Behind Bars*, Johannesburg: DPSC/DESCOM.

Goldblatt, B. (1997) 'Violence, Gender and Human Rights: An Examination of South Africa's Truth and Reconciliation Commission', paper presented to the annual meeting of the Law and Society Association, St Louis, Missouri.

Goldblatt, B. and Meintjies, S. (1996) 'Gender and the Truth and Reconciliation Commission: A Submission to the Truth and Reconciliation Commission', Johannesburg: Centre for Applied Legal Studies, University of the Witwatersrand.

Kleinman, A. and Kleinman, J. (1994) 'How Bodies Remember: Social Memory and Bodily Experiences of Criticism, Resistance and Delegitimation in the Aftermath of China's Cultural Revolution', *New Literary History* 25(3): 707–23.

Lawyers Committee for Human Rights (LHCR) (1986) *The War Against Children: Apartheid's Youngest Victims*, New York: Lawyers Committee for Human Rights.

Mamdani, M. (1996) 'Reconciliation Without Justice', *South African Review of Books* 46(Nov./Dec.): 3–5.

Messer, E. (1993) 'Anthropology and Human Rights', *Annual Reviews in Anthropology* 22: 221–49.

Minow, M. (1998) *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston: Beacon Press.

Ndebele, N. (1994) 'The Rediscovery of the Ordinary: Some New Writings in South Africa', in *South African Literature and Culture: Rediscovery of the Ordinary*, Manchester: Manchester University Press.

Olkers, I. (1996) 'Gender-neutral Truth: A Reality Shamefully Distorted', *Agenda* 5: 61–7.

Owens, I. (1996) 'Stories of Silence: Women, Truth and Reconciliation', *Agenda* 4: 66–72.

Report of the South African Truth and Reconciliation Commission (1998) 5 volumes. Cape Town: Juta.

Ross, F.C. (2000) 'Bearing Witness: Women and the South African Truth and Reconciliation Commission', unpublished doctoral dissertation, University of Cape Town.

Ross, F.C. (2001) 'Speech and Silence', in V. Das, A. Kleinman, M. Lock, M. Ramphele and P. Reynolds (eds) *Remaking a World: Violence, Social Suffering and Recovery*, Berkeley: University of California Press.

Shifman, P., Madlala-Routledge, N. and Smith, V. (1997) 'Women in Parliament Caucus for Action to End Violence', *Agenda* 36: 23–6.

South African Institute of Race Relations (SAIRR) (1960–94) *Race Relations Survey*, volumes 1960–94, Johannesburg: SAIRR.

Taylor, J. (1994) 'Body Memories: Aide-memoirs and Collective Amnesia in the Wof the Argentine Terror', in M. Ryan and A. Gordon (eds) *Body Politics: Disease, Desire and the Family*, Boulder, CO: Westview Press.

Todorov, T. (1999) *Facing the Extreme: Moral Life in the Concentration Camps*, London: Weidenfield and Nicholson.

White, H. (1994) *In the Shadow of the Island*, Pretoria: Human Sciences Research Council.

Wilson, R. (1997) 'Representing Human Rights Violations', in R. Wilson (ed.) *Human Rights, Culture and Context: Anthropological Perspectives*, London: Pluto.

Chapter 9

Reproduction, health, rights

Connections and disconnections[1]

Maya Unnithan-Kumar

In this chapter I focus on a notion of reproductive entitlement based on women's moral claims in the area of reproduction and the healthcare related to this, claims which are largely articulated in relation to the social expectations and responsibilities surrounding fertility, sexuality and motherhood. Following Petchesky and Judd (1998), I suggest that an emphasis on moral claims is in contrast to a focus on what the state or law owes women and the formal, legal language of rights which is often experienced in the form of the state imposing rights. The language of claims is different from that of rights as it is shaped in terms of the force of cultural expectations, obligations and responsibilities placed upon women and men, which is reinforced or changed through practice and further mediated by their desires, aspirations and life circumstances.[2] The concept of moral claims, as Petchesky and Judd emphasise, goes beyond the notion of 'needs' as it entails a conviction of the moral rightness of one's claim, incorporating both a sense of authority and a sense of aspiration (1998: 13). In her criticism of the legal language of human rights, Hastrup (this volume) also stresses the significance of a focus on moral agency within a shared social space (also, for example, Das 1995, 1997; Asad 1997; Farmer 1999).[3]

Since 1998 I have been involved in the work of a voluntary health centre in Jaipur district in Rajasthan, NW India, and since 1986 with issues of poverty and identity in southern districts of the state.[4] I draw on these experiences to reflect on poor women's engagement with the Indian state[5] in the area of reproduction and their negotiations around work (productive and reproductive), which take place within the family and community in which women seek to meet their aspirations. I suggest that it is at the global level (of states, transnational agencies and activist networks), that the domain of health, and reproductive health in particular, has become the main site where connections between reproduction and rights have taken place. At the more local level, in contrast, these framings are disconnected from the ways in which claims relating to reproduction are imagined and exercised. Rather than couched in individual entitlements to health, I found that poor women's claims to reproduction in Jaipur were connected with their poverty

and significantly influenced by notions of spousal responsibility and loyalties which accompany social intimacy. A narrow focus on health in the discourse on rights is unable to address the social, emotional and economic issues which emerge as linked in Rajasthani women's desires, claims and practices of sexual and reproductive well-being.[6]

The chapter focuses on the ways in which claims to sexual and reproductive well-being are framed, when they are acted upon and to whom they are addressed. Understanding women's reproductive agency within a shared social space is a complex task and involves, as Moore suggests for understanding agency in general, 'a matter of comprehending the spaces and oscillations between integrating notions and diverse experiences' (2000: 15). The task of accounting for 'choice' in a way that preserves individual agency at the same time as acknowledging the power of cultural institutions and ideologies is particularly challenging, for, as Rapp (1993) points out in her work on prenatal diagnosis in America, such discourses are multi-layered, contradictory and often difficult to separate out for purposes of analysis (see also Ginsburg [1989] on abortion discourses). One way in which I find I can capture the complexity surrounding decisions to do with reproduction is by focusing on ties of emotion, such as those for example of intimacy, which allows me to move beyond the 'natural' explanation provided by kinship as a moral force guiding women's reproductive choices and desires (Unnithan-Kumar 2001). A focus on the emotions associated with kinship relationships (as fearful, anxious, intimate, pleasurable, responsible, dutiful, respectful) nevertheless keeps the social hierarchy and power connected with kinship at the centre of the analyses. The work of emotion in engendering relatedness, as I see it, complements other new directions in the study of kinship which focus on, for example, the sharing of substances other than blood (Carsten 2000).

The anthropological work on emotion and the embodiment approach of scholars like Csordas (1994, 2000), Lyon and Barbalet (1994), Good (1994), Lutz and Abu-Lughod (1990), Lutz and White (1986), Rosaldo (1984), Shweder (1991), Scheper-Hughes (1992), Das *et al.* (1997) and Lock (2001) are particularly useful as means of understanding conceptions of body and self which lie at the heart of women's claims to do with fertility, sexuality and motherhood (in particular, the extent to which the self is constructed as having rights or control over the body). As Lyon and Barbalet suggest, emotion provides us with a means of getting at the experience of embodied socialization, that is, where the body is not only subject to external agency but also simultaneously an agent in its own world construction (1994: 48), or, in relation to the concerns of this chapter, where women simultaneously experience their body as both belonging to them and alienated from them (Petchesky 1998: 16). The extent of self-alienation from control over one's body remains a complex and context dependent issue. As Strathern suggests, the connections between body and self oscillate within

cultures themselves and, in certain cases, such as among the North Mekeo of Papua New Guinea, partibility or fragmentation between the two is a required stage in order to participate in the processes of social personhood and identification (1992: 76). Notions of personhood and embodiment are also central to understanding local responses to the discourse on reproductive rights at a more global level, which with increasing medical, health and legal interventions, also, like other locally framed claims, become caught 'within the webs of power and meaning which extend beyond the local' (Wilson 1997).

The simultaneity of experiencing the body as both culturally belonging to and as alienated from the self leads to a specific notion of reproductive entitlement which enables women in Rajasthan, for example, to resist a state which creates increasing constraints on self and community ownership of the body. Such resistance, I find, is reflected in women's ambivalent engagement with the state in the area of maternal healthcare, and their negotiated engagement with the community through their resort to a diverse range of experts knowledgeable in the processes of procreation and healing. I suggest that, as claimants, women are both *subject to* the external agency of the state and of the moral force of kinship, and *subjects of* their own framing of claims to social reproduction. The local framing of rights and claims depends on the play of subjectivity and objectivity inherent in the relationship between body and self. It is only by understanding the emotional context of women's engagement with others, grounded in more collective notions of body ownership, that we begin to get an idea of how moral claims in the domain of reproduction may be constituted.

The Indian State and feminist discourse on reproduction and rights

Differing perspectives on ownership of the body, fertility and objectification

As we know, universalizing discourses on rights are problematic for their unilinear construction of people as objects, who receive rights (in the view of the state), as individuals who are disengaged from their moral and social communities (by the legal language employed), or as victims of male-dominated, medical and state-perpetuated violence and control (as construed by feminists). These formulations are particularly problematic in the way they become associated with women's control over their bodies and the related social identities. To take the example of the Indian State first, we find that, despite adopting the current language of health and empowerment in its recent reproductive health programmes, the programmes continue to be shaped by a patri-focused, ideological view of women's identity as primarily shaped by their childbearing. As discussed below,

reproductive health programmes in India reinforce the notion of women as childbearers in their emphasis on fertility and in the connection that health policies make between the control of women's fertility and their empowerment. By contrast, it has been infertility and anxieties about not being able to bear children that have vexed women who, at least in ideological terms, are governed by the same view as that perpetuated by the state; that is, the view that motherhood is the key defining moment of womanhood. In this perspective, women's bodies are fully encompassed within the realm of childbearing, giving little thought to the other aspects of their identities. The emerging statist discourse on reproductive rights can thus, for example, be criticized for ignoring sexuality as a valid domain for the exercise of rights (Parker *et al.* 2000; Petchesky 2000; Cornwall and Wellbourn 2002). The following lines briefly describe the reasons behind the misplaced importance given to fertility in India, also by feminist engagement with the issue, despite growing evidence to the contrary.

The notion of fertility control has been central to national discourses on health and development and has more recently also become central to the idea of 'women's empowerment' and rights in India (Ramasubban and Jejheebhoy 2000, for example). This is despite the fact that the majority of especially lower-class and lower-middle-class Indian women in post-independence India have experienced the state in negative terms, as imposing its authority in the domain of reproduction. Recent history provides a striking example of state coercion among the rural poor in the matters of reproductive control and related health care. The family planning programmes of the late 1970s under the political regime of Indira Gandhi, and in particular the forced sterilization policy, stand out in popular perceptions (urban and rural alike) of state violence in the domain of reproduction. The collective resentment of the forced sterilizations of poor men and women, against their wishes, or even without their knowledge, was among the major factors in the downfall of Indira Gandhi's government. Governments which followed, with an eye to their own political support, were measured in their espousal of family planning programmes. Sterilizations in particular were publicly denounced, which also suggests the limits placed by civil society on the state's capacity to impose its will.

Given the overriding emphasis on fertility control at the level of state policy and planning in India, women's health care services, up until 1994 (the year of the International Conference on Population and Development in Cairo), mainly addressed the area of maternal health as the 'problem of childbirth'. This focus was manifest in the health planning documentation in two senses: first, in the need to stem maternal mortality, or the risk of death to mothers at the time of childbirth; second, in the need to regulate conception as a means of reducing the birth rate and controlling population increases. Although the definition of reproductive health at Cairo was particularly distinctive for its inclusion of sexual health, and recognition was given

to the enjoyment of sexuality as a part of this[7], it is also this aspect of the definition which has received almost no recognition, in policy terms, in reproductive health planning in India. A consequence of the Indian state's focus on childbirth, as I see it, was that, in development policy discourse, both women's needs (for better health through fewer children) and the nation's needs (of economic progress through a reduction of population) became linked and served through this common objective of the control of fertility. However, in response to the deliberations in Cairo,[8] where governments were urged to focus on reproductive health in general and not just fertility control, there was a significant shift made in addressing the concerns of reproduction when the most intimate areas of women's lives were linked to the issue of human rights.

The Cairo meeting had a significant impact on health planning in India in that, since then, a broad-based reproductive health approach which focuses on the provision of a safe, demand-driven health service has been stressed in the planning and policy documents (Govt. of Rajasthan 1999). Evident since 1994 is an ostensible shift in the labelling of maternal health programmes (from women and child programmes to safe motherhood, for example) and a move away from a policy for explicit population control in the health programme (most discernible in the removal of sterilization 'targets' set for public health workers). Nevertheless, despite efforts made to accommodate contraceptive choice, for example to broaden the delivery of health services for women, these efforts did not detract from the fact that contraceptives and fertility control remain to date a major focus of health programmes for women in the country (Ramasubban and Jejheebhoy 2000). When the government was said to be moving away from an explicit emphasis on fertility control in the 1980s, health activists have pointed out that, since then, the idea of fertility control has been implicit in health delivery planning (Chayanika *et al.* 1999), reflecting the tenacity of the argument among state planners that population reduction (to be achieved through controlling fertility) is the symptom rather than the cause of underdevelopment (Greenhalgh 1995; Hartmann 1995; Kertzer and Fricke 1997).[9]

The Indian government's continued emphasis on birth control is contrary to a significant body of evidence recently emerging from non-governmental health organization work, as well as my own observations since 1998, that suggest that it is widespread reproductive morbidity (see Appendix, Table A.1) that is the main cause of women's ill-health and even their secondary infertility,[10] and that the meaning of choice in this context may be one for facilitating rather than restricting childbearing. Thus, from an overall health perspective, women's control over their reproductive bodies can only be facilitated by the state if the health care provisioning is more broadly based, focusing not only up until the moment of childbirth, but beyond this to provide economic health care and nutritional support to females in childhood as well as when they are adults.

It is largely feminists who have been most effective in bringing the issue of choice into the domain of reproductive health policy (see Rapp 2001, for example), but this has been of limited success because of the constraints imposed by a focus on fertility and health in the dialogue with the state. The definition of reproductive health to emerge from the Cairo meeting was notable for the emphasis it placed on the notion of choice. In terms of reproductive health, this choice related to the choice to control fertility, the choice to become pregnant in ways which ensure safe outcomes for mothers and children, as well as the choice to engage in sexual relations and enjoy one's sexuality (Gittelsohn *et al.* 1994). The other concern of feminists worldwide has been with the ethical dimension of reproductive health practices. The unethical use of a range of contraceptive drugs (such as Norplant, Depoprovera) in family planning programmes in India and elsewhere, before any conclusive evidence is available as to the safety of the women concerned, has been a major issue in feminist protest against the propagation of anti-fertility drugs.[11] Ironically, the talk of rights and empowerment and the facilitation of consumer choice have further strengthened the industry built around contraceptive provisioning.

The emphasis on fertility control and contraceptive provisioning also comes from other globally powerful institutions and the pressures they have exerted on the Indian State in recent years. Most notable among these is the World Bank and its promotion of structural adjustment policies for India. It has been shown that the economic reforms brought in by structural adjustment have led to a constriction in public spending on health (Seeta Prabhu 1999).[12] If, as Seeta Prabhu (1999) suggests, the World Bank's prescription for constraints on public health expenditure is accompanied by a promotion of preventive rather than curative care, then the economic structural adjustment policies of the 1990s will further enforce the emphasis on fertility control rather than the treatment for reproductive tract infections and the provision for infertility care.

The feminist contribution to the reproductive rights discourse in India has been twofold. On the one hand, Indian feminists have campaigned against the coercive, unethical policies of the government, as mentioned earlier, and against the medicalization[13] of women's bodies, at the same time as arguing for widening women's choice to accept but also decline the use of specific contraceptives. So, for example, the significance of contraceptive provision in determining the nature of health care services has been questioned given the vested interests of a large number of parties involved in the delivery of contraceptive technologies (such as medical research, pharmaceutical companies and government bodies) (Dhanraj 1992; Chayanika *et al.* 1999). Another, to my mind, really crucial dimension of feminist work in the area of rights and reproduction has been in raising women's awareness of their worth, work, bodies and selves in which, as Rapp suggests, the mind/body distinction is subject to political analysis (2001: 467). In tandem, and at times

influenced by Euro-American feminist concerns with women's rights, the Indian feminist work on awareness-raising among women predates much of the global reproductive rights discourse.[14]

Feminist work in the domain of health has significantly added to an understanding of the ways in which local reproductive claims are constituted. It is those health activists and feminists who have been involved in understanding the local contexts which frame the experience of sexuality, reproduction and motherhood who have shown that fertility control is only one among a range of factors which needs to be considered in facilitating women's control over their bodies.[15] Anthropologists Rapp (2001), Ginsburg and Rapp (1995) and others, for example, have developed the concept of stratified reproduction to highlight the unequal social ordering of reproductive health, fecundity and birth experiences and as a means to question the stigma attached to deviant fertility and childbearing. Other equally significant feminist and anthropological work on reproduction and embodiment has been on identities and social personhood, especially related to the differing cultural notions of the body and ownership.

Personhood and ownership

The issue of reproductive autonomy has continued to engender heated debate between feminist activists and the state, but has also generated controversy amongst various feminist groups themselves. So, for example, liberal feminists who emphasize the necessity for women to own their bodies have been accused by more radical feminists of evoking patriarchal and commercial practices of objectifying women's bodies (Ginsburg and Rapp 1995; Petchesky 1995). The controversy, as Petchesky suggests, is over the language of property in feminist theory that,

> starts from a narrow premise that interprets property and ownership in terms of a Lockean paradigm through which 'property in one's person' signifies radical individualism, instrumentalism, and a dualism between the body as commodity and the 'person' as transactor. This perspective tends to reify the idea of property itself, to encase it in a prevailing economism and nullify its tremendous cultural variation.
>
> (1995: 388)

If, on the other hand, we consider Strathern's work in Papua New Guinea, which suggests that bodies do not belong to persons but are composed of the relations of which a person is composed, we move to a very different notion of property in one's person, which is collectively rather than individually constituted (1992: 76).[16] The women whose lives I describe in the following sections also overridingly experience their bodies through the collective membership of their social group. The imperative of individual

control over the body, or self-ownership as a value in itself, then disappears to an extent. In fact, one may suggest that the body itself disappears as a site for experiencing individualism and alienation, rather it becomes a site for experiencing the collective in more or less intensive ways. This is not to deny the significance of what Lock calls 'local biologies', that is, the extent to which the material body influences the embodied experience of physical sensations (2001). It also does not preclude women's sense of bodily autonomy or self-control. It is just that the forms that their agency takes may be more collectively rather than individually constituted.

Sexuality, reproduction and motherhood in Rajasthan: negotiating local knowledge and power

My work with poor women of Regar, Dhanka ('untouchable'), Meena and Rajput castes, and among rural Sunni Muslim women in Rajasthan suggests that it is only by understanding the emotional context of women's engagement with others, by their negotiation of the authoritative knowledge and moral controls exerted upon them by traditional healers, spouses and kinswomen, that we can begin to get an idea of how moral claims in the domain of reproduction may be constituted.

Motherhood and reproduction form a central part of women's lives across caste and religion in Jaipur district. In fact, in the views of men and women of these communities, women's lives are considered to be all about reproduction. In this sense reproduction is not easily separable as a distinct domain of women and men's lives. In ideological terms, it is primarily through bearing children that women are seen to fulfil their role as dutiful wives to their husbands, but bearing children and becoming mothers is also valued by the women themselves. As an ideal type, motherhood is desired by women and the nurturing of children is connected with a sense of achievement and worth.

The adherence to ideas of appropriate and altruistic motherhood are, however, neither uniform nor uncontested. While women are anxious to be seen as good mothers, at the same time they are constantly engaged in decreasing the burden that the bearing and nurturing of children place upon them. In ideological terms, the work of childbearing and child rearing and the work of the domestic economy are all regarded as women's business and devalued in terms of the effort, skill and competence required for these tasks. The fact that most of these tasks also remain hidden from the collective view further reinforces their unimportance in the 'official' domain. The control over women's sexuality and procreativity takes place in many forms once initiated at menarche (the first menstrual period). For example, at the onset of menstruation (referred to as the 'coming of the cloth'/the 'month'/the 'flow') young women undergo a permanent change in their attire, in that their bodies are clothed to cover the hips, legs and breasts. Body parts but also bodily secretions of women are required to be removed

from public view from menarche onwards. Also, after menarche all bodily emissions of women, including urine and faeces, must be kept hidden from public view. The control over bodily processes is manifest in the constraints that women feel in passing urine, defecating and changing their menstrual protection. A number of women told me that they drank less water during the day so that they would, at best, only need to pass urine once during midday. Poor women, whether in the slum areas or in the villages were forced to use the open spaces, sewage dumps and field spaces set aside for urinating and defecating in the early hours of the morning, before dawn, and before these spaces were used by men.

The control over mobility in relation to women's bodily functions is tangibly experienced by them in the form of 'looks', or ways of seeing that are derisory, showing desire (by men) or conveying envy and jealousy (of other women). As a consequence, it is commonplace to hear that women prefer to go out for their ablutions before dawn because they would rather not be subject to the 'eyes' of young boys and men. The power of the female 'looks', on the other hand, is connected to the fairly widespread restrictions on the movement of menstruating women. Menstruation is a particularly dangerous period for women as it is a time when they are extremely vulnerable to the 'looks' and the winds that are generated from them. Menstrual blood is regarded as bad blood and dangerous because it is the blood of failed childbirth. It is therefore quickly caught by the ill winds (the winds represent the spirits of people and infants who have experienced violent or tragic deaths or died after unfulfilled lives). These winds are usually set in force by jealous women. Thus, during their menstrual periods every month, women must take care to avoid crossroads, because these are the places where the ill winds converge.

As the following lines describe, there are three categories of kinspersons: husbands, relatives who are religious healers and closely related kinswomen, who are particularly significant agents in women's abilities to manage any threats they may feel to their sense of self-ownership and bodily integrity.

Social intimacy, spousal responsibility and reproductive claims

The notions of spousal responsibility are central to an understanding of the kinds of claims that are made in the area of reproduction. While women are expected to conform in the ways outlined earlier, men are constrained ideologically in their role as providers to women (to wife, sisters and mother) and children. The duty of men to provide for their family is talked about in terms of providing the finances for food, shelter, clothes, education and healthcare, yet the actual support provided is very much dependent on the individual predisposition of the men. Often financial or economic provisioning is seen as an index of the caring nature of the husband. Very

little importance or emphasis is placed on an outward display of affection. There is no expectation that the husband will provide sexual pleasure or indeed that women have the necessity for sexual pleasures. This does not mean that women do not enjoy having sex, but rather that they cannot exert any claims on their husband to fulfil their sexual desires. Men, on the other hand, are able to assert their conjugal rights to sexual intercourse on demand and for their pleasure. Women, in contrast, assert their conjugal rights to pregnancy and motherhood. So women are able to question men's fertility or failure to produce a child or be productive. Such claims are often the basis of the few occasions when women could demand a divorce. So while husbands could not be held responsible for failing to provide sexual pleasure to their wives, they could be held accountable for an inability to facilitate childbearing (doubts regarding fertility were more likely to be aimed at the women, though). Even a man's family could be accused of failing to provide the right or conducive atmosphere for conception (see the account of Ghisi discussed in the next subsection).

The anxiety over conception and childbirth is one that is shared by the husband's family, especially if there is no son, or only one son (who may succumb to disease and illness) to carry on the husband's line. A consequence of the wider interest in the birth of children is that women have a right to exert a claim over their husbands to pay for the consultation with professional reproductive health experts. This is in contrast to the negligible amounts of money spent on the health care expenses of elderly women or of women before they bear children. Because the birthing of children is important for the advancement of the agnatic family, women can claim financial support for any complications they may face in this period. They could demand to see a gynaecologist or place expectations on the husband to take them to the spiritual healer and carry out the rituals prescribed by the healer for their cures. In reality, the greater resort to spiritual healers compared to medical professionals, whose costs are much higher, can be regarded as reflecting the financial and social control of the husband's family over women who have joined as wives.

In the cultural context as outlined so far, the social expectations married women have of men, especially in the affinal family, emerge as expectations of being able to consult with the family healer of their choice and, failing this, with medical professionals, as the moral rightness of pressurizing the husband to participate in the cures suggested by the healer and as a claim over the husband to provide the procreative fluids of the right potency to enable conception and for him to be free from sexual impairment.

Spiritual and familial control

In Rajasthan, ill winds are considered to be the prime cause of women's menstrual disorders, especially excessive or irregular bleeding, and are directly

associated with the problems in conception (see Appendix, Table A.1). The resulting affliction and anxiety can only be appropriately addressed by those knowledgeable about the world of the spirits and their kinship with the particular social world of the patient (see also Lambert 1996). Spiritual healers are considered efficacious primarily because they have the means to redress the danger that may be communicated by the specific ways of seeing, as outlined above. In my work, the significance of the local healers was overridingly evident to me in the very high numbers of women who sought out spiritual healers. In general, women tended to see a variety of healers with greater regularity than medical doctors (for example, amongst the 70 women whom I met, over 90 healers were consulted. What I want to emphasize here, though, is that, while the proficiency of the healer is recognized at the level of the community, the control that they exercise over its members is more absolute than that of the State, because of the very nature of their social embeddedness. This is especially the case for women as it is women who frequent healers, with men usually visiting a private medical doctor. Spiritual healers then become the primary means through which women experience the control of their community.

It is the ability to locate individual suffering in terms of a social disconnectedness, which distinguishes the approach to the body in healing systems, as compared with that of the partial body (viewed in terms of its parts) in biomedical systems (Csordas 1994; Good 1994; Lyon and Barbalet 1994). Spiritual healers are important because only they have the skills and competence to deal with disorders of the embodied self. They are considered experts in the illness related to 'winds' and 'looks' which are mainly afflictions which affect women and children (see Appendix, Table A.2) or crops and animals (who also reproduce). Local healers, for example, are considered the only healers who can effectively prevent infant mortality. A common explanation for high infant deaths is that it is the 'looks' of jealous women relatives who are unable to conceive which are responsible for these deaths and only local healers could restrain them.[17] A common assumption for the healer's cures to be effective in Rajasthan is the understanding that the remedy suggested will only work if it is carried out by the husband of the woman patient, thereby acknowledging the social fact that husbands' actions are central to the healing process undergone by their wives.

The control of the healers is manifest in indirect and direct ways. An *indirect* consequence of the healers being of the same community as the women themselves is that certain afflictions are unlikely to emerge as they would not be brought to the attention of the healers by the women themselves. The prevalence of reproductive tract infections (mainly as a result of the scarcity of water and the lack of privacy to wash in) is so widespread among women that in fact certain manifestations of it, such as infected vaginal discharge (*safed pani*), are regarded by both the women and the healers as a part of their normal bodily processes, which therefore do not need to be

addressed in the healing process. More *directly*, spiritual healers exert a powerful control in the community because only they can identify the exact physical and social cause of illness. But even more significant a reason for their ability to exert control, in my mind, is the fact that a majority of healers are closely related to their patients. During my work, I found that most of the spiritual healers whom women in Jaipur district consulted were healers who belonged to the families of either husband or wife, with the majority of them (34 out of 38 healers) being men who were closely related to the woman's husband. These family healers (*outh*, *syyed*, *bhairu*) were usually the first to be consulted by women. Their authority was particularly imposing for young, new brides in the family who were under the most pressure to earn the goodwill of their affinal family members through the display of the appropriate sexual and reproductive behaviour.

The authority of the family-based spiritual healers, although significant, is not one that is uncontested by individual women. In fact, the negotiation of the power of one healer takes place, I would argue, by recourse to healers from a different social category, i.e. non-agnatic healers. There are two main categories of non-agnatic healers: those who practise across communities, being healers of significant repute (*mata*, *hanuman*, *shukker baba*), on the one hand, and healers who belong to the woman's natal kin and who are less frequently consulted, on the other hand. The following examples of Ghisi and Sharda (women of the Regar, 'untouchable' caste, a dominant social group in this area) illustrate the power of healers of the husband's family as well as the resistance to it.

Ghisi, the older sister-in-law, complained of secondary infertility. At the time she had a daughter of five years but said she had been unable to conceive after this child. She had become pregnant about five months before but was unable to retain the foetus. Since she has been married and in her husband's home, she was under the care of a healer who was her father-in-law's elder brother, Mangi Lal. He was possessed by the spirits of *kali mata* and *bhairu*. When Ghisi's miscarriage took place, Mangi Lal explained it in terms of her falling prey to an ill wind (*hava*), caught at a crossing. Ghisi said he blamed her for what had happened and that, after she heard this, she began to have less faith in him. Sharda, who was married to Ghisi's husband's younger brother, strongly believed in the powers of Mangi Lal, on the other hand. She had also experienced a miscarriage. Two years after her marriage she had a miscarriage when she was four-and-a-half months pregnant. Eight days before this she had been in pain and consulted with Mangi Lal who gave her sacred ashes and wheat grains and tied a thread around her waist. He cautioned her from going anywhere alone after 11 p.m. Eight days later Sharda went unaccompanied to the toilet at night, at around 12 midnight. Her husband was unwell so she decided not to disturb him. She also did not bother to wake her mother-in-law. On her return she bled for three hours. Sharda attributes her miscarriage to the fact that she did not adhere to Mangi

Lal's instructions. A year later, in 2000 when I met her, she was pregnant again and did not go anywhere without Mangi Lal's consent. He had forbidden her to go to the doctor's or to her natal home. Ghisi, on the other hand, had sought medical treatment for her secondary infertility from the voluntary health centre, where I met her. She became pregnant towards the end of my stay in 2000. The doctor at the health centre mentioned the success of a particular course of drugs, but Ghisi claimed she was pregnant because of the powers of the man who was possessed by the *mata-mai* in her natal village.

Compared to Sharda, her younger sister-in-law, Ghisi was able to resist her father-in-law's control over her body as a spiritual healer partly because she had already had a child and thus proved her fertility. But, as the events unfolded, it became clear to me that Ghisi's confidence also stemmed from the fact that her relationship with her husband was deteriorating and thus her sense of responsibility towards him, and through him to his kin, had declined as a result. Sharda, on the other hand, got along well with her husband and was anxious to please him and produce her first child. In Ghisi's resort to the healer of her father's family, we see her negotiating an outcome which is emotionally directed towards those persons she feels more intimate with at the time. The failings of Mangi Lal, as broadcast by Ghisi, are used to provide her with a legitimate reason to travel back and forth to her natal home, giving her a mobility desired by most married women in the villages.

Reproductive claims and the authority of kinswomen

As work on childbirth and authoritative knowledge has shown, familial control over women's reproduction is exerted not only by men but also quite significantly by women, whether as childbirth specialists or as kinswomen (Davis-Floyd and Sargent 1997; Ram and Jolly 1998). In Rajasthan, to a large extent, the 'common' and specialist knowledges of reproduction and motherhood are exclusive to women and located in women of specific social categories. As a result, the control that is exerted is more diffused and widespread, ranging from notions on appropriate consumption and work during pregnancy and lactation (exercised primarily by mothers, mothers-in-law and sisters-in-law) to the more explicit prohibitions on postpartum mobility (exerted by 'aunts' who are the primary midwives: Appendix, Table A.2). It is these women who enforce the very ideologies which constrain women's agency and autonomy (Unnithan-Kumar 2002).

Reproductive freedom is experienced by poor women in Rajasthan as a reduction in work generally, not just in childbearing alone. The link between women's reproductive and productive work is a very real one. In general, I found that notions of appropriate mothering, enforced by kinswomen, are strongly connected with the work roles of women. So, for example, there is a widespread conviction that thin mothers are hardworking

and produce a superior quality breast milk (*phulna dudh*). Fat mothers, on the other hand, are lazy, produce inferior quality breast milk (*katna dudh*) and therefore have thin babies. Women's capacity for balancing their individual desires for mobility, through a socially acceptable reduction in reproductive work, can only take place with the support, tacit or otherwise, of those kinswomen with whom they are most intimate. It is sisters-in-law, for example, even more so than husbands and male relatives, who, through the provision of their own labour, are able to significantly reduce women's productive and reproductive loads. A greater dependency on these kinswomen, however, is also accompanied by the knowledge that far fewer claims can be made on their time, partly because these women are bound by the same exacting work schedules and the ideologies which regulate all women's mobility, socialization and 'free' time. The everyday context of negotiating work and childcare-sharing arrangements is also the most difficult arena in which women can assert their independence or articulate their claims.

Women can mainly lay claims on the time and resources of close women relatives only on the basis of a reciprocal arrangement or previous work done for them. Because men (as spouses or in-laws) regard the sharing of work among women between households as a threat to their contributions to their immediate family, they are unlikely to approve or sanction this. As a result, women's command over other women's labour as a means to reduce or postpone their own work burden in the domain of reproduction cannot be taken for granted. The force of the claims on other women's time is dependent on the powers of negotiation of the women concerned, the reciprocal work arrangements and the general level of emotional and other (including financial) support they are able to provide to each other. If a woman has the bad luck of having few immediate female relatives living in proximity to her, she can expect little alleviation from the constant work of the household economy, including that of mothering.

I found that, on the occasions when there were few or no sisters-in-law (either husband's younger, unmarried sisters or husband's brothers' wives) to share the work in the fields or around the hearth, there was a greater understanding and sharing of work which took place between mothers-in-law and their daughters-in-law. But this relationship was potentially fraught because of the invariable complaints that the daughter-in-law was not doing enough work or did not look after her children or husband well enough. In general, the sister-in-law category was the most significant one for women in Rajasthan. Yet which particular sister-in-law would be of greatest support and influence the decisions of women the most depended on the level of intimacy that the women shared, and was not purely an obligation of kinship (Unnithan-Kumar 2001).

The unstated rules which govern requests for other women's labour also become important for pregnant mothers, for example, in order to negotiate

the choice of those who attend her labour as a means to control the outcomes (very powerfully demonstrated by the work on the authoritative knowledge surrounding childbirth across cultures in Davis-Floyd and Sargent 1997). The importance of establishing a connection among women who oversee birth becomes paramount and is reflected in the fact that it is social intimacy rather than expertise alone which governs the choice of those kinswomen who ultimately attend the birth (Unnithan-Kumar 2002; see Appendix, Table A.2). The combination of intimacy and knowledge (as represented by the pregnant woman's choice of kin midwives who are friends) is the best way for women to ensure they have as much control over their body in childbirth as possible. In reality, because of the work constraints of midwives, their availability and attendance at the time of birth, and especially in the postpartum period, can neither be assured nor taken for granted.[18]

Among the data I collected, women's agency in reproductive matters and the support from emotionally close kinswomen was further manifest, although in a more covert sense than in the case of childbirth, in the area of miscarriages (*girna/safai*). Rather than contest men's right to inseminate them, or insist on the use of devices to control conception, or even raise questions about family size, women often decided after they were pregnant whether they should terminate their pregnancies or not. I found that women preferred to act consequent to, rather than prior to, their husband's actions and in consultation with several intimate kinswomen. So, women would get pregnant and then decide along the lines of their own and others' ideas of social responsibility to their husband and his family, whether they would induce a miscarriage or see the pregnancy through.

The right to terminate a pregnancy was not one that was openly claimed but emerged in discussions on the difference between involuntary miscarriages (abortion or *girna*) and D&C or medical termination procedures carried out as a result of pregnancy complications (*safai*). Miscarriages were frequent and few questioned their occurrence. They could be induced (and therefore voluntary) on the pretext of a bleeding which was difficult for individuals other than gynaecologists to verify. Gynaecologists were usually more than happy to assist poor women with abortions. The support of kin midwives was often crucial here, for it is these women who suggest that the termination be carried out following their diagnoses that the foetus is not growing (a special condition called *peth mein chhod*), or simply in their belief that a 'stomach cleansing' (*safai*, D&C) would ensure a healthy conception.

What I have suggested in this subsection is that companionship and intimacy, especially in terms of the relationships between women, allows women in general to negotiate the controls experienced by them in the manner they desire. Emotions direct women to act in ways which enable them to reclaim their bodies from the control exerted by both men and women of their communities.

State maternal health services and local ambivalence

Women's resort to professional gynaecologists and biomedical therapies, as discussed above, has been caught up in the interplay between the authority of kinspersons and women's own aspirations. The demands for access to professional medical expertise are made often, and result from a combination of factors, such as the self-professed lack of expertise of local midwives in dealing with obstetric complications, women's weak command over the services of midwives who are both intimate and capable, or even as a means of ascertaining the concern of the affinal family and spousal loyalties. The relationship with the state in the area of maternal health care has been an ambivalent one for most women in Rajasthan. It has been ambivalent in the sense that it has been regarded as necessary to gain access to professional care, yet this is feared and put off because of the poor and degrading quality of care provided.[19] The fact that the health services do not engender the confidence and trust of the local people is neither a surprising, nor a new finding, as numerous studies on health services in developing countries have shown. However, where previously this could be blamed on the ignorance of the users of health services, the emergence of a discourse on rights has imposed, at least at the national level, some sense of accountability in developing the quality of maternal health services.

As discussed earlier, it is not that there have been no attempts by the state in India at improving the quality of health care. In fact, since the Cairo meeting, there has been a great interest in reforming the public health care sector on the part of the government, including an interest in working alongside non-governmental organizations. In Rajasthan there have been concerted efforts to regulate the misuse of medical technologies, for example the Act of 1997 to regulate the use of prenatal diagnostic techniques. But, as was the experience with the Medical Termination of Pregnancies Act (1971) which went before it, such efforts are unlikely to curb the misuse of medical technologies in the private and informal health sector. Among the more recent, laudable attempts by the state in the area of reproductive health care provisioning has been the strengthening of the role of the semi-professional health workers, particularly the Auxiliary Nurse Midwives (ANMs),[20] at the village health sub-centres (Appendix, Table A.3), and, at the same time, the encouragement of local midwives to undergo training, gain experience and eventually to become effective community midwives themselves (Govt. of Rajasthan 1999). However, the effort to strengthen rather than reformulate the structure of the health services, which defines the role of the ANM, ignores the growing evidence of the low uptake of the services of the ANM and the failure of past training programmes (Jeffrey and Jeffrey 1993; Rozario 1998; Ramasubban and Jejheebhoy 2000).[21,22]

At the other end of the spectrum of the state's health provisioning for women, I found that the *zenana* (women's) hospitals were also only

frequented in cases of major emergencies.[23] Among the factors which made women delay their trips to the hospital was that public hospitals were considered dirty, both in a physical sense and in an ideological sense.[24] A major anxiety for younger women surrounding the delivery of a child in a public hospital was the fear of being sterilized at the same time. Stories abound of women who have been sterilized and suffered serious complications. Although one may be sceptical of them, just the fact that there is no provision of follow-up care provided to women who undergo such procedures is indicative of the imagined and often real lack of control experienced by women over their reproductive processes. There were a number of older childbearing women (in their late thirties, with four or five children) who did go in for, or at least consider, tubectomies. The relative popularity of the tubectomy among women was a significant finding, given the past history of coercion attached to the sterilization programme. But more often these women went to private rather than state doctors (or state doctors who practised privately).

Despite the problems outlined above, the fact that the hospitals did get large numbers of patients suggests that there is a significant demand for professional gynaecological expertise and an awareness of the benefits of medical treatment.

The fact that the state is unable to provide suitable services is further reflected in the fast-growing popularity of the private health specialists. Even poorer households are willing to pay the high consultation fees of the private doctors to procure safe reproductive outcomes. The ideological importance placed on conception by the community translates into the availability of household finances for women's reproductive complications. In this sense reproductive complications are distinct from other illnesses which women may face, in that the latter would receive much less spousal attention and financial outlay from household funds. There is widespread acknowledgement of the importance of the private health sector in meeting patient needs. This is acknowledged by the doctors themselves who prefer to practise privately, with better equipment, and deliver better care than they would in the public hospitals. However, the lack of state regulation in this sector and the attendant lack of accountability mean that commercial interests rather than welfare ones dominate the provision of health services in the country.

The negative encounters with the public health services and comparison provided by well-stocked and efficient private services have to a certain extent promoted a sense of entitlement vis-à-vis the state.[25] A number of women I met demanded more investment in bringing professional health services nearer to them. Their primary demand was for an easily accessible (in terms of distance rather than costs) birthing centre facility attended by a gynaecologist. Although this may seem a simple enough demand to meet, the state has a lot to overcome to draw women back into its trust and confidence before it can be seen to be enhancing their rights. The magnitude of

the problem can be seen in the fact that the state will have to redress its disregard of local conditions such as poverty, malnutrition, scarcity of water, illiteracy and lack of knowledge if it aims to enhance health sector reform. At the same time it needs to address local expectations in the area of reproduction and the regulatory social structures, ideologies and processes related to this, and connect with local expertise (especially the diverse specialists in providing health care to women, such as midwives and spiritual healers). The provision of health-related information and the transparency of health-related expenditure comprise one way forward as a means of both raising people's sense of entitlement and also making the government accountable. They may also be a means of connecting reproductive rights to economic rights.[26] The inability of the state to treat rights in relation to reproduction as grounded within these wider frameworks will continue to draw an ambivalent engagement from the wider public. The ambivalence is further strengthened because the state is more responsive to the global discourse on rights and reproduction than to understanding local conceptions, precisely because of the accountability that is enforced through major donor and aid agencies. This is reflected in the continued centrality of fertility control and antenatal care as the major focus of state thinking and programmes on reproductive health.

Concluding comment

In this chapter I have discussed the complex ways through which a group of women in Rajasthan negotiate their moral claims, identities and aspirations relating to physical and social reproduction. I suggest that notions of embodiment and personhood are central to understanding how claims to do with reproduction are framed and women's agency in relation to them. The existing national policies relating to women's health in Rajasthan construct women as reproductive subjects divorced from the social conditions in which they live. The state's view, as reflected in the recent formulation of its population policy, fails to take cognisance of the disjunction between its own narrow focus on reproductive health as facilitating women's empowerment and rights, and the ways reproduction is inextricably interconnected at the local level with the social, emotional, moral and economic contexts of people's lives. In its widest sense, reproductive freedom for women in Rajasthan is construed as a reduction in their overall work (including that of mothering) and the related constraints on their mobility. The emotional solidarity between specific kinswomen and men is a means which allows women to negotiate work-sharing arrangements as well as to imagine and exercise the possibility of selectively resisting familial authority over their bodies (whether exerted by local healers or by affines). The power and emotions of social relationships are reflected in women's high resort to local healers rather than public health agents for their reproductive complications. Choosing between healers is one way in which women manage the power that is exerted over them, and is therefore reflective of their autonomy in the face of familial and state control.

Appendix

Table A.1 Main reproductive vulnerabilities

Category	*Characteristics*
Menstruation-related (locally referred to as the 'problem of the month/flow/cloth')	Excessive bleeding Irregular bleeding Absence of bleeding Painful bleeding
Reproductive tract infections (RTIs) (or 'pain in the tubes')	Infections of the ovaries, fallopian tubes and uterus (including the cervix)
Vaginal discharge (or 'white water') related to RTIs above	–
Prolapse (or 'the body coming out')	Protrusion of the bladder, uterus and rectum
Anaemia (or 'weakness')	Moderate to severe haemoglobin levels (8–10 gram per cent)
Miscarriage (or 'to fall')	–
Sterility (or 'to be barren/empty')	Secondary and primary

Source: Primary fieldwork data, Jaipur district, 1998.

Table A.2 Diverse local specialists in childbirth and reproductive complications

Specialist	*Function*
Women and midwives	
Kin midwives (who are 'friends' and oversee)*	To 'hold'
Mothers, mothers-in-law (who have shame and only facilitate from afar)*	Knowledge/experience
Non-kin midwives lower caste* (women who clean)	To 'blame'
'Nurse' midwives (who have some basic medical training)	For emergencies
'City' midwives (who are specialist herbalists)	To terminate/grow
Spiritual healers (who treat afflictions relating to 'ill winds')	Menstrual disorders Infertility Suspected foetal disorders Infant mortality (resulting from the 'evil eye')
Private (and government) gynaecologists and clinicians	Dilatation and curettage (D&C)/ dilatation and evacuation ('cleansing') Medical termination of pregnancy ('cleansing') Ultrasound scan ('sonography') Tubectomy ('operation')

Source: Primary fieldwork data, Jaipur district 1998, 2000.
Note: * Attendance at birth depends on social intimacy rather than expertise alone.

Table A.3 Public health services in SW Jaipur: maternal care and resources

Population	*Expertise*	*Services*	*Operating facilities*	*Phone*	*Vehicle*
Sub-centre					
5,000	1 ANM 1 assistant	Internal examination Provision of iron-folic supplements and contraceptives	None No drip	None	None
Primary Health Care (PHC)					
30,000	1 doctor (rarely gynaecologist) Staff nurse Health-worker Health visitor Compounder Lab technician Sweeper Sanitary inspector	Family planning services as above	None Drip facility	Yes	None
Community Health Centre (CHC)					
100,000	4 doctors (including 2 gynaecologists) 1 surgeon 3 nurses 2 TB workers	8–10 beds for MCH* cases Routine delivery services No forcep deliveries Dilatation and evacuation service; No medical termination of pregnancy	None Drip facility No anaesthetist	Yes	Yes (but not used due to parking problems)

Source: Compiled from National Family Health Survey (NFHS) Rajasthan 1998–9 and fieldwork data.
Note: * Maternal and child health.

Notes

1 This chapter was first presented at the ASA meeting on Rights, Claims and Entitlements at the University of Sussex in April 2001, and subsequently at Cambridge in November 2001. I would like to thank members of both the anthropology groups at Sussex and Cambridge for their helpful suggestions and insights. Thanks as ever to Dr Bannerji and members of the Khejri Trust and voluntary health centre in Jaipur, Kamlesh, Zahida and Kavita Srivastava, and the Wellcome Trust for enabling the field research on which this chapter is based.

2 Following Moore, I use the word culture as a series of sites of contested representation and resistance within fields of power (2000: 11).

3 This is, as Hastrup suggests, because of the increasing tendency with which law is becoming central in replacing culture as defining a sense of belonging. Farmer (1999), writing on the relationship between health and human rights, shows how an exclusively legal perspective can obscure the extent of the violations involved. Asad (1997) is sceptical about the universalist discourses around cruelty and the ways in which cruelty is increasingly represented in a language of rights which denies the existence of alternative moral perspectives.

4 See Unnithan (Unnithan-Kumar) (1997, 1999, 2001, 2002).

5 The term 'state' in this chapter refers to the national Indian government (Indian state) and the regional governments (for example, state of Rajasthan).

6 Cornwall and Wellbourn also critique the focus on health as a way of addressing rights relating to reproductive and sexual well-being (2002).

7 The addition is particularly notable, as Petchesky points out, in that sexuality is conceived as something positive in itself and separate from childbearing and not linked to coercion, violence or abuse (2000: 83).

8 It is important to note that such deliberations were brought on by the sustained lobbying of feminist groups across the world.

9 Deepa Dhanraj's film *Something Like a War* provides powerful documentary evidence of the extent of state coercion and international collaboration in the area of family planning.

10 The high levels of secondary sterility I came across in Rajasthan lead me to suggest that, in fact, state health care programmes need to be more specifically focused, so, for example, for younger women they need to be concerned with a reduction in reproductive tract infections and treatment which enhances rather than controls fertility.

11 George's work (forthcoming) on the politics of the Quinacrine sterilization trials provides a good insight into the different ways authoritative knowledge in this domain is constructed and critiqued.

12 The economic reforms brought in by structural adjustment have, on the other hand, led to a constriction in public spending on health. For example, Seeta Prabhu (1999) notes that there has been a deceleration in the real capital revenue and capital expenditure on health since the mid-1980s, which is a trend in accordance with the World Bank's recommendations to confine the role of the public sector to providing preventive rather than curative services. From 1989 to 1995, the Union Government's revenue expenditure on medical, public health and family welfare fell from 3.04 per cent of the total revenue expenditure to 3.01 per cent of the same (Seeta Prabhu 1999: 121).

13 As Lock suggests, with medicalization,

> attention is deflected away from social arrangements and political forces that contribute to the incidence of distress and disease . . . subjectivity and

> symptom reporting are subsumed into medical pathologies and standard deviations from medical norms and the focus of attention is on the bodies of individuals who are essentially made responsible for their own condition.
> (2001: 481)

Although, as Lock notes, this concept needs to be refined to take into account more nuanced and diverse responses to biotechnologies.

14 For example, in Rajasthan, the feminist research component of the Women's Development programme initiated in 1984 was specifically concerned with transforming women's poor status in their communities through stimulating an awareness of their own capacity and abilities (Unnithan-Kumar and Srivastava 1997). The focus on self-awareness rapidly led to the exploration of the ways in which sexuality, fertility and bodily experiences were connected to the workings of institutional forms of power. There was the production of a growing literature in the vernacular on these themes by feminist grassroots groups (for example, Indian Women's Collective 1989) who drew on books such as *Our Bodies, Our Selves* and *Women's Body* at the same time as locating them within the cultural contexts of village women's lived experiences.

15 Feminist work on rights has been most productive where it has been involved in understanding the local contexts which frame the experience of sexuality, reproduction and motherhood (notable examples are IRRRAG's work (The International Reproductive Rights Research Action Group), Petchesky 1998 and the feminist activist groups in India working on raising women's self-awareness, such as the Indian Women's Collective [1989]). The work of national governments has been productive where they have supported such local initiatives and ensured their sustainability in the long term.

16 Recent pertinent work in anthropological demography, such as that of Townsend on the concepts of reproduction and parenthood (1997), suggests that fertility itself is a description of social relationships with offspring, and not simply an attribute of the individual.

17 As Lambert suggests, for Rajasthani villagers, the features of some conditions immediately point to the cause and thus treatment (1996: 1707).

18 The preference for local midwives, who are emotionally supportive and share women's life circumstances and experiences, to assist in regular birthing activities reflects the redundant role of the government-trained birth attendants, such as the ANMs. On the other hand, the demands for access to professional expertise reflect women's lack of command over the services of local midwives as well as the lack of expertise of the local midwives in dealing with obstetric complications.

19 This feeling is best reflected in poor women's tendencies in Rajasthan to delay seeking gynaecological advice until absolutely necessary, and to completely bypass semi-professional health advice, which is largely construed as irrelevant. What emerged from the many conversations I had was that poor urban and rural women were not particularly attached to the idea of seeking care from 'traditional' experts alone, or desirous of birthing at home, but more that their experiences of care from the public health services was one which was dominated by uncertainty, both in terms of the quality of care and in terms of the low degree of esteem accorded to them (Unnithan-Kumar 2002).

20 Auxiliary Nurse Midwives are the main public health agents who operate at the local level. Based at the health sub-centres of which they are in charge, the ANMs form the first point of contact with public health services for most rural women. The primary duties of the ANM lie in the area of immunization and maternal health care. In the area of maternal care ANMs are trained to assist women with

the normal deliveries of their children. They are further qualified to identify cases of high risk, which they are then required to refer onwards to better equipped and staffed health care centres higher up in the hierarchy of the health structure (see Appendix, Table A.3). More routinely, ANMs are meant to motivate women to seek safe outcomes for their pregnancies by accepting tetanus toxoid injections and iron and folic acid tablets.

21 One of the main reasons in Rajasthan for rejecting the services of the semi-professional worker like the ANM is for the correct perception that health workers at this level are unable to provide professional medical support (Unnithan-Kumar 2001). None of the 70 women I met had ever used the services of the ANM for the birth of their children. I found women at the neighbouring health sub-centres had a similar story to tell, that the ANM was rarely consulted because of the minimal services she had to offer them. This dismal picture of the smallest health service delivery unit in the state was further reinforced by the ANM herself. The ANM presented herself as someone who was overburdened, undertrained and under-resourced. She was overburdened in terms of the increasing number of records she was required to keep and the expectations of her to bring about a concrete transformation in birth rate statistics and health-seeking trends. The ANM in the villages where I was based felt undertrained in being able to cope with emergency obstetric care for which there was a great local demand. They felt under-resourced in terms of the restricted and poor supply of medicines, staff and equipment (Appendix, Table A.3). A consequence of the under-resourcing and undertraining was that the ANMs were held in low esteem by the members of the community whom they were meant to serve, leading to a low overall morale in this very crucial section of the public health sector.

22 On the preventive side of care, a fairly large proportion of women rejected all forms of contraceptives, vitamin supplements and preventive vaccines, mainly because of the physical pain caused by taking them (such as excess bleeding and stomach aches), or because they involved inappropriate (self-centred, physically intimate) discussions with men. One of the key tasks of the ANMs in motivating women to space their pregnancies through the use of contraceptives, such as *nirodh* condoms, *mala*-D hormonal pills and copper-T intrauterine devices, which are provided free of charge.

23 The hospitals were daunting partly because they were overcrowded, with long queues of patients who were waiting for appointments or operations and who were usually ill-informed of the procedures or the appropriate queues to stand in. They were also feared because of the attitudes of the staff and doctors who were invariably frustrated and rude, with little time for explaining their course of action to the women and their families.

24 The wards were dirty and the cleaning services provided depended on the patients' abilities to pay the relevant hospital staff. Also, as most of the patients were poor and as the hospital provided services free of charge, public hospitals were regarded by most people as places where only those poorer and of lower social status than them would go.

25 A similar observation is made by Petchesky (1998).

26 As Aruna Roy, one of the main founders of the Mazdoor Kisan Shakti Sangathan movement and the Right to Information Campaign in Rajasthan has so pertinently argued, the right to information provides a bridge between human rights and economic rights (personal communication, 2002).

Bibliography

Asad, T. (1997) 'On Torture, or Cruel, Inhuman and Degrading Treatment', in A. Kleinman, V. Das and M. Lock (eds) *Social Suffering*, Berkeley: University of California Press.

Baer, H., Singer, M. and Susser, I. (1997) 'The Pursuit of Health as a Human Right', in *Medical Anthropology and the World System: A Critical Perspective*, Westport, CT: Bergin and Garvey.

Carsten, J. (ed.) (2000) *Cultures of Relatedness: New Approaches to the Study of Kinship*, Cambridge: Cambridge University Press.

Chayanika, Swatija and Kamaxi (1999) *We and Our Fertility: The Politics of Technological Intervention*, Bombay: Comet Media Foundation.

Cornwall, A. and Wellbourn, A. (eds) (2002) *Realising Rights: Transforming Approaches to Sexual and Reproductive Wellbeing*, London: Zed Books.

Correa, S. and Reichmann, R. (1994) *Population and Reproductive Rights: Feminist Perspectives from the South*, London: Zed, in association with Dawn.

Cowan, J., Dembour, M. and Wilson, R. (2001) *Culture and Rights*, Cambridge: Cambridge University Press.

Csordas, T. (ed.) (1994) *Embodiment and Experience: The Existential Ground of Culture and Self*, Cambridge: Cambridge University Press.

Csordas, T. (2000) 'The Body's Career in Anthropology', in H. Moore (ed.) *Anthropological Theory Today*, Oxford: Polity Press.

Das, V. (1995) *Critical Events: An Anthropological Perspective on Contemporary India*, Delhi: OUP.

Davis-Floyd, R. and Sargent, C. (1997) *Childbirth and Authoritative Knowledge: Cross-Cultural Perspectives*, Berkeley: University of California Press.

Dembour, M.-B. (1999) 'Medical Care as Human Right: The Negation of Law, Citizenship and Power?', in T. Kohn and R. McKechnie (eds) *Extending the Boundaries of Care: Medical Ethics and Caring Practices*, Oxford: Berg.

Dhanraj, D. (1992) 'Something Like a War', film, Mumbai: Tata Institute of Social Sciences.

Edwards, J. and Strathern, M. (2000) 'Including Our Own', in J. Carsten (ed.) *Cultures of Relatedness: New Approaches to the Study of Kinship*, Cambridge: Cambridge University Press.

Farmer, P. (1999) 'Pathologies of Power: Rethinking Health and Human Rights', *American Journal of Public Health* 89: 1486–96.

George, A. (forthcoming) 'In Search of Closure for Quinacrine', in M. Unnithan-Kumar (ed.) *Reproductive Change, Medicine and the State: Ethnographic Explorations of Agency in Childbearing*, Oxford: Berghahn.

Ginsburg, F. (1989) 'Dissonance and Harmony: The Symbolic Function of Abortion Activists' Life Stories', in *Interpreting Women's Lives: Feminist Theory and Personal Narratives*, Bloomington: Indiana University Press.

Ginsburg, F. and Rapp, R. (eds) (1995) *Conceiving the New World Order: The Global Politics of Reproduction*, Berkeley: University of California Press.

Gittelsoln, J., Bentley, M., Pelto, P., Nag, M., Pachauri, S., Harrison, A. and Landman, L. (eds) (1994) *Listening to Women Talk about Their Health: Issues and Evidence from India*, Delhi: Ford Foundation.

Good, B. (1994) *Medicine, Rationality and Belief: An Anthropological Perspective*, Cambridge: Cambridge University Press.

Govt. of Rajasthan (1999) *Population Policy of Rajasthan*, Rajasthan: Dept. of Family Welfare.

Greenhalgh, S. (ed.) (1995) *Situating Fertility: Anthropology and Demographic Enquiry*, Cambridge: Cambridge University Press.

Hartmann, B. (1995) *Reproductive Rights and Wrongs: The Global Politics of Population Control*, Boston, MA: South End Press.

Hastrup, K. (2001) 'Representing the Common Good: The Limits of Legal Language', paper presented at the ASA meeting on Anthropological Perspectives on Rights, Claims and Entitlements, Human Rights Institute, Copenhagen.

Indian Women's Collective (1989) *Sharir ki Jankari* (*Knowledge of the Body*), New Delhi: Kali for Women.

Jeffrey, R. and Jeffrey, P. (1993) 'Traditional Birth Attendants in Rural North India: The Social Organisation of Childbearing', in S. Lindenbaum and M. Lock (eds) *Knowledge, Power and Practice: The Anthropology of Medicine and Everyday Life*, Berkeley: University of California Press.

Kertzer, D.I. and Fricke, T. (1997) *Anthropological Demography: Toward a New Synthesis*, Chicago: University of Chicago Press.

Lambert, H. (1996) 'Popular Therapeutics and Medical Preferences in North India', *The Lancet* 348 (21–8 December): 1706–9.

Lock, M. (2001) 'The Tempering of Medical Anthropology: Troubling Natural Categories', *Medical Anthropology Quarterly*, new series 15(4): 478–92.

Lutz, C. and Abu-Lughod, L. (1990) *Language and the Politics of Emotion*, Cambridge: Cambridge University Press.

Lutz, C. and White, G. (1986) 'Anthropology of Emotions', *Annual Review of Anthropology* 15: 405–36.

Lyon, M. and Barbalet, S. (1994) 'Society's Body: Emotion and the "Somatisation" of Social Theory', in T. Csordas (ed.) *Embodiment and Experience: The Existential Ground of Culture and Self*, Cambridge: Cambridge University Press.

Martin, E. (2000) 'Mind-Body Problems, AES presidential address', *American Ethnologist* 27(3): 569–90.

Moore, H. (2000) 'Anthropological Theory at the Turn of the Century', *Anthropological Theory Today*, Oxford: Polity.

Parker, R., Barbosa, R.M. and Aggleton, P. (2000) *Framing the Sexual Subject: The Politics of Gender, Sexuality and Power*, Berkeley: University of California Press.

Petchesky, R. (1995) 'The Body as Property: A Feminist Re-vision', in F. Ginsburg and R. Rapp (eds) *Conceiving the New World Order*, Berkeley: University of California Press.

Petchesky, R. (2000) 'Sexual Rights: Inventing a Concept, Mapping an International Practice', in R. Parker, R.M. Barbosa and P. Aggleton (eds) *Framing the Sexual Subject: The Politics of Gender, Sexuality and Power*, Berkeley: University of California Press.

Petchesky, R. and Judd, K. (1998) *Negotiating Reproductive Rights: Women's Perspectives Across Countries and Cultures*, London: Zed.

Ram, K. and Jolly, M. (1998) *Maternities and Modernities: Colonial and Postcolonial Experiences in Asia and the Pacific*, Cambridge: Cambridge University Press.

Ramasubban, R. and Jejheebhoy, S. (2000) *Women's Reproductive Health in India*, Rawat: Jaipur.

Rapp, R. (1993) 'Accounting for Amniocentesis', in S. Lindenbaum and M. Lock (eds) *Knowledge, Power and Practice: The Anthropology of Medicine and Everyday Life*, Berkeley: University of California Press.

Rapp, R. (2001) 'Gender, Body, Biomedicine: How Some Feminist Concerns Dragged Reproduction to the Center of Social Theory', in *Medical Anthropology Quarterly*, new series 15(4): 466–78.

Rosaldo, M. (1984) 'Towards an Anthropology of Self and Feeling', in R. Shweder and R. Levine (eds) *Culture Theory: Essays on Mind, Self and Emotion*, Cambridge: Cambridge University Press.

Rozario, S. (1998) 'The Dai and the Doctor: Discourses on Women's Reproductive Health in Rural Bangladesh', in K. Ram and M. Jolly (eds) *Maternities and Modernities,* Cambridge: Cambridge University Press.

Scheper-Hughes, N. (1995) 'Primacy of the Ethical', *Current Anthropology* 36(3).

Seeta Prabhu, K. (1999) 'Structural Adjustment and the Health Sector in India', in Mohan Rao (ed.) *Disinvesting in Health: The World Bank's Prescriptions for Health*, New Delhi: Sage.

Shweder, R. (1991) 'Menstrual Pollution, Soul Loss and the Comparative Study of Emotions', in R. Shweder (ed.) *Thinking through Cultures: Expeditions in Cultural Psychology*, Cambridge, MA: Harvard University Press.

Stivens, M. (2000) 'Gender Politics and the Reimagining of the Asia Pacific', in A. Hilsdon, M. Macintyre, V. Mackie and M. Stivens (eds) *Human Rights and Gender Politics*, London: Routledge.

Strathern, M. (1984) 'Subject or Object? Women and the Circulation of Valuables in Highlands New Guinea', in R. Hirschon (ed.) *Women and Property: Women as Property*, London: Croom Helm.

Strathern, M. (1992) *Reproducing the Future: Essays on Anthropology, Kinship and the New Reproductive Technologies*, Manchester: Manchester University Press.

Townsend, N. (1997) 'Reproduction in Anthropology and Demography', in D. Kertzer and T. Fricke (eds) *Anthropological Demography: Toward a New Synthesis*, Chicago: University of Chicago Press.

Unnithan see Unnithan-Kumar.

Unnithan-Kumar, M. (1997) *Identity, Gender and Poverty: New Perspectives on Caste and Tribe in Rajasthan*, Oxford: Berghahn.

Unnithan-Kumar, M. (1999) 'Households, Kinship and Access to Reproductive Healthcare among Rural Muslim Women in Jaipur', *Economic and Political Weekly of India* 6–13 March.

Unnithan-Kumar, M. (2001) 'Emotion, Agency and Healthcare: Women's Experiences of Reproduction in Jaipur', in S. Tremayne (ed.) *Managing Reproductive Life: Cross-cultural Themes in Fertility and Sexuality*, Oxford: Berghahn.

Unnithan-Kumar, M. (2002) 'Midwives among Others: Knowledges of Healing and the Politics of Emotions in Rajasthan, NW India', in G. Samuels and S. Rozario (eds) *Daughters of Hariti: Birth and Female Healers in South and Southeast Asia*, London: Routledge.

Unnithan-Kumar, M. (2003) 'Spirits of the Womb: Migration, Reproductive Choice and Healing in Rajasthan', *Contributions to Indian Sociology* (*Migration and Modernities in South Asia,* a special issue edited by F. Osella and K. Gardner).

Unnithan-Kumar, M. (ed.) (forthcoming) *Reproductive Change, Medicine and the State: Ethnographic Explorations of Agency in Childbearing,* Oxford: Berghahn.

Unnithan-Kumar, M. and Srivastava, K. (1997) 'Gender Politics, Development and Women's Agency in Rajasthan', in R. Grillo and R. Stirrat (eds) *Discourses of Development: Anthropological Perspectives*, Oxford: Berg.

Wilson, R. (ed.) (1997) *Human Rights, Culture and Context: Anthropological Perspectives*, London: Pluto Press.

Chapter 10

Rights and the poor

John Gledhill

In Amartya Sen's usage (1981), 'entitlements' refer to the ability of persons to acquire access to food and other goods through the legal channels established in a society. These might include self-provisioning on the basis of direct control of the resources needed for livelihood and the exchange of money for goods on the market, but they also include claims on the state, acquired through the official recognition of public claims and rights. To the extent that 'rights' are legislated, they apply to defined categories of persons. National states may extend or circumscribe the rights of aliens who find themselves within their borders through legislation, and they may also subscribe to international agreements on the rights that non-citizens or foreign corporate entities should enjoy within their jurisdictions.[1] The 'citizen' is, however, the most inclusive category routinely involved in the specification of rights and entitlements at the level of national legislation, and much of the social legislation of the nineteenth and twentieth centuries was applied to more restricted categories, such as organized labour.

The socio-economic rights defined by the 1948 UN Universal Declaration of Human Rights defined minimum standards of entitlements to be enjoyed by all individuals and households globally. Yet, by the end of the twentieth century, the realization of the standards embodied in these clauses remained an aspiration rather than a reality, even in some of the world's richest countries (Gledhill 1997). By the time that the UN Copenhagen Summit renewed Poverty and Social Development as central to the global agenda in 1995, it had become all too clear that there was a fundamental problem in basing any new 'war' on global poverty on the terrain of the politics of rights. Mexican sociologist Julio Boltvinik puts the matter as follows:

> while the workers' gains expressed themselves as rights stipulated in legislation – above all, in labour and social security laws – conventional proposals for a fight against poverty take the form of more or less discretionary government policies, not only in Mexico but throughout the world. The poor person appears not as a subject of rights but as a receiver

> of transfers to which he can only respond with his vote. Where citizenship ends, charity and manipulation for electoral purposes[2] begins.
> (Boltvinik and Hernández Laos 2000: 14; my translation)

The answer to the question, 'What are the entitlements of the poor?', thus appears to be, 'Whatever governments think it necessary to concede (to "public opinion" as much as to the poor themselves) in order to stay in power'. Indeed, methods of measurement of the incidence and intensity of poverty have a clear tendency to reflect political definitions of what is deemed viable (ibid.: 56). Measures may be based on a 'poverty line' associated with income or consumption, or an index of absolutely defined 'basic necessities' which individuals or households may lack, such as drinkable water. Yet in either case, a 'politically acceptable' tally can readily be manufactured by raising or lowering the line or adding or subtracting from the list of 'basic necessities'.

This does not, of course, mean that governments always get their calculations right from the electoral point of view. The emergence of something of a vogue for 'third way' political discourse in Latin America at the start of the new millennium reflected a perception that there were widespread aspirations for states to offer more to the average citizen in the form of entitlements to socio-economic and physical security. It is, however, clear that the classic issues of distribution of income and social welfare now have a more complex politics. We live in a world in which the social categories to which rights and entitlements may be attached have lost the clarity that they appeared to have in the nineteenth century, when the proletariat might still be painted as a universal class in the making.

Rights-bearing subjects in the twenty-first century

Contemporary doctrines of universal human rights are, in principle, blind to differences of gender and culture. They are also strongly assertive of the unity of humanity against the racial qualifications through which the old colonial world denied the fitness of non-white and mixed-race persons to discharge the full responsibilities of the bourgeois citizen (Stoler 1995: 130). In contrast to early formulations of political liberalism, modern doctrines also reject the idea that rights are consequent on education for the proper discharge of the responsibilities of citizenship, a principle that also reflected a blurring of ideas about class and race within the metropolis itself. The core idea of seventeenth-century liberalism, as defined by Macpherson (1962), was that full freedom could only be enjoyed by those who possessed full 'property of their persons' (were not servants or employees). Its meaningfulness is reduced in an age in which few enjoy such social autonomy. Yet old battles continue to be fought, in particular those in which the welfare

of the many demands circumscription of the freedoms associated with property, economic power and enterprise.

This reflects the fact that 'the many' face a problem of political representation and action. As organized interests or coalitions in civil society, their demands have difficulty seizing the ethico-political high ground as universal rather than sectional – a classic example of this problem being trade unionism. As the demands of individual citizens, they become subsumed under the general will of an anonymous majority more apt to be spoken for or 'silent' (Bartra 1992) than given opportunities for independent voice. Alternatively, they are calculated in terms of their political value – which is zero for those who cannot vote or swing electoral results (Bourdieu 1991: 188). One effect of this dilemma is to keep the proper role of the state at the heart of the debate about social justice. Another is to place a premium on the political value of claims for new forms of legally recognized entitlements that evoke offences against the shifting global social sensibilities underlying contemporary forms of universalism, some of which present national states with problems rarely encountered in the past.

The claims of 'indigenous peoples', for example, are by definition claims grounded in a colonial past of invasion and expropriation, even if their urgency is tied to contemporary processes of genocide, ethnocide, further threats to resources and territory, and persistent social discrimination. The category 'indigenous person' is neither transparent nor immune from disputation in any given social and political context.[3] But it is a prime example of a contemporary process by which certain groups can escape anonymity and achieve a distinct 'social personality'. Such a distinct personality can underpin claims to entitlements that may not only secure recognition by national states but also enjoy the advocacy and support of networks and actors beyond national boundaries (possibly including the governments of other states and certainly including transnational NGOs and voluntary associations of foreign citizens). An obvious difficulty with this kind of claim is that it rests on the notion of redressing a foundational historical injustice on the basis of an *identity claim* in the present. Although the case may be reinforced by arguments about contemporary disadvantage premised on discrimination in terms of ethnic identity, citizens who cannot successfully appropriate that identity but might be considered equally disadvantaged cannot evoke a historical claim of the same kind.

There is no post-colonial moral load attached to being a poor *mestizo* in a Mexican city that can support a claim to compensation. Yet the ancestors of the poor *mestizo* in question might, in fact, have been evicted by violence from their share of the common property of what was once a legally recognized 'Indian' community. Nor can arguments about the nature of the transition from feudalism in Europe be invoked to ground contemporary claims to redress on the part of poor families in European cities. This reflects the way that entitlements are generally redefined by historical changes in laws

relating to property and relations between persons that reflect shifting patterns of class and political domination. A changing global imaginary of social justice has made it possible for certain groups to demand a different treatment under the law through an expanded definition of social personhood that escapes the constraints of being defined as an individual citizen, *tout court*. Yet such a politics of compensation does not seem capable of resolving the larger problem provoked by rising social polarization. This is especially true in largely urbanized societies in which social anonymity can actually be advantageous for those poor people whose survival strategies depend on evading the state, while the range of identity options might include joining a street gang or working for a drug dealer (both of which tend to be ways of acquiring individual 'respect'), joining street trader or local residents' movements and membership of Christian Base Communities or Evangelical Churches.

However, while collective identities may be important for grounding some of the claims poor people make and their ability to make their voices heard, the language of human rights itself remains predominantly individualizing. This is the basis for many critiques of the universality of western human rights discourse. One line of critique focuses on the individual versus the collective. Indigenous rights doctrines often seek to reconstitute collective subjects of rights, whose entitlements are themselves defined in collectivist or communalist terms: rights to possess and enjoy property collectively and to practise communal forms of decision-making and self-government (Gledhill 1997). But another line of critique focuses on efforts to impose a universal framework of moral understandings. This is not simply the conventional cultural relativist point, but can also be applied to efforts to judge behaviours across the lines of class position. As Nancy Scheper-Hughes notes, one of the ironies of early responses to efforts by progressive Catholics and leftist political parties, encouraged by Amnesty International, to foster a concern for human rights in Brazil (in the late 1970s and early 1980s) was that some of the poor people with whom she worked in the Alto de Cruzeiro *barrio* readily subscribed to the elite critique of the new doctrine as a dispensation to 'criminals' (Scheper-Hughes 1992: 227–8). Not only did the class violence of the same elite go unrecognized as the basis for the reproduction of poverty and violence amongst the poor, along with the role of carceral and police institutions in routinizing everyday patterns of practical inequality before the law. The same elite was also able to use the principle that each individual life counts as equal in value to condemn the way poor women appeared to neglect some of their children. In Scheper-Hughes's analysis, social circumstances induce a different 'ethic of caring' among poor women (that entails a certain denial of the personhood of infants), in the form of a 'morality of triage' (ibid.: 405). Appeal to an absolute, supposedly universal, standard of rights assigned to each individual cannot be meaningful where the basic structures of socio-economic inequality deny some individuals the space to work with those kinds of standards.

Thus, as the editors point out in their introduction to this volume, rights regimes have a habit of converting themselves into regimes of truth that require a contextualized social critique. Yet from the point of view of practice, the assumption of western rights discourse that individuals are the ultimate bearers of rights is itself a strength as well as a weakness in some contexts. Where, for example, indigenous communities are given the right to govern their internal affairs by 'communal consensus', dissenting individuals may be severely disadvantaged, by, for example, loss of their rights to reside and hold land in the community. Non-Catholics in indigenous communities in Mexico have, in fact, frequently invoked human rights legislation in appeals to higher instances of political and juridical authority against community governments. Yet it is impossible to analyse either the causes or possible resolution of these conflicts in abstraction from the particular ways in which they are politicized and the social cleavages that they embody. In general, as the number of rights it is deemed appropriate to recognize has increased, so has the possibility of extending protection to minorities of various kinds. The changing sensibilities of western liberal societies have allowed debate around the issue of the dictatorship of majorities, even if governments of all (electable) hues remain dedicated to socially 'normalizing' rhetoric and to proclaiming the virtues of constructed 'mainstream' national cultures.

Indeed, debates about poverty and injustice on a global scale have provoked a certain amount of dissidence and 'disloyalty' to the national state on the part of concerned citizens. One example would be the Quakers who founded the Sanctuary movement to help Central American refugees denied legal entry into the United States (Cunningham 1995). The counterpoint to the New Right in North America, these advocates of a Christian universalist ethic challenged the moral authority of national states. The example serves to remind us that liberal humanism is not the only source of argument about rights and entitlements, and that religion has lost none of its centrality to debates about social justice and freedom, though it now grounds diametrically opposed positions.[4]

The extension of the subjects of rights has, however, continued to place strains on the universalism of legislation. Children have also become subjects of specific rights. Yet what, cross-culturally, is 'a child'? What effect should we allow the idea that children have a right to a childhood and protection from economic exploitation to have on the immediate welfare of families with working children? The only way forward to resolving such contradictions would again appear to be a recognition that child labour is embedded in a 'larger sea of economic inequalities which affect adults as well as children, men and women as well as boys and girls' (Levine 1999: 152).

The fact that the social and cultural values of societies that are relatively affluent have continued to play a prominent role in defining the terrain of 'universal' rights discourse does not, in itself, invalidate the discourse as a set of goals. It can, however, be argued that there is a hegemonic thrust to the

way western rights discourse operates that resides in its individualistic premises, and that this limits its value for some potential beneficiaries. It can also be argued that a partial, western-orientated field of rights politics actually fails to address the central conditions that perpetuate and may deepen global social injustice. As Levine asks in the case of the campaign against child labour (with specific reference to the new South Africa):

> Could it be . . . that the millions of dollars and large amounts of human energy being spent globally to end child labour are part of a larger hegemonic movement where freedom in the name of democracy is reinforcing other social inequalities in which child labour is embedded? (Ibid.)

Petras and Morley (1992: 160) have argued that studies of Latin American dictatorship focused on violation of human rights obscured the way military regimes implemented a form of class domination ultimately tied to North Atlantic interests. The political framework of neoliberalism continues to impose a model of capitalist development sponsored by the North through different mechanisms. This argument might also be invoked in the context of the outcomes of the Truth and Reconciliation process in South Africa.[5] Yet some would argue that any hegemonic thrust behind global campaigns to foster liberal democracy and respect for human rights is countered by the changing and growing role of local and transnational non-state actors in the global politics of rights and entitlements.

Hegemonic and counter-hegemonic dimensions of NGO interventions

Given their diversity, it might be expected that the impact of NGOs would be far from uniform in terms of supporting or challenging a global order of things dominated by North Atlantic countries. But it is also influenced by their organization and positioning in ways that cannot be predicted simply from their explicit goals and social and political orientation.

As professionalized organizations with their own agendas, poverty alleviation, environmentalist and indigenous rights NGOs may subtly disempower those they seek to aid. In some cases, the mission of the NGO is directly supportive of agendas premised on the idea of individual self-help and 'empowerment'. Poor urban people eager to start individual small businesses may be more attractive than those with a more collectivist ethos (Gill 1997). In other cases, NGO intervention produces unintentionally contradictory consequences: community leaders become semi-professionalized and detached from their original social base as they learn to navigate the new circuits of NGO politics and funding (Warren 1998). This is often the case in the Mexican state of Chiapas, to which a plethora of new NGOs have

been attracted since the 1994 Zapatista uprising.[6] The community development projects run by foreign NGO activists have sometimes been offered only to pro-Zapatista factions in divided communities, ironically mimicking the tactics once associated with the former ruling party, the PRI (Partido Revolucionario Institucional).[7] Many of these involve assets which can be enjoyed by individual families. Efforts to 'empower women' by fostering new forms of production and sponsoring exclusively female forums within community life have provoked a male backlash, while the lifestyles of foreign activists have sometimes offended local sensibilities. Most problematic of all, however, is the way a certain lack of cultural and social sensibility reflects the determined pursuit of utopias of 'alternative development' conceived outside the region and not systematically adapted to its people's own perceived needs and aspirations. The NGO presence in Chiapas has therefore had mixed results. Though many of them might be seen as positive, not least in their contributions to moderating repression, interventions have also produced tensions and conflicts.

Another constraint on the way NGOs work is that local projects have to be adapted to the interests and visions of sponsors. The latter may construct the beneficiaries of funds in ways that reflect social and cultural distance. Thus 'exotic' Indians preserving a 'traditional culture' seem more worthy of support than 'acculturated' people. As Alcida Ramos (1998) notes in the case of Brazil, 'real' flesh and blood Indians tended to disappoint the organizations that sought to help them. Leaders did deals with the military and private companies, earning the opprobrium of other indigenous groups. When these deals failed to deliver protection from exploitation, violence and dispossession, the NGOs turned a deaf ear. In contrast to the 'hyperreal' Indians that NGO sponsors constructed in their imaginaries, real Indians could not be trusted to act as guardians of an unspoiled 'nature' and often seemed uninterested in being objects of 'cultural conservation'. They changed, they acted, they grabbed opportunities as individuals, and then they quarrelled over the consequences. In this context, acting as potential individual subjects of rights ironically becomes a barrier to people receiving entitlements through organizations that work with a different construction of the rights-bearing subject.

Yet NGOs do come in many different hues, and there are senses in which the global role of many could be seen as counteracting existing political and economic hegemonies. This perspective has certainly been taken seriously by scholars associated with the US National Security Apparatus. Let me again take the case of Chiapas as an example of what some commentators see as the menacing implications for traditional forms of national and global governance of the 'swarming' of loose networks or rhizomes of acephalous, polycentric and transnational organizations:[8]

> The EZLN's insurrection and the government's response aroused dozens if not hundreds of representatives of numerous human-rights,

> indigenous-rights, and other types of activist nongovernmental organizations (NGOs) to 'swarm' – electronically as well as physically – out of the United States, Canada, and elsewhere into Mexico City and Chiapas. There, they linked up with Mexican NGOs to voice sympathy if not solidarity with the EZLN's demands. They began to press nonviolently for a cease-fire, military withdrawal, government negotiations with the EZLN, democratic reforms, and for access by the NGOs to monitor conditions in the affected zones.
>
> This active response by a multitude of NGOs to a distant upheaval – the first major case anywhere – was no anomaly. It built on decades of organizational and technological groundwork, and shows how the global information revolution is affecting the nature of social conflict. The NGOs formed into vast, highly networked, transnational coalitions to wage an information-age *netwar* to constrain the Mexican government and support the EZLN's cause.
>
> The Zapatistas are insurgents. But the widespread argument that they are the world's first post-Communist, postmodern insurgents makes a point that misses a point: Their insurgency is novel; but the dynamics that make it novel – notably, the links to transnational and local NGOs that claim to represent civil society – move the topic out of a classic 'insurgency' framework and into an information-age 'netwar' framework.
>
> (Ronfeldt and Martínez 1997: 370–1)

From this perspective, peaceful NGOs form part of the same larger problem and process as violent terrorist networks of the Bin Laden variety. This demands a radical shift in superpower military and diplomatic strategies. The 'swarming' of networked non-state agents 'may be welcomed by many actors around the world as a way to reshape global competition and assemble social forces to overturn the existing order of world power led by the United States' (Arquilla and Ronfeldt 2000: 3). Although those who write about these matters are careful not to imply that all 'social netwars' are 'bad' in their implications – Ronfeldt and Martínez refer to 'progressive and regressive' variants, with the latter exemplified by extreme Right groups in the US (1997: 374) – concerns about 'stability' and 'divisiveness' are prominent. In the case of Mexico, our authors (rather grudgingly) conclude that: 'social netwar is an agent of change that may have both positive and negative effects' since it 'can disrupt a slowly liberalizing authoritarian regime, put it (and its military) on the defensive, and, to some extent, help spur new steps towards democratization' (Ronfeldt and Martínez 1997: 387). On this reading, national and transnational NGOs networked with local actors impede the management of political and social change by global hegemonies, producing 'political and social challenges and opportunities that differ radically from those we have traditionally confronted, *or desired*' (Arquilla and Ronfeldt 2000: 3; emphasis added).

The idea that global networks of NGOs and 'third sector' voluntary organizations offer a significant counterweight to corporate power and may promote 'responsible capitalism' has also been evoked by Anthony Giddens as part of his defence of the 'third way' paradigm (Giddens 2000: 144), discussed in more detail below. It can be argued that these developments disrupt the conventional framing of subjects of rights as citizens and nationals. In addition to NGOs whose interests are in social justice abroad, civilizing global capitalism and/or preserving and respecting social and cultural diversity, organizations such as Justice for Janitors in the United States have taken up the question of the rights of immigrant workers within metropolitan countries. Although the short-term embarrassment caused to corporations by public exposure of their treatment of such workers has not yet led to sustained strategic gains for the latter,[9] this is another example of the way that the debate over entitlements can be broadened and to some extent internationalized.

Yet, even leaving aside the amount of intellectual effort currently being expended in the centres of global economic and military power on devising strategies to limit the effectiveness of 'progressive swarming', much of the latter seems to succumb to other kinds of internal contradictions simply because of the depth of socio-economic inequality now congealed in the global order. Respect for democratic rights is a necessary condition for open debate about different models of social justice. Yet the value of 'free and fair' elections may seem limited to families that face increasing impoverishment irrespective of their electoral choices. Freedom from arbitrary arrest and inhuman and degrading treatment at the hands of other citizens or agents of the state is a necessary condition for minimum standards of social welfare. But obliging states to respect human rights does not necessarily reduce the amount of violence citizens experience if growing impoverishment wears down the fabric of sociality in other ways and consigns an increasing proportion of the population to prisons.

As I noted earlier, concern with this issue has prompted an increasing emphasis on 'third way' alternatives to neoliberal strategies in Latin America. The term 'third way' is no newer in that region than it is in Europe. Its previous Latin American incarnation was associated with the Catholic Church's efforts to chart an alternative to free-market capitalism and socialism in the late nineteenth and early twentieth centuries. Nevertheless, as in the case of Europe, Latin American 'third wayers' tend to describe themselves as a 'democratic left' or 'modernizing social democrats' and argue that their approach is a response to irreversible social changes brought about by globalization. Like their European counterparts, they argue that state-led development failed and that traditional left projects are obsolete, although the Latin American version still envisages a rather stronger role for the state and public expenditure than the Anglo-Saxon variants on both sides of the Atlantic.

The cornerstone of 'third way' positions is that rights must be matched by responsibilities, a concept of 'social citizenship' that applies equally to rich

and poor, business corporations and private individuals (Giddens 2000: 52). Although the way modernizing social democracy seeks to reconstitute 'the social' against the dissolving influences of the market echoes communitarian calls to 'restore civic virtues', it is *anti-communitarian* in the sense that it sees all forms of 'community-based' identity politics as potentially divisive and exclusionary, 'difficult to reconcile with the principles of tolerance and diversity on which an effective civil society depends' (ibid.: 64). Civil society is seen as 'fundamental to constraining the power of both markets and government' and itself 'supplies the grounding of citizenship' (ibid.: 65). A stable civil society 'incorporates norms of trust and social decency' (ibid.: 165) and third way politics are not, their advocates claim, a variant of neoliberalism. This is because they not only advocate the continuing provision of public goods, but the subjection of market-based decisions to social and ethical criteria defined by a 'healthy' civil society capable of consummating a 'democratization of democracy' through devolution of power (ibid.: 33, 61).

These claims seem, at first sight, to address the problems discussed earlier in this chapter. They promise a non-clientalistic approach to the problems of poverty and social inequality and they address some of the difficulties associated with community and identity-based claims to entitlements. There are, however, both theoretical and practical objections to the vision they embody.

Normalizing inequalities

Much of Giddens's argument about the need for a new politics for a new era covers familiar ground. He invokes, for example, the de-industrialization argument for the irrelevance of class, with a particular focus on the way the emergence of an IT-based middle class of 'wired workers' breaks down past divisions between 'Left' and 'Right' (Giddens 1999). These people care about GM foods and human rights, but don't want to pay more taxes. Yet he does not look at the economics of the new economy very carefully. If we look at what 'wired workers' actually earn, we find that wage trends for white-collar and college-educated workers in the US were not particularly favourable through the 1990s. Even newly hired engineers and scientists in the IT industry were earning less in 1997 than their counterparts did in 1989 (Mishel *et al.* 2001). The generalized experience of white-collar workers in the 1990s mirrored that of blue-collar workers in the 1980s – wage losses, displacement from downsizing and job instability (Mishel 1999).

Although this can be seen as continuity in capitalism's 'laws of motion' which affects 'the new economy' as much as the old, changes in the structure of the capitalist accumulation process are significant. Middle-class households that do not benefit from stock market hikes, for example, have done relatively badly relative to other groups above and below them in recent years. Nevertheless, the statistics Giddens bandies about do not appear

to distinguish the staff of call centres from the different grades of software engineers (some of whom are casually employed, and perform functions subject to deskilling as new programming tools are developed). The California on which Giddens occasionally gazes appears to lack sweatshops and low-pay service occupations, and the word 'race' scarcely appears in his texts. Yet what seems most striking about his presentation of our new economic realities is the way it displaces the issue of real income inequalities from a central place in the discussion.

Giddens does not attempt to deny that the decline in inequalities of wealth and income that characterized 'developed' countries from 1950 to 1970 have generally been reversed. But he does highlight the differences between countries in levels of inequality and foregrounds an apparent diminution in inequality in the country with the most unequal distribution of income, the United States. He notes, in particular, that the income share of Blacks and Latinos rose by 15 per cent between 1992 and 1998 (Giddens 2000: 90–1). Yet this seems to be basically a result of declining rates of unemployment within minority groups, rather than reductions in wage disparities. Despite the widespread improvements in living standards of the last few years, very little of the 20.5 per cent increase in productivity achieved in the US between 1989 and 1999 went to working people. Wage *inequality* actually increased, and the share of income distribution accruing to the owners of business grew steadily, magnifying the gap between top and middle income earners (Mishel *et al*. 2001). This leaves inequality in the United States high in historic terms and, more significantly, high in comparison with other industrialized countries, since low-wage workers and the growing number of men and women in 'non-standard occupations' earn less in real terms. The percentage of children living in poverty is double that of other advanced industrial countries. Of these one in five poor children, Black and Latino families registered the highest proportion (ibid.). Health service coverage of the workforce was lower in 1998 than in 1979 (62.9 per cent) and only half the workforce had pension coverage.

Since Giddens does not deny that global trends towards rising income inequality exist, it perhaps does not matter too much how sound his arguments on particular countervailing tendencies may be. However, those just discussed are reinforced by other arguments urging us to take a broader view of what social inequality is and reflect more deeply on its causes. On this front, we are offered the evidence of opinion surveys on 'social egalitarianism', illustrated by women becoming more equal to men in social and cultural terms (Giddens 2000: 91). The over-representation of women and children among the poor is thus said to reflect the wider gains that women have made, since single-parent households reflect 'the increasing autonomy of women' (ibid.) One could, however, readily turn this line of argument on its head and say that, even where income inequality is declining, qualitative changes in lifestyles and working patterns might diminish the returns

of such changes to people and social life. One of the most obvious downsides of the US's 'improvements of living standards' under Clinton was the growth in the hours worked (and work pressures and insecurities) experienced by even the better-off sectors of the workforce (Mishel *et al.* 2001). Another was the rise in consumer personal debt behind the apparent rise in living standards.

Giddens is perhaps less interested in these issues simply because he takes the view that old 'emancipatory projects of the left' are rendered obsolete by social change. They should be replaced by a 'life politics' that enables individuals to feel 'fulfilled' by, for example, being allowed to continue to work past the normal age of retirement (Giddens 2000: 40). Modernizing social democracy (like liberalism) is focused on equality of opportunity, and its advocates should be prepared to accept higher rather than lower levels of income inequality as a correlate of the incentives and freedoms integral to the model (ibid.: 86). Giddens suggests that high levels of social and cultural diversity are to be counted amongst the gains of reconciling equality with pluralism and 'lifestyle diversity', 'since individuals and groups have the opportunities to develop their lives as they see fit' (ibid.). Policies to promote equality should focus on enhancing 'social capabilities' in Sen's sense (1992). *Inter alia*, this will still require some mechanisms for redistribution of income to guarantee that the children of today's (relative) 'failures' have an equal chance of self-realization. Freedoms defined as the capability to pursue well-being by making use of social and material goods are distinct from neoliberal freedoms in that they are exercised through membership of groups, communities and cultures (Giddens 2000: 88). Poverty cannot simply be measured in terms of material deprivation: even if an unemployed person receives an income similar to someone in work, they may still feel a lack of social esteem that limits their sense of well-being (ibid.) The ability to 'function' in capitalist society thus becomes the key to all forms of self-fulfilment.

The master concept underlying Giddens's analysis is the distinction between 'poverty' and 'social exclusion' (Giddens 2000: 104–13). The latter rests on the idea that some groups of people are cut off from a flow of *sociality* or interactions with others in a way that prevents 'society' from realizing itself in an optimal form. Thus Giddens argues that 'social exclusion' should not merely be seen as the possible physical isolation of certain categories of people, such as low-income families living in run-down housing estates. It is also produced by the active self-isolation of more fortunate citizens sequestering themselves in gated communities. Basing a concept of 'social exclusion' on the idea of 'social separation' distinguishes the former from 'poverty' in the sense of relative deprivation and lack of resources. Poor people are not necessarily socially separated. There are a variety of causes and conditions of individual poverty, which may be a transitory state in an individual or family life cycle, and can affect persons whose previous status was middle-class. For Giddens, exclusion is a matter of either social

isolation in the physical sense or 'lack of access to normal labour market opportunities'. Even in the absence of physical separation of the gated communities type, elites may contribute to its growth by 'withdrawal from their social and economic responsibilities, including fiscal responsibilities' (Giddens 1999).

As a description of one of the processes that underlay the concentration of poverty in inner-city cores as tax-payers fled to the suburbs in the United States, this way of looking at the relationships between poverty and social exclusion/separation has something to recommend it. As Boltvinik points out, social segregation of the more affluent and reduction of the poor to 'disposables' is already a semi-accomplished scenario in some of Latin America's cities (Boltvinik and Hernández Laos 2000: 14). But many of Giddens's proposed solutions have little to recommend them, especially when the analysis is transferred to a region such as Latin America, where levels of mass poverty are very high, while concentration of wealth is commensurately narrow, but gives the wealthy a healthy international ranking. Although there are virtues in decomposing the category 'poor people' analytically and empirically, doing so in a way that shifts the question of income inequality from the centre of analysis is especially questionable in countries in which households are obliged to bear the weight of economic adjustments in the absence of comprehensive public welfare systems. Equally disturbing is the 'normalizing' thrust of Giddens's 'solutions' to the problems of 'social exclusion', already evident in the phrase 'normal labour market opportunities'.

The 'third way' as defined by Giddens is underpinned by a notion of social citizenship that is both moralizing and coercive. If elites cannot be coerced into accepting their fiscal responsibilities, 'the rest of us' (the 'merely affluent') must be urged to adopt more philanthropic attitudes, while those suffering deprivation must accept those labour market niches that global capitalism is willing to provide for them. Underpinning these prescriptions, which hardly sound historically innovative when expressed in this way, is the equally hoary idea that 'society' must be made to 'function' as an integrated set of relationships between individuals and groups. Such functionality is ultimately to be defined by a minimal normative consensus on what individuals have a 'right' to expect from 'society' and what they are obliged to render unto Caesar in terms of lifestyles and livelihood strategies, defined in terms of the responsibilities of social citizenship.

Defrauding the welfare system or participating in the black economy do not, of course, fit into that proposed normative consensus. But they may still provide individuals who pursue such lifestyles with superior subjective senses of personal worth as socially situated actors and improved material opportunities to participate in the culture of consumerism that hegemonic values so tirelessly promote. Giddens's sociology seems to have little interest in what it might *mean* to be a former worker in a downsized traditional industry living in a post-industrial economy, a puertorriqueño in New York,

a provincial *cholo* in Lima, or a Cambodian surrounded by Mexicans and Central Americans in Stockton, California. Yet struggles to infuse personal and collective lives with meaning seem more rather than less central to urbanized mass societies in the twenty-first century.

What Giddens offers us is a regime of truth that specifies certain subjectivities as appropriate and disqualifies others. The third way critique of neoliberalism thus ultimately shares its concern to efface the social personalities of the poor in their diversity and make them manageable subjects of bourgeois governmentality as worker-consumer-citizens. Like liberal models of 'justice and fairness' that are troubled by the issue of social inequality, such as those of Rawls and Dworkin, it takes the basic structures of society as given. It is complacent about the power relations shaping social relations and considers the suppression of dissident forms of life incompatible with the dominant consensus to be inevitable. This can only foster a lack of interest in the capacity of such dissidence to offer alternative models for structures. As a more 'liberal' doctrine than that of the conservative Right, 'third wayism' does not advocate the combination of extreme deregulation of the market economy with a state that is utterly coercive in the personal moral sphere. Rights to diversity can be recognized in such areas as sexual preference and cultural and 'lifestyle' practices that can find expression in a commodified 'personhood'. But the third way assumes that the rights of corporate capital to restructure the world (and its boundaries) in whatever manner may suit it are now only marginally negotiable. This seems an odd position to take in a world in which much of the blurring of the traditional boundaries between social movements of the Right and the Left seems to turn precisely on unhappiness with that proposition.

Latin America has evolved its own 'third way' theorizing, exemplified by the discussions of the Grupo Mangabeira think-tank.[10] Whether the emphasis is on micro-credit schemes, targeted anti-poverty programmes or restoring and extending access to public services, the distinctive feature of *Alternativa Latinomericana* was that it envisaged the maintenance of fiscal equilibrium with public spending at a level of 30 per cent of GDP. This would be a substantial increase for countries such as Mexico.[11] It would also reflect a very much greater role for the state than envisaged by most Anglo-Saxon third wayers. Nevertheless, the focus remains on empowerment through access to the market and the assumption of personal responsibility. The ultimate goal is a society of possessive individuals for whom assistance from the state is a means towards achievement of self-realizing autonomy. The Latin American model simply concedes that market relations will not produce 'tolerable' levels of social inequality without fiscal reform and more state intervention.

Such a perspective can be presented in ways that resonate with Latin American political cultures and experience. There has been no shortage of evidence for 'enterprise' in small business activity on the part of the poorer citizens of this region, and this is, of course, true of other parts of the world

as well.[12] But it is likely to continue to sit uncomfortably with the relations that articulate 'groups' and social identities based on race and ethnicity within those 'societies' in the context of the problems of livelihood and resource predation now posed by capitalist globalization. It is also difficult to see how targets for poverty reduction could conceivably be reached without a drastic redistribution of income. Even at a growth rate of 3 per cent, it would take 40 years to eradicate present levels of absolute poverty in Mexico, according to Nora Lustig of the Interamerican Development Bank, in a speech which also criticized political control of the government statistical agency and past electoral manipulation of anti-poverty programmes (*La Jornada*, 10 July 2000).

It would, of course, be easier for the countries of the South if they also received income transfers from the countries of the North. On this issue, Giddens is quite content to follow the lead of analysts who argue that even a major cut in northern per capita incomes could not increase average incomes in developing countries significantly (Giddens 2000: 129). Indeed, he adopts a robust 'blame the victim approach', suggesting that:

> Most of the problems that inhibit the economic development of the impoverished countries don't come from the global economy itself, or from self-seeking behaviour on the part of the richer nations. They lie mainly in the societies themselves – in authoritarian government, corruption, conflict, over-regulation and the low level of emancipation of women. *Mobile investment capital will give such countries a wide berth, since the level of risk is unacceptable*.
>
> (Ibid.; emphasis added)

There are a number of perplexing assertions in this statement, but the general thrust of blaming global inequalities on local pathologies that are completely disconnected from the past or contemporary effects of northern hegemony fits a wider pattern of post-cold war discourse (Gledhill 1999). This is not an analysis that is concerned with making connections or exploring uncomfortable causal relationships – such as those between southern political mafias and respectable northern financial institutions – because it rests on the assumption that an acceptable social order for the majority of citizens can be achieved by a judicious blend of policing and investment in 'human capital'. If the real cause of social inequality remains the distribution of the various assets and resources that underpin the achievement of 'social capabilities', we will end up with more of the former than the latter.

Conclusion: power and the entitlements of the poor

In many respects, the arguments that I have just surveyed resonate with those popular amongst elites at the dawn of the industrial capitalist era, particularly in the way they deploy the ideas of 'social stability', controlling

'dangerous classes', and enforcing 'participation' in the normal life process of market society. The differences between eras lie, perhaps, in the extent to which the forces 'swarming' against the order of things are its own products. International terrorist networks[13] and drug cartels follow the latest styles of business organization. Citizens use the new technologies to argue for more inclusive models of social responsibility and changes in the structures of global power that would amount to rather more than the tolerance of social and cultural diversity advocated by social democrats who now feel at home in the corporate, wealth-creating, world.

It is easy to be deceived by this latter evidence of empowerment, and forget that grinding impoverishment is often the best ally of criminal and undemocratic elites. Nevertheless, there are enough popular organizations around the world now attempting to pursue practical alternatives to global neoliberalism for there to be plenty of alternatives to the politics of the 'third way' in all its variants. The issue of the social distribution of the means of livelihood and wealth creation have not lost their salience. Despite the fact that the bulk of world trade continues to flow between developed countries, the predatory exploitation of the labour and non-human resources of the countries of the South is increasing, while 'development' is often directly shaped by 'needs' of the most affluent consumers. The present social organization of the market economy seems more rather than less questionable. Even Giddens complains about 'corporate greed'; participation in stock markets has increased social differentiation within the middle classes, and transnationals continue to press for high risk economic and environmental strategies and further reductions in the rights of labour despite public opposition. In a period when the share of capital in global income has generally increased, many human beings remain far from clear that there is any place for them in the new economic system. This is not a context likely to stifle debate about the fundamental structures of global power and inequality.

It is certainly true that 'poverty' is a concept that needs unpacking. As anthropologists have frequently argued, the use of simple linear scales to measure wealth and poverty obscures as much as it reveals about the quality of human lives and the social capabilities that different forms of life afford (see, for example, Ferguson 1992). Measures of poverty based on indices of deprivation tend to multiply the numbers of the poor with each increment to the number of variables used. Measures based on cash incomes are subject to political manipulation and often fail to register the significance of non-monetary flows (or income acquired from the illegal economy). Our measures need to pay more attention to the overall quality of different forms of life. But, despite these significant qualifications to the question of measuring poverty, it remains fairly obvious that there is a process of global socio-economic polarization. It is also clear that the higher incomes which underpin consumerism do not necessarily deliver qualitatively better lives, and that we need to look more deeply at the changes in the world that

would be necessary to make the idea of individuals pursuing their chosen lives in society substantive. What history is doing is opening up the debate in new and potentially significant directions, especially where it escapes the boundaries of the nation-state unit.

But anthropologists are not social and political philosophers, and our role is largely one of observing how these developments manifest themselves in practice. I have suggested that this entails a considerable amount of analysis of contradictions on the ground. This should encourage a great deal of realism about the limitations of the 'counter-hegemonic globalized public sphere' that could be seen as a by-product of capitalist globalization and about the power of the forces that continue to sustain and defend North Atlantic global hegemony. These include deployment of overwhelming lethal military force overseas and all the indirect effects on the distribution of 'social capabilities' of an international economy in which the freedom of movement of labour does not mirror that of capital.[14] If anthropologists have a role beyond 'naming and shaming', it is perhaps that of exploring ways in which 'progressive swarming' on behalf of grassroots efforts to challenge that hegemony might be made less contradictory.

Notes

1 International law is increasingly limiting the rights of citizens in certain areas relative to the rights of foreign commercial entities. For example, an international tribunal determined that local demands for environmental protection in Mexico should not override the terms of commercial contracts for the establishment of a waste processing plant accepted by the federal government, obliging the taxpayer to compensate the affected firm.

2 Mexican perspectives on this last issue are influenced by the experience of the National Solidarity Program introduced, with the enthusiastic endorsement of the World Bank, by the subsequently discredited administration of President Carlos Salinas de Gortari (1988–94). See Dresser (1994).

3 The development of a global indigenous rights politics has transformed the politics of 'ethnicity' within many national states by fostering subscription to more inclusive ethnic identities than those which underpinned social interactions in the past. While the colonial state in Latin America might be said to have created the category 'Indian', and people thus classified were drawn into using the category in some of their dealings with that state and its national successors, primary identities in everyday life were generally anchored in local communities. The language-based criteria used in anthropological studies to distinguish different ethnic groups and subgroups have only become relevant as anthropological constructions have themselves been incorporated into disputes about indigenous rights and history. Claims for official recognition of specific entitlements are often clouded by arguments about definition of 'valid' beneficiaries. Arguments centre on debates about the 'hybridity' of contemporary indigenous cultures, the presence or absence of direct historical connections between the current inhabitants of territories and pre-colonial peoples, and, in the case of societies in which social categories based on the notion of racial mixing are central, on what combination of biological and/or cultural attributes might underpin a claim to 'indigenous'

status. In the latter case, the more the impossibility of biological distinctions is conceded, the more charged arguments about history and culture become.

4 It is, however, important to stress that the Sanctuary movement also revealed the effects of social distance on the attitudes of the northern protagonists to the people they sought to help. Considerable tensions developed between the Central Americans and Sanctuary activists around the issue of those who were genuine (political or economic) victims of the violence versus those who sought entry to the US simply to better a less precarious economic position. The activists also failed to understand the conflicts that developed between their Salvadorian and Guatemalan clients over mutual accusations of receiving special treatment. See Cunningham (1995: chapter 7).

5 By allowing space for the white elites to achieve redemption, the Truth and Reconciliation process might be seen as offering necessary guarantees to capital (national and transnational). This seems somewhat ironic when one considers that the orthodox ANC analysis of the apartheid system portrayed it as the support for a particular system of capitalist exploitation, rather than as a system of racial discrimination with a social logic transcending political economy and thereby likely to be reproduced through social segregation despite the transition to democracy.

6 This is not to deny that some NGOs (especially domestic organizations) pre-date the Zapatista uprising, though their perspectives have sometimes changed as a result of it, and it is also important to emphasize that not all NGOs are directly supportive of the Zapatista movement, as is sometimes too readily assumed in national security circles.

7 Institutional Revolutionary Party. I am grateful to my student Niels Barmeyer for bringing this process to my attention.

8 This model of 'social netwar' is an extension of the SPIN (segmented, polycentric, ideologically integrated networks) model developed by anthropologist Luther Gerlach and sociologist Virginia Hine in research on social movements in the US during the 1960s and 1970s. See Gerlach (1987).

9 In the case of a high-tech company in Silicon Valley, analysed by Christian Zlolinski (2000), the corporation was 'named and shamed' in a way that forced it to abandon a system of employing immigrant workers through a Korean-owned subcontractor. This led to their unionization and incorporation, under new employment arrangements, in a system of 'total quality control'. The workers found, however, that TQC entailed an intensification of work quite incompatible with 'quality', and devised their own strategies for subverting it, while complaining that 'professional' companies had a duty as well as a right to devise 'professional' work practices. Although this demonstrated a willingness in principle on the part of the Mexican employees to buy into the responsibilities associated with their model of 'American modernity', the fact that most of them were undocumented laid them open to disciplining through an Immigration and Naturalization Service raid. Their union's efforts to provide material support were judged inadequate by the majority since they felt little sense of 'ownership' of an organization that was basically designed to deal with the problems of legal workers. Although the workers saw the hand of the corporation behind the INS intervention, fundamental changes in the position of such vulnerable groups do seem to depend on efforts by a wider 'public' to bring the battle to the corporations themselves.

10 The initiative of Brazilian political scientist Roberto Mangabeira, it included Vicente Fox, later president of Mexico, and his foreign minister until 2003, Jorge Castañeda, then aligned with the Centre-Left Party of the Democratic Revolution. Other members included Rodolfo Terragno, subsequently prime minister of Argentina, and Ricardo Lagos, subsequently president of Chile.

11 Fulfilment of Fox's electoral promises to the three in every five Mexicans who now live below the poverty line, and 25,000,000 in extreme poverty, depended on the success of a fiscal reform plan. With non-oil taxation standing at only 11 per cent of GDP, less than half its US level and only just over a third of the average in the EU, Mexico offers substantial scope for a more progressive tax system, but the Fox plan was, in fact, regressive. In the event, the executive's lack of control over the Congress frustrated its implementation, and the aftershocks of September 11, declining oil revenues and the impact of recession in the US forced a series of running cuts in federal budgets through the 2002 fiscal year. This provoked further conflicts with state governments to which a substantial proportion of social development and welfare spending had been devolved under the previous administration. The problems posed by the government's inability to achieve substantial increases in tax revenues were compounded by its commitment to the politically unpopular cause of meeting the additional costs of servicing the private debt transferred to the public purse under the previous government's bank rescue scheme, a reminder that Mexico's rich are not taxed on their capital gains, but are compensated for their losses.
12 This is particularly well illustrated by Keith Hart's classic work in the urban slums of Accra, where he studied poor and ethnically and socially marginalized people experimenting with a diverse (and not always successful) range of social strategies for building a small business. These strategies sometimes involved a little illegality, but they principally involved working with the contradictions of managing kin relations, getting richer without being shunned by the rest of the community, and (often as an alternative to coping with the demands of kin) building trust between strangers. Readers of Hart's most recent book (2000) will discover that a little ethnography goes a long way, not merely against the abstractions of neoclassical economics, but against the abstractions of the kind of sociology on which the work of Giddens and the political forces that he represents are based.
13 As Cooley (1999) has shown, some of the US's most feared enemies are monsters created by the country's own geopolitical strategies.
14 These include, *inter alia*, the propagation of xenophobia and racism as 'citizens' depict 'immigrants' as a threat to their own, increasingly limited, entitlements.

Bibliography

Arquilla, J. and Ronfeldt, D. (2000) *Swarming and the Future of Conflict*, Santa Monica: The RAND Corporation and National Defense Institute. Text available online at http://www.rand.org/publications/DB/DB311/DB311.pdf.

Bartra, R. (1992) *The Imaginary Networks of Political Power*, New Brunswick, NJ: Rutgers University Press.

Boltvinik, J. and Hernández Laos, E. (2000) *Pobreza y Distribución del Ingreso en México*, Mexico City: Siglo XXI Editores.

Bourdieu, P. (1991) *Language and Symbolic Power*, Cambridge: Polity Press.

Cooley, J.K. (1999) *Unholy Wars: Afghanistan, America and International Terrorism*, London: Pluto Press.

Cunningham, H. (1995) *God and Caesar at the Rio Grande: Sanctuary and the Politics of Religion*, Minneapolis and London: University of Minnesota Press.

Dresser, D. (1994) 'Bringing the Poor Back In: National Solidarity as a Strategy of Regime Legitimation', in Wayne A. Cornelius, Ann L. Craig and Jonathan Fox (eds) *Transforming State-Society Relations in México: The National Solidarity Strategy*, La Jolla: Center for US–Mexican Studies, University of California, San Diego.

Ferguson, J. (1992) 'The Cultural Topography of Wealth: Commodity Paths and the Structure of Property in Rural Lesotho', *American Anthropologist* 94(1): 55–73.
Gerlach, L.P. (1987) 'Protest Movements and the Construction of Risk' in B.B. Johnson and V.T. Covello (eds) *The Social and Cultural Construction of Risk*, Boston, MA: D. Reidel Publishing Company.
Giddens, A. (1999) 'Social Change in Britain: Inequality and Social Democracy', Tenth ESRC Annual Lecture. Text available online at http://www.esrc.ac.uk/esrclecture10/socialchange.html.
Giddens, A. (2000) *The Third Way and Its Critics*, Cambridge: Polity Press.
Gill, L. (1997) 'Relocating Class: Ex-miners and Neoliberalism in Bolivia', *Critique of Anthropology* 17(3): 293–312.
Gledhill, J. (1997) 'Liberalism, Socio-Economic Rights and the Politics of Identity: From Moral Economy to Indigenous Rights', in R. Wilson (ed.) *Human Rights, Culture and Context: Anthropological Approaches*, London: Pluto Press.
Gledhill, J. (1999) 'Official Masks and Shadow Powers: Towards an Anthropology of the Dark Side of the State', *Urban Anthropology* 28(3–4): 199–251.
Hart, K. (2000) *The Memory Bank: Money in an Unequal World*, London: Profile Books.
Levine, S. (1999) 'Bittersweet Harvest: Children, Work and the Global March Against Child Labour in the Post-Apartheid State', *Critique of Anthropology* 19(2): 139–55.
Macpherson, C.B. (1962) *The Political Theory of Possessive Individualism: Hobbes to Locke*, Oxford: Oxford University Press.
Mishel, L. (1999) 'The "New Economy"', article in *Viewpoints* section of Economic Policy Institute website, available at http://epinet.org. Originally published in *The Las Vegas Review*, 14 February 1999.
Mishel, L., Bernstein, J. and Schmitt, J. (2001) *The State of Working America*, Cornell: Cornell University Press. Extracts available online at http://epinet.org.
Petras, J. and Morley, M. (1992) *Latin America in the Time of Cholera: Electoral Politics, Market Economics, and Permanent Crisis*, London and New York: Routledge.
Ramos, A.R. (1998) *Indigenism: Ethnic Politics in Brazil*, Madison: The University of Wisconsin Press.
Ronfeldt, D. and Martínez, A. (1997) 'A Comment on the Zapatista "Netwar"', in Arquilla, J. and D. Ronfeldt (eds) *In Athena's Camp: Preparing for Conflict in the Information Age*, Santa Monica, CA: The RAND Corporation. Available online at http://www.rand.org/publications/MR/MR880/.
Scheper-Hughes, N. (1992) *Death Without Weeping: The Violence of Everyday Life in Brazil*, Berkeley: University of California Press.
Sen, A. (1981) *Poverty and Famines: An Essay on Entitlement and Deprivation*, Oxford: The Clarendon Press.
Sen, A. (1992) *Inequality Reexamined*, Oxford: The Clarendon Press.
Stoler, A. (1995) *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*, Durham and London: Duke University Press.
Warren, K.B. (1998) *Indigenous Movements and Their Critics: Pan-Maya Activism in Guatemala*, Princeton, NJ: Princeton University Press.
Zlolinski, C. (2000) 'The Ethnography of Immigrant Workers' Labor Control and Resistance: Mexican Janitors in Silicon Valley', paper presented to Session 1-043 *Ethnographies from the American Workplace*, 99th Annual Meeting of the American Anthropological Association, San Francisco, CA, 16 November 2000.

Chapter 11

The rights of being human

Lisette Josephides

Godless Morality: Keeping Religion out of Ethics is an unexpected title for a book by the Most Reverend Richard Holloway, Primus of the Scottish Episcopal Church. More surprising still is his argument: that we should find good human reasons for our moral stance and not rely on divine rubber stamping. If a religious leader can argue that we should keep religion out of ethics, may an anthropologist likewise argue that we keep culture out of morality?

My aim in this chapter is to explore the possibility for a field of human rights that is broader than the one modelled on western culture, without being rooted either in traditional notions of human nature or in Kantian moral imperatives. To this end I develop a two-pronged argument: a philosophical one in respect of the morally universalizing aspects of human ontology, and an anthropological one that grounds such ontology in ethnographic observations. My hope is that this will allow me to argue that implicit moral attitudes towards human ontology are shared across cultures. The following steps guide my investigation. First, I review some formulations of human rights, with particular reference to anti-foundationalism. Next, I recruit the help of Alasdair MacIntyre for a critique of cultural relativism, and introduce ethnographic arguments from the Kewa of Papua New Guinea. Third, with the help of Charles Taylor, I discuss western philosophical theories of human ontology, or what 'being human' entails. Fourth, I consider overlapping 'grounding experiences' as the basis for shared human virtues. Fifth, I offer illustrations of rights talks in PNG, and their relevance for human ontology. I conclude with a consideration of the impact of comparative materials on my argument.

Formulations of rights and the spectre of relativism

The promises and problems of human rights discourse are encapsulated in deceptively simple terms by Howard and Donnelly (1997: 268; my paraphrase). They note that human rights are not universal either as ideals or

practices: though all societies embody conceptions of personal dignity, worth and well-being, pre-modern societies lack the idea of equal and inalienable rights. Human rights discourse originated as a tactic *in extremis* of a bourgeoisie desirous of freeing itself from the constraints of the feudal order without seeming to demand class privilege. Its campaign took the form of a call for universal natural rights, articulated as claims against the state. But this historical origin, Howard and Donnelly argue, should not lead to a rejection of the cross-cultural applicability of human rights. They are the only standard possible, embodying as they do the liberal conception of justice, which holds the rights of the person as paramount and the state as merely a means for the unfolding of human potential.

This introduces right away an agenda for the diffusion of a western-produced discourse for the benefit of humankind in general, on the basis of its presumed unique merits. Attempts to seek possible foundations for it elsewhere are pre-empted by the observation that pre-modern societies lack ideas of equality and rights altogether. This, I suggest, is to start on the wrong foot. Equality and rights are legal and political terms, and as such are tied to particular politico-legal institutions. Political and moral philosophers who describe their emergence at a particular juncture in western history do not expect to find them there at an earlier time, so why should we look for them in pre-modern societies? Accordingly, my enquiry focuses not on the presence of rights in these societies, but on the local foundations which legitimate and make sense of such politico-legal discourses. To bracket this question as metaphysical and answers to it as inaccessible, by concentrating instead on actual struggles on the ground, cannot sidestep the practical, political situations in which such agnosticism leads to infringement of human rights.[1]

Philosophers have entered this debate from two main perspectives, focusing either on the political philosophy of the state or a transcultural 'society of peoples', or else on the constitution of personal value judgements. Lukes, Rawls and Elster deal with human rights (defined as 'basic civil and political rights, the rule of law, freedom of expression and association, equality of opportunity, and the right to some basic level of material well-being' (Lukes 1993: 38–9)) by considering the sorts of states or ideologies that would be compatible with them. For Lukes (ibid.), the state of Egalitaria approximates the ideal human rights state, despite its problems with liberty, while Utilitaria, Communitaria and Proletaria are incompatible or else incommensurable with such rights. While Elster (1984) attempts a reconciliation between Marxism and the ideology of human rights by arguing that the former is a version of the individualist humanism expressed in the latter, Rawls (1993) goes beyond the domestic scene to an examination of how a transcultural concept of rights could be developed. He cobbles together a social contract approach to human rights, developing the 'law of peoples' from a generalization of liberal ideas which he argues can also be extended

to non-liberal societies. He argues that this law, constructed piecemeal and principle by principle, respects basic human rights and is universal without being ethnocentrically western. He maintains furthermore that a liberal ideology is not required for the observation of these rights (defined as 'rights to life and security, to personal property, to a certain liberty of conscience and freedom of association, and rights to emigration' (ibid.: 68)). Non-liberal, non-democratic hierarchical societies may be accepted as members in good standing of a society of peoples, as long as they are well-ordered and peaceful and their laws are regulated by what judges 'reasonably and sincerely believe is a common good conception of justice' (ibid.). According to this conception, the features of human rights

> do not depend on any particular comprehensive moral doctrine or philosophical conception of human nature, such as, for example, that human beings are moral persons and have equal worth, or that they have certain particular moral and intellectual powers that entitle them to these rights. (Ibid.)

This approach, it seems to me, would have to remain neutral on such hard cases as female genital mutilation or the practice of suttee.

Rorty begins his treatise on human rights by declaring human ontology and foundationalism to be outmoded, overtaken by our awareness of our 'extraordinary malleability' (1993: 115–16). Instead of asking what we are, we ask what we can make of ourselves and our world. Only sentimentality is active in value judgements, especially those that extend consideration to others, and sentimentality relies on malleability – influence through an appeal to emotions works only with malleable natures. Though Rorty believes that western morality, cradled by the Enlightenment which gave rise to the human rights culture, is superior to other moralities, he cannot account for this by reference to a distinctively human, transcultural attribute. Sidestepping meta-ethical debates about the grounds of moral beliefs, he advocates instead the pragmatic view of efficiency: the task of western humanists is to make their own culture more self-conscious, more powerful, and more widely adopted, in order to achieve the promise of an enlightened utopia (ibid.: 118). A moral institution such as human rights does not owe its emergence to increased moral knowledge, but to hearing sad and sentimental stories (ibid.: 118–19). Susceptibility to these stories is not presumed to be an inborn natural response; it was acquired with increased wealth, literacy and leisure, which made possible an acceleration in the rate of moral progress in the western world (ibid.: 121). Thus, though unable to make judgements of value, Rorty, in a pragmatic fashion, can see progress and a sort of human perfectibility. He allows that people untouched by the Enlightenment have a concept of the good, but it is a bad good, being little more than a 'primitive parochialism' that causes them to see only their group

members as good human beings and all outsiders as bad ones. Nevertheless, we should not see these people as irrational or depraved, only as deprived (ibid.: 126). Rorty does not consider western concepts of the good as more universal, only as better, having grown in a richer soil. His agnosticism in matters of moral value does not extend to comparative judgements of better or worse, though the judgement is always based on sentiment.

Rorty's argument about sentimental education has a soft centre in more ways than one. He begins with an account of atrocities performed by Serbian men on Bosnian women, citing the difficulty of an appeal to men who do not recognize others as human beings. Next he argues that, before sentimental sympathy can take root, some conditions of security and leisure must obtain. He concludes by calling on journalists to go to work on the emotions of the leisured classes in the safe countries, to bring a change of heart among them and induce them to stop oppressing others, 'out of mere niceness' rather than any moral law or obligation. This appeal is necessary because, much as this truth repels us, they are the people 'on top' and hold all the future in their hands (ibid.: 130). But how will the niceness of the leisured classes in the safe countries protect Bosnian women from attacks by Serbian men?[2]

Though Rorty claims that he is pursuing a practical argument, simply 'taking care of the future', he is in reality presenting a philosophical argument about pragmatism as the best way forward and sentimentality as the only strategy in moral matters. Bryan Turner (1993), arguing from the opposite perspective that a conception of human ontology is a precondition for the notion of human rights, latches on to an idea similar to malleability, that of 'human frailty', as a universal condition of human existence. It seems to me that, if malleability is a universal condition, it is a form of human ontology, but one that does not posit a human nature. The baggage carried by the concept of 'human nature', essentializing conventions and used as a lazy justification for deplorable actions, makes it unattractive and imprecise for any useful function. 'Human nature' does not precede human existence; rather, human existence produces common ways of being which we recognize in others. I treat my own enquiry about human ontology in part as a descriptive one; searching for shared experiences and commonality in respect for human dignity is an empirical matter of observation.

Anti-foundationalism, it seems, must turn to some form of emotivism if it is not to succumb to nihilism. At the core of anti-foundationalism is the conflict between universalism and scepticism, objectivism and relativism. Writing before Rorty in the 1970s, Mackie complains that, while recent philosophical ethics concerns itself with ideals, the truth of the matter is that people on the ground make judgements about right and wrong on the basis of 'moral sense' or 'intuition', not on the basis of general principles for which there is widespread implicit acceptance. Mackie (1977: 37–8) puts the case for relativity in a way that goes to the heart of anthropological enquiry: it

derives, he says, from empirical differences in moral codes, which reflect people's participation in different ways of life. The argument from relativity gains its force, Mackie observes, because variations in moral codes are more easily understood as arising out of existing ways of life than as expressions of perceptions of objective values; it is difficult to treat such a variety of judgements as apprehensions of objective truths. In response to this argument from relativity objectivists may argue that objective validity is not claimed for any specific moral codes or rules, but only for some general basic principles (such as some form of universalization or utilitarianism) which are recognized at least implicitly in all societies. Acting on different local circumstances, these principles produce different specific moral codes. Mackie believes that such a response counters relativity only partially, as it forces the moral objectivist to argue that the objective moral character attaches only to these major principles; the objectivity of the particular moral code and the daily moral judgements becoming merely derivative and contingent on specific local conditions. Yet below I shall argue precisely from the perspective Mackie offers to the objectivist, unfazed by this critique.

From the very first statement on human rights made by the American Anthropological Association's executive board in 1947, cultural relativism has been a central concern in this debate for anthropologists. Yet anthropologists have also pointed to the unsoundness of the concept. Relativism, in the sense of putting moral objectivity at doubt, has for long battled to explain 'why moral judgments have relative truth-value (as opposed to absolute truth-value or none at all)' (Gowans 2000: 27). As Wilson (1997) notes for anthropology, cultural relativism undermines its own claims and implies moral nihilism, in addition to providing a platform for repressive governments that oppose human rights. Despite these critiques, anthropologists on the whole have preferred not to take on cultural relativism and instead do their human rights work by providing other rationales and general justifications. Wilson (1997: 15) urges us to focus on struggles and restore the richness of subjectivities while connecting local perspectives to global networks. Renteln (1990: 7) observes that, despite enormous diversity in notions of justice and morality, one moral principle of reciprocal vengeance – 'retribution tied to proportionality' – is a 'cross-cultural universal'. Walley (1997) critiques both relativist and ethnocentric arguments in her search for 'real voices', but finds only contradictory ones. Dwyer (1997) follows Mendus, who focuses on avoidance of evil rather than pursuit of good, and Shklar, who puts 'cruelty first', arriving at an idea of the universal as provisional.

Wilson argues that it is naive to conflate what is common and what is morally justifiable, or to derive human rights from notions of human dignity (1997: 13). I base my arguments precisely on such empirical evidence, not in respect of frequency of occurrence but by analysing the foundational aspect of those acts that may be compared cross-culturally. From this analysis I arrive at the notion of what is due to a person. Further steps are required

to institute such notions as 'rights', since 'rights' is a political concept and a legal category whose actualization is contingent on a decision to enact a political institution that upholds our ideas of human dignity. 'Rights without a meta-narrative', as Wilson (ibid.: 8) himself cautions, 'are like a car without seat-belts; on hitting the first moral bump with ontological implications, the passengers' safety is jeopardised.' Yet later he refers to such seat-belts as 'cabalistic musings' (ibid.: 14).

Finally, Turner (2000: 115) asks what common aspects of the social and cultural constitution of human beings confers 'rights', since the latter are not to be found in a precultural or psychobiological constitution yet are present in all societies as 'transcultural principles' of justice and morality. He suggests that 'processes of social and cultural production and reproduction, rather than cultural traits, values, or norms . . . , might thus be considered as the matrix of general attributes of human species-being' (ibid.: 119). Turner suggests further that the existence of cultural differences 'does not logically preclude the possibility of cultural universals, any more than the specific differences among languages preclude the possibility of universal features of language' (ibid.: 118). On the contrary, cultural relativism is itself a universal claim, since it presupposes 'the proposition that all "cultures" are entities of the same type' (ibid.: 118–19). In other words, cultural relativism is not culturally relative.

Relativism and the rationality of traditions of enquiry

In order to ground the case against cultural relativism, I recruit Alasdair MacIntyre's help in an ethnographic exercise. MacIntyre constructs an argument against cultural relativism that goes like this. All rational inquiry is embedded in a tradition. A tradition of inquiry has reached an 'epistemological crisis' when by its own standards of rational justification conflicts can no longer be resolved rationally. This gives rise to internal critique, resulting in transformations likely to involve the espousal of an 'alien tradition'. What is key is that the questioners come from the inside. The argument against relativism is proved when insiders to one tradition decide that it cannot provide rational answers to questions and conflicts that arise within it. Their own response is not from a cultural relativist perspective (MacIntyre 2000: 212).[3]

Nothing among the Kewa corresponds to an Enlightenment critical philosophy. Instead I encounter two traditions: an overarching ideology which provides principles for how to live, and a pragmatic, practical wisdom. For the first I retain MacIntyre's term of 'tradition of inquiry', not as an accurate description but as mnemonic of its function. The second I refer to as 'social knowledge', a practical and personal negotiation of meaning by means of 'elicitation' in social action and verbal exchange. It may be that these two should be fused in explications of a tradition of inquiry. I also

note that it is precisely 'practical wisdom' that has universality embedded in it.[4]

The Kewa tradition of inquiry is extremely flexible and broad, incorporating implicit critiques by embracing new practices and technologies when old ones prove ineffective (new cults, including Christianity, new technologies and business ventures). Nevertheless, two practical uses of the trickster figure, each identifying a different kind of action, trace the steps from questioning of the tradition to its reformulation, as in MacIntyre's hypothesis.

The use of a trickster figure identifies moments of crisis, appearing as a mediator when local tradition has reached the limits of its explanatory power. In one case, such a figure (Walali) was used to make sense of a bloody first encounter with a European patrol (Josephides and Schiltz 1991). For a series of reasons – to do with misunderstandings, cross-purposes, physical exhaustion, hunger, fear of attack and lack of discipline – members of the patrol shot and killed several local people. In retellings of the events half a century later, local people began to identify a long-lost person called Walali, from a local enemy group, as having been part of the patrol and responsible for several of the killings. The elaboration (or perhaps invention) of a local man returning to avenge killings and turn the tide of war in favour of his clan had unmistakable mythical overtones. As an explanation of the fantastic events in which people were killed in mysterious ways (that is, by gunfire), it worked by interpreting those events in terms of local rivalries and cultural practices. In this case, the outside was brought in and explicated via a local logic.

In the 1980s, by contrast, a similarly mythologized 'rascal' figure provided the occasion for a local bigman to demonstrate his ability to expand the cultural universe by 'taking himself out' (Josephides 1998b). In Kewa myths, trickster figures, as skin changers and often with abnormal appetites, may hold the host village to ransom. In modern days, rascals (gangsters) can reap worse destruction with their stealing, raping and killing. On this occasion a visitor with affinal connections staged a 'self-mugging', by tearing his clothes, injuring and bruising himself and then reporting to the police that he had been attacked and robbed. His maliciously deceitful actions exposed the village to the terrifying dangers of police reprisals. The local bigman, more resourceful in his response, himself enlisted the police as allies and exposed the rascal's machinations. No longer translating from local cultural meanings, he had begun to think in the new language of the broader world that was encroaching on and enmeshing with his. The link was provided by a template that translated the story he told to the police into a familiar traditional myth about a trickster figure. The existence of this template did not imply, however, that the bigman was tailoring this event for integration into local tradition. On the contrary, he was employing a different logic from that employed by the earlier 'first contact' interpreters, by taking himself out and understanding the event in terms of different cultural traditions. He was

acting and instituting that change, thus reformulating tradition.[5] I argue that the use of the trickster figure in this way, as a mediator in uncertain situations, identifies a universal feature. The figure – at times little more than a figure of speech – is a conduit that provides a way out of cultural relativism.[6]

Kewa women did not articulate their desires and dissatisfactions in terms of conflicts that their 'tradition of inquiry' was no longer able to resolve. Their tactic was to go outside, and argue that their problems and desires were not even part of the agenda of the local tradition (Josephides 1999). While the bigman's radical reformulations went unnoticed, because he was able to act within the template, the young women, stepping completely outside the tradition of inquiry, caused a ruckus of male objections. I offer one example: the Kewa folk model says that a girl should 'go and bring shells to her parents' – she must marry so that her brideprice can be enjoyed by those who have laboured hard to bring her up. This describes a girl's duties vis-à-vis her parents and the society as a whole. However, practical folk wisdom says that a girl should not be forced into marriage because if she is not happy she will run away, brideprice will have to be returned and everybody's efforts will have been in vain. The possibility of the breakdown of the ideal marriage system is acknowledged by practical wisdom, which allows the girl a way out of a particular marriage. But the real epistemological crisis is caused when the girl refuses to marry at all, proposing instead to do something different, outside the system, such as get an education and salaried employment outside the village.[7] What is said within one tradition can certainly 'be heard or overheard' in another.

Human ontology as a morally universalizing argument

I turn now to a statement of my argument from ontology. I argue that moral action towards others is informed by an implicit understanding of what is entailed in being human. This is what I mean by 'human ontology'. Though the concept sounds metaphysical, it is supported by practical or empirical observations of shared grounding experiences, from which the commonality of human lives is inferred. In this section I focus on the metaphysical idea of human ontology; in the next I consider the Aristotelian categories of 'grounding experiences', and attempt to fill them out with my own ethnographic data.

In his exhaustive study *Sources of the Self*, Charles Taylor uncovers the underlying premises of our ideas about what it entails to be human. They concern conceptions of human dignity, or, as he puts it, 'the sense that human beings command our respect' (Taylor 1989: ii). We feel respect for the life, integrity and well-being of others. This cluster of concerns, I argue, does not derive from western cultural values, which have spread worldwide by some sort of diffusion. The mistaken assumption that they do so derive

arises in part from terminology, when these concerns are labelled 'rights' – the right to life, the right to dignity, the right to happiness, the right to freedom from pain, from suffering and hunger. Many societies in which anthropologists have worked are not rights-based, but they have profound concerns about the value, worth and dignity of a person. My argument rests on the thesis that the broader idea, of 'what is due to human beings', is found in all cultures. I am thus not concerned with rights as natural and automatic or legal and coercive, since the former ideas do not correspond to any social reality and the latter are at once impractical and undesirable; rather, I focus on perceptions of human dignity and expressions of human commonality, as inferred from human action. A glance at how pain is perceived in most societies is a good measure of how human ontology is conceptualized. People everywhere at some point feel pity for the pain of others, even when compassion is against their own interests and there is an inborn compunction to inflict death or injury. A person who has suffered pain is thought to require consideration and restitution in order to have his or her humanity restored.[8] The restitution may simply entail acknowledgement and sympathy, or it may involve more substantive political and social action.

Though following Taylor closely, I make a slight but crucial deviation from his well-laid path: I extend to pre-modern societies the attitudes towards others associated with human dignity, while Taylor describes the 'age of dignity' as a historical era, born of the collapse of a previous 'honour' society. It may after all be a friendly amendment to claim for all societies the attitudes of self-esteem, and dignity for self and other. Keeping with my deviation for a bit longer, I would also claim for non-western societies at least a portion of Taylor's argument that personal identity 'is partly shaped by recognition or its absence' (1994: 25). I am not bound, however, to become entangled in a politics of universalism which emphasizes the equal dignity of all (ibid.: 37). This debate leads Taylor into a conundrum over the treatment of difference: if equality requires difference-blindness, the particular recognition on which identity depends is denied; but if equality requires the recognition of difference, different provisos (such as positive discrimination) must be established to enforce the equal recognition of difference; and this leads to a different definition of equal status. Moreover, if ideas of equality are derived from a universalization of dignity, the denial of commonality-similarity raises questions about what equal dignity is based on. I want to question the concept of 'equal dignity' as being incoherent and ultimately a red herring. It assumes that there is a category 'dignity' whose meaning includes infinite expandability, purpose-made to accommodate all new political and social developments. But this is quite different from the concept Taylor started off with, and returns us, instead, to Mackie's problem with the distinction between general basic principles and their specific derivations. Earlier I maintained, against Mackie, that there is no

inconsistency in claiming objective validity for some general basic principles which are implicitly recognized in all societies, without extending that claim to specific moral codes. In the same way, a recognition of a shared basic dignity, on the lines of Taylor's original formulation, does not logically imply equal recognition of all its elaborations (such as legal protection of minority languages, for instance). In fact, such an extension would go against the logic of the original premise of an underlying principle not reducible to a specific practice or code, which was encapsulated in Taylor's description of the striving of a society to be virtuous without subscribing to a particular virtue (ibid.: 56–7). Taylor is interested in that requirement for its recognition of difference (equal respect for those who do not subscribe to that virtue); I am interested in it for its distillation of what is shared.

The philosophical hiatus or epistemological amnesia that occurs between Taylor's elaboration of the self as having dignity (described in *Sources of the Self*) and his deliberations on the conundrum of multiculturalism (in 'The Politics of Recognition') lead him to the false dilemma of a liberal society compelled to remain neutral on the good life (ibid.: 57). But refusal to associate the good life with a cultural particular is not tantamount to being neutral on the question; on the contrary, it is to acknowledge that the good life is beyond such particulars, as I try to show in the next section. Taylor himself observes that liberalism is not a possible meeting ground for all cultures (ibid.: 62); what is important is to ensure that 'citizens deal fairly with each other and the state deals equally with all' (ibid.: 57). My endeavour is to find the virtue animating that desire for 'fairness' as already existing in practices ranging over different cultures; not to legislate for it in liberal societies. My concern here is with shared evaluations underlying human rights, not with multiculturalism, which has to resolve quite a different set of practical and political problems (and in the process delivers Taylor into the snares of relativism).

Taylor identifies a conundrum at the heart of the politics of dignity, thus: modern identity is forged in recognition; what is recognized is dignity; the politics of equality demands equal respect of dignity; equal respect demands recognition of difference. Thus modern identities depend on respectful recognition of our difference by others. But what is respected is implicitly accorded value. How can the presumption that all traditional cultures have value be a valid judgement as part of an ethical imperative and in the absence of knowledge of that culture? As a principle of political rights, a case can be made that all cultural groups should receive recognition. But a 'judgment of value' (that a culture has worth) 'cannot be dictated by a principle of ethics' (that all cultures must receive equal recognition) (ibid.: 69). In other words, political argument can't escape (pronounce on) moral questions.

Grounding experiences and objective virtues: a demonstration of the argument from human ontology in Kewa ethnography

From a consideration of the metaphysical idea of human ontology, I move on to the related topic of the 'grounding experiences'. Martha Nussbaum, following Aristotle, attempts to show how people everywhere in their practice overlap in their attitude towards 'grounding experiences', thus identifying certain features of our common humanity.[9] The paradox of modern ethics – that an ethical approach based on virtues is condemned to relativism because virtues are seen as embedded in local conditions – did not arise for Aristotle, for whom the local anchoring of virtues did not contradict a single objective account of the human good. His approach is to identify spheres of human experience which in all human societies require individuals to act, and then to ask: 'What is it to choose well within that sphere?' His answers identify the virtues one by one. (In the sphere of fear of death, the virtue is courage; in the case of bodily appetites, moderation; in that of distribution of limited resources, justice; in the management of one's personal property, generosity; and so on (Nussbaum 2000: 170).)

Virtues, then, are grounded in the spheres of choice that occur in the shared conditions of human existence. Moreover, as Nussbaum observes, when people make their choices in their local contexts, they are 'usually searching for the good, not just for the way of their ancestors' (ibid.: 174). Aristotelian particularism is thus compatible with Aristotelian objectivity. Disagreements over a course of action are over what is right, they are not 'just narrating a different tradition' (ibid.: 175). Our task as anthropologists is to take up Nussbaum's challenge and describe, from inside human life, how people have constructed these central experiences. This cross-cultural evidence will identify the grounding experiences that allow judgements to be made about the representativeness of certain ways of conceptualizing such experiences. (Nussbaum makes the further assumption that the eventual 'more or less shared' picture will accord with our wishes 'for flourishing life' [ibid.: 175].) I offer one ethnographic vignette (from my fieldwork in Papua New Guinea) to initiate this search.

> Once, at a ceremonial pig exchange I was taking photographs of the hired dancers, when I was spotted by a man who appeared to be the dancers' manager. He ran towards me, gesticulating violently and shouting that I had no right to be taking photographs, not having paid for the performance. My companion, Michael, responded with equal bellicosity and a fight seemed in the offing. I quickly pulled Michael away. On the walk back to our village we discussed the implications of the episode. Had the impresario insulted us? Had the hosts insulted us?

> I had always taken photographs before, why not this time? Back home, Rimbu established the facts carefully through close questioning: our neighbours had paid for the dancers and could take as many photographs as they wished. When the impresario began to shout at us we should have told him we would obtain the hosts' permission and done so right away. The hosts were not to blame because they were unaware of the altercation, the impresario was not to blame because it was his group's business to dance for payment; there had been no affront.

The action that Rimbu proposed was the best possible course of action, arrived at by taking into account the circumstances, not 'seeking the way of the ancestors'. Michael's strategy was clearly inferior, not incommensurable or grounded in a different local tradition. The anecdote also provides evidence for some of the other Aristotelian virtues. Rimbu exhibits 'justice' with respect to the 'distribution of limited resources' (an attitude locally shared with other thoughtful people), recognizing the need of these people to dance for their living and according due respect to their circumstances. (Kewa say they cannot know the mind of others, in a firm way that suggests also the right of others to have thoughts that are private to them.) He exhibits 'mildness of temper' in response to 'slights and damages'. He also shows 'easy grace' and friendliness in social association, and 'proper judgement' in respect of the fortune of others. Finally, he exhibits 'practical wisdom', proper conduct not only in the short term but a foresight that recognizes the long term implications of such behaviour for 'flourishing life'.

Nussbaum suggests a possible list of the features of our common humanity relevant to 'grounding experiences': attitudes to our mortality, the body, pleasure and pain, cognitive capability and functioning, practical reason, early infant development, affiliation and sociality, and humour (2000: 176–7). All of these together might allow us to glimpse an ontology of being human. In an abbreviated way I indicate the sort of ethnographic information from my fieldsite that might fit into some of the categories:

Death Kewa have a strong fear of causing the death of others. Old people in particular frame requests from their children in terms of their impending death, appealing to their fear of allowing their parents to die through neglect or a general feeling of not being fulfilled. (Wapa requested that his sons build him a house in the village, otherwise he'd go and join the ancestors in the ancestral village; Payanu was well recompensed at the pig kill, as she is about to die; Rimbu was terrified when Yadi fell ill just after he (Rimbu) gave him a cigarette while nursing a grudge against him.)

The body In Melanesia the body itself, in respect of its growth, health, sickness and death, is evidence for obligations entailed in relationships (e.g. compensation for pain, nurture).

Cognitive capability '[A]ll human beings by nature reach out for understanding' (Aristotle).

- *Example on the level of 'how one should live one's life':* When Lari became a Catholic, she wanted to understand the religion, even become a nun. When the priest failed to support her or argue her case to her parents who wanted her to marry, she decried his inconsistency, thus showing she expected consistency.
- The cognitive links and syntheses made by Kewa people are generally evidenced in their expectations of missionaries: that they should not make profit or take people's money, because their mission is to reclaim souls, not handle filthy lucre.
- *Example of micropractice:* Uses of siapi (veiled speech) reveal people reaching out for understanding, in attempts to divine the meaning of others.
- The desire of girls, in their discussions with me, to learn about new, foreign things and practices. Mamasi expressed lack of interest in traditional stories: 'I want to hear about our *present* practices.'

Practical reason I call this 'social knowledge'. See the discussion on 'relativism and the rationality of traditions of enquiry' (pp. 234–6) and Josephides (1998a).

Sociality or affiliation (I would add emotion and the need for recognition.) Rimbu, moved by the memory of Wata's grief at his father's death, recalls her to the settlement after expelling her; Poreale glowed with pleasure when I told her I had heard a story about her; women at pig kills beg tearfully to be allowed to fulfil their obligations, as generosity is part of prestige.

The above accounts of grounding experiences, though cursory, nevertheless identify the path that such an analysis could take. I continue with a discussion of one court case involving human rights.

Papua New Guinean concepts of personal worth and a worthwhile life

In Papua New Guinea, postcolonial transformations are partly expressed in a tension between opposing kinds of persons: the 'traditional' person constructed by the local social relations within which people formerly lived out their lives, and the modern individual who desires freedom and human rights. This is no mere bipolar tug of war, but a complex negotiation that questions simplistic understandings of human rights as an ideology of possessive individualism, imposed on communalistic political traditions.

The best examples of attempts at radical social engineering are to be found in the area of women's rights and gender relations, in an activity that implicates the restructuring of personal and political identities. The constitution

adopted at Papua New Guinea's independence in 1975 included a call to involve women in all aspects of the nation-state. Initiatives to implement this requirement meshed tradition and modernity, by mobilizing traditional structures in efforts to realize civic and legal rights for women. A human rights forum, ICRAF, was founded in the 1990s to debate and publicize human rights issues, offer training programmes and provide advocacy. Their most celebrated intervention was in the case of the 'compo girl', which concerned the offer of a bride as part of a compensation payment.

Compo girl

This is a simplified version of the events (after Gewertz and Errington 1999). A man, Willingal, had been killed by the police. Willingal's father's clan was required to pay compensation for the death to his mother's clan. This is known as 'head payment' and involves a complex set of beliefs to do with substance and nurture. The bones of the dead nephew are ceremonially returned to his mother's clan, which nurtured him, together with the 'head payment' of valuables or marriageable women. The latter is connected with the prescriptive rule of cross-cousin marriage. In this case the payment featured the dead man's daughter, Miriam. Following the considerable publicity received by this case (including coverage in the *New York Times*), ICRAF, the human rights forum, intervened. They argued that trading in women was a violation of human rights, tantamount to rape, and petitioned a judge to hear the case and stop the payment.

The judge's decision was informed by affidavits describing the nature of the custom. Miriam herself stated that she would be willing to be part of her father's head payment, as long as she did not have to marry immediately or marry just anyone – the latter especially would make her feel 'humiliated'. She wanted to complete her education first and become independent, as she did not intend to live on subsistence farming in the village.

In his judgment the judge ruled that compliance with tradition had to be voluntary on Miriam's part, otherwise her rights would be violated. The constitutional sections he cited as infringed by an enforcement of the head payment concerned human rights: liberty of the person, right to privacy, right to freedom of movement. As these were not relevant to traditional practices, tribal custom clearly had to submit to modernity. The judge put it this way: all the little tribes are part of modern Papua New Guinea, and when their customs conflicted with national law they had to give way to it. The rules of custom are allowed only as long as people agreed, with a full knowledge of their rights, to submit to them. In this case there was indication, in the judge's opinion, that pressure had been exerted on Miriam, therefore the head payment was not allowed to proceed.

The thrust of Gewertz and Errington's analysis, from which my account is drawn, is to demonstrate that the judgment contributed to the creation of

'ontological difference' between emergent classes. The 'representative' Papua New Guinean, glossed by the judge as 'the ordinary modern Papua New Guinean', was distinguished from and excluded the majority of uneducated villagers who are governed by 'obscure' traditional customs. As Gewertz and Errington argued, modernity, affluence and modern middle-class values were held up as the measure of the good.

A clearer link to human rights issues is made in Marilyn Strathern's discussion of the same case. While she also cites the judge's equation of 'good' with 'modernity', suggesting that modernity itself does not undergo ethical judgement (Strathern, n.d.: 6), her concern (echoing John Muke, who advised on local tradition in the case) is with the danger that human rights discourse may 'sweep away' kinship and its obligations altogether (ibid.: 23). This would be disastrous, because relationships are what make the Melanesian person. Here Strathern is contrasting this 'related' person with the 'anonymous entity' of western liberal individualism, and is led to question the adequacy of 'common humanity' as a social context from which to view the subject of human rights. She proposes that this subject should be invested with the 'dignity of choice between multiple options' (ibid.: 24). Her conclusion invites several comments. First, it should be noted that 'common humanity', as it encompasses an ontology of the human, is by no means a narrow or empty context. It makes claims not only about basic human characteristics but also about commonalities in life experiences and the sorts of options they offer for action (see my discussion on grounding experiences, p. 239). Second, 'the theory of rights is by no means blind to cultural differences' (Habermas 2000: 112). To assume that it is so is to accept as uncontested the claim that it has a single provenance in western liberal traditions. Third, far from offering this 'anonymous entity' the 'dignity of choice between multiple options', Strathern instead stresses the 'non-optional aspects of the relationships' into which people are locked (n.d.: 27). The options, it appears, are not choices made available to individuals, but categories made available to judges, in which they can place those individuals. They are declarations of the following order: 'This person's rights must be considered in terms of his/her cultural context within a web of relationships'; 'that person is to be considered as a free-standing individual'; and so on.

What are the implications for human rights discourse in this analysis? Strathern assumes that 'legal rights based on equality before the law implies the subjects being stripped of social circumstances' (ibid.: 25). This inference seems entirely inaccurate; Miriam was not so stripped. Nonetheless, I second Strathern's call to theorize Wilson's 'middle ground', which Strathern understands as a context 'fabricated' from 'the intersections of the local and supra- or trans-local global'. Instead, Strathern proposes a return to the 'foundational anthropological collectivity' of relations – not those relations that trace local connection to macro global processes (as Wilson suggests), but

'relationship as a complex field of its own' (ibid.: 26). In PNG this is to acknowledge that individuals do not interact 'with' society or culture, 'they interact with other persons in relationships' with society and culture (ibid.: 27). These interactions lock people into relationships with 'non-optional aspects', such that '[p]eople are nowhere 'free' to create relationships' (ibid.). If then, as Wilson asks, we are to re-contextualize human rights reporting, we must also re-contextualize the particular cases on which we report. Strathern observes that present reporting does not abstract by de-contextualizing, but by providing a new social context, that of 'the universe of others who have suffered human rights abuse' (ibid.). The re-contextualization should be, instead, into that person's particular circumstances.

In other words: The reporting on the case of an individual who becomes the focus of human rights debate and action must reintegrate or contextualize that person within the binding relationships that are part of her background. At face value this sounds like a reasonable proposition. But it is important to spell out its entailments. It assumes that no statement on human rights in general is valid, but each case must be considered individually. Practically, this implies that it is futile to attempt to develop another debate, in which all contexts could be incorporated as particulars (such as an investigation into objective virtues or overarching morality). It should be clear that such contextualization entails the dissolution of a human rights discourse altogether. Once we have contextualized the person in her webs of relations, we have returned her to a context of binding relationships (perhaps the viper's nest she was attempting to flee) from whose embrace there is no escape. In that context, who is to bring up the question of human rights? Yet the conflict in the compo girl case was there, initiated by Papua New Guineans themselves. Thus an argument that purports to uncover insights into human rights in reality makes such a discourse impossible.

It might appear that, in striking a blow for human rights, I have also destroyed my own thesis concerning human ontology. But this would be so only on the assumption that the 'human rights' person was ontologically different from the 'traditional' person, and the morality underlying traditional practices incommensurate with that underlying human rights discourses. As I argued in the section on grounding experiences and objective virtues, this is far from the case. Let's consider, for a moment, Miriam's fate. She was, indeed, returned to her relationships; but they were not only 'local', or rather not only from one discourse or one tradition. Miriam's defence throughout was for moral recognition of her personal dignity and respect for her desires; desires that looped back, again, to recognition of the requirements of her dignity. Respect is seen as the first call for human dignity, from which equality might follow. In PNG, rights talk is rife with issues such as domestic violence, rape and political awareness, and they are couched in terms of respect and confidence.

Conclusion: the ontology of the human and human rights

An immediate and suggestive observation is that indigenous people everywhere are overwhelmingly embracing human rights. Richard Wilson, in his edited volume on *Human Rights, Culture and Context* (1997), observes that rights are active in modern constructions of indigenous identities, adopted as a resource in local situations. Sally Engle Merry, contributing to the volume, observes that small, isolated communities, from Penang tribesmen to the Kayapo of Amazonia, 'increasingly speak in the global arena'. 'And what they speak is law', she adds, but not a law 'exclusively owned by the West'; an imperial system of law is becoming vernacularized (Merry 1997: 29). For what reasons, on what premises or foundations and at what costs do indigenous people embrace international, global laws of human rights?[10]

An important cluster of debates centres around the relationship between the global politics that express those rights, and local cultures. Are transnational arguments different from those springing from local values? Do people use human rights arguments against their own culture and against their local and national political organization? What are the implications of such strategies? Is it true, as Wilson suggests, that globalization leaves culture behind, no longer the supreme ethical value? It could be argued instead that these developments expose anthropological descriptions of particular cultures as being based on partial representations.[11] Indigenous peoples are clearly expressing their desire for equal rights, freedoms and opportunities as their fellows, sometimes the other gender, in their own countries. In turning to international avenues for human rights, they find a channel for bypassing 'the larger political life of a society which offers them no place in its conception of the good' (Gledhill 1997: 106). In my own fieldsite in Papua New Guinea, Kewa women were certainly doing this when they pursued education and other avenues for escaping local restrictions.

In this burgeoning debate anthropologists are reluctant to endorse metaphysical views. They accept that no eternal foundations can be found for human ontology and human rights and advocate instead an existential ethnography of rights which concentrates on historical investigations (Wilson 1997: 15). Yet Wilson makes a statement that points in quite a different direction. 'Human rights', he writes, 'are not a product of social relations, not even indicative of them, but immanent in them, internal to their very expression (ibid.: 14). If human rights are immanent in all social relations, is this immanence not an adequate foundation for human ontology, or even indicative of that foundation?

Why should anthropologists not go beyond thick descriptions of existential situations?[12] Wilson's own work on South Africa's Truth and Reconciliation Commission suggests an answer, despite his views, when he describes the emergence of the moral acknowledgement of suffering as a unifying symbol.

It is not only a question of 'putting cruelty first' (Shklar quoted in Dwyer 1997: 15) by declaring it an irreducible evil experienced everywhere as unacceptable; the attitude towards suffering also has implications for what is human. In her study of truth commissions in South Africa and elsewhere, Martha Minow (1998) describes the steps by which the commissions achieve their ends: first, pain is expressed so that it can be taken 'off the heart', publicly validated, established as a fact and acknowledged as a legitimate candidate for restitution. This implies a belief that the suffering was harmful and reprehensible. Second, witnesses' own emotions must be affected ('"Tutu cries"' (ibid.: 73)) and the therapists should take a moral stand, as sympathetic acknowledgement of a moral wrong restores dignity. Third, perpetrators must accept responsibility for the wrong they did and offer an apology for it. Only then can the two sides become human again and reconciliation a possibility. Minow cites Archbishop Tutu, chairman of the South African Truth and Reconciliation Commission: '"The African understanding [of justice] is far more restorative – not so much to punish as to redress or restore a balance that has been knocked askew. The justice we hope of is restorative of the dignity of the people."' (ibid.: 81). The steps for this restoration are personal catharsis, moral reconstruction and political action to curb repetitions of violations (ibid.: 79).

But, as Wilson points out, all these steps were not in practice always followed through. The victims of apartheid often resisted the commission's policy of treating all suffering under apartheid as universally equal, whether endured in pursuance of political ends or incurred accidentally, and refused to give up revenge and embrace forgiveness (Wilson 2000). Nevertheless, the first step was crucial. The moral acknowledgement of suffering as requiring recompense suggests that the infliction of pain is perceived as constituting a violation of 'our sense of ourselves as commanding attitudinal respect' (Taylor 1989: 15). It indicates a sense of respect for and obligation to others. These dues to humanity are what is meant by the ontology of the human.

In this chapter I have attempted to provide ethnographic support for a two-stranded philosophical argument: first, that ideas of human ontology (what is due to a human being) are shared across cultures, and second, that 'grounding experiences' show a convergence of strategies at the level of basic choices about how best to live one's life. But simply perceiving or demonstrating an implicit moral stance that transcends cultural particularities is not sufficient to account either for the transformation of those particularities, or the extent to which what was carried over involved people's creative activity rather than their passive alienation. Ethnographic vignettes showed that a worthwhile life was seen as one in which people developed themselves and played a full role in the society in which they were placed. As in earlier, more 'traditional' times, people were judged in terms of their social knowledge of the contemporary world. Changes in the mode of sociality acknowledged individuality as a social term: respect entailed treating people

as human beings with individual needs and capable of forging individual ties, and of exercising rights in order to obtain freedoms that improved their standard of living. The effects of modernity on Papua New Guinean concepts of the person and personal worth, while in many ways transformative of particular practices and ideologies, also illustrated the shared nature of the moral stance in the two traditions.

Notes

1 Why should anthropologists want to go beyond an existential ethnography of rights that concentrates on thick description and historical investigations (Wilson 1997: 15), and dabble instead in the apparently metaphysical questions of human ontology and Aristotelian objective virtues as providing a foundation for human rights? In partial response I offer a striking historical anecdote. During the Putney debates in 1647, when the fate of the English revolution hung in the balance, the Levellers argued for adult male suffrage on the grounds that it was a 'natural right'. An opponent made this into a sticking point. He questioned the philosophical coherence of 'natural rights', since, 'following nature, a man can kill another and claim his property'. It seemed obvious to people then that the lack of a philosophical explanation impeded political advances.

2 Rorty's examples of sentimental stories (1993: 133), gently inviting the listener to imagine herself in the shoes of the narrative's suffering hero or hinting at possible future links with another character, are reminiscent of stories told everywhere and described by anthropologists as operating through empathy (e.g. Leavitt 1996: 520; Josephides n.d). Why use 'sentimental manipulation' in preference over the more interactive term 'empathy'?

3 In MacIntyre's argument, there are three stages in the development of a tradition: the 'doxic' stage, when the tradition is not challenged; the 'epistemological crisis', when criticisms are articulated but not resolved; and the third stage, in which remedies lead to reformulations and re-evaluations that transform the tradition. My ethnographic exercise must address four questions. First, how can I identify among the Kewa something that corresponds to a 'tradition of inquiry'? Second, in what circumstances can that tradition be said to suffer an epistemological crisis? Third, who are the persons from inside the tradition who issue challenges to it? Fourth, is the nature of the transformation an espousal of an alien tradition?

4 In a personal communication, Marc Schiltz has pointed out that the persuasiveness of a secular mode of thinking is that it is profoundly anthropological, arising out of everyday experience (perhaps analogous to what Aristotle calls 'basic experiences'), which yet transcends a particular culture (an Aristotelian compatibility of the local and the universal). The following Yoruba proverb, Schiltz added, could be understood by persons of all cultures: 'The newly-sprouted palm frond boasts: "I shall touch heaven." But have any of its predecessors ever done so?'

5 The bigman's strategies within this crisis area show a perception of the world as a dangerous place. During the years of colonialism and 'pacification' people were lulled into a false sense of security, the other side of emasculation and disempowerment. They had made over their capacity for political action (not only military action) to a Hobbesian Sovereign, who in turn kept the peace. But in the last two decades a Pandora's box of new evils was let loose on their world: rascals, daily violence and rape, corruption in high and low places, breakdown of local government structures, political and personal insecurity. The efflorescence of Christian churches was one response.

6 From this perspective, moves to legislate for intellectual and cultural property rights may be seen as attempts to close off this area of creativity. They make practical sense to the extent that they redress political, economic and cultural imbalances, especially in the case of former colonies and still repressed minorities or indigenous peoples. But they are also ominously accompanied by exclusive neo-traditionalisms that discriminate against minorities (ethnic, mixed race) or disadvantage one gender. They are particularly specious when those propounding them, despite their cultural invocations, have a firm foothold in, even a stranglehold on, the modern nation-state.

7 I am now able to articulate more clearly the difference between a local overarching ideology which provides principles for how to live, and a pragmatic, practical wisdom: whereas the former is a folk model, the latter is the analyst's model. It is what I have elaborated, from my observation, as 'social knowledge' and 'negotiation of meaning by means of elicitation'. People never told me that practical social knowledge is acquired through elicitation.

8 The caveat concerns the necessity to establish who belongs in the category 'human being'. It is not necessary to extend dignity to all humans in order to recognize it as an important basis of human ontology. What each cultural group puts into the category of 'human being' is not the point, as long as they put some people in there. We can acknowledge that all cultures have ideas of 'others like us' without needing to specify the dispositions or qualities those others are required to have.

9 Consider the contrasting way Gewirth (2000) defends moral objectivity: he argues that a non-relative morality is based on rationality. He distinguishes between a positive morality and a normative morality (corresponding to 'high' culture versus anthropologists' concept of culture), the first being a sort of 'culturally relative' morality which is obligatory because people believe in it or follow it, the second rational and independent of people's beliefs or actions. Gewirth considers the criticism that this normative, rational morality may simply be one positive, ethnocentric version. He rejects the criticism with the argument that 'there is a supreme moral principle which is inherently rational, in that self-contradiction is incurred by any actual or prospective agent who rejects the principle' (ibid.: 182). The argument is based on the universal principle of non-contradiction, i.e. it is an analytic argument. Gewirth offers further arguments, however. First, he argues that the idea of human rights 'is a normative, not a positive or empirically descriptive conception' (ibid.: 186), therefore it is not disproved by the fact that it has not been accepted in various areas or cultures. Second, it is false that the idea of human rights is exclusively a modern western conception. Third, since moral precepts are addressed to individuals, the fact that the precepts of human rights are addressed to individuals 'disproves the contention that the "individualism" of human rights is an ethnocentric limitation' (ibid.: 187).

10 Ondawame's heartfelt account of the political and civil repression of West Papuans within the Indonesian state allows, as he sees it, only one way forward for West Papuans: to call for human rights, embracing their moral imperative as a universal concept. His call implicitly rejects a cultural relativist narrowing of human rights (Ondawame 2000).

11 A contributor from the floor at the Conference made the perceptive observation that anthropologists were reductionist in their treatment of Muslim societies – offering a partial representation of their culture – when they assumed that the Islamic religion was a sufficient and complete description of those societies with respect to attitudes to human rights. See also Dwyer (1997).

12 And beyond restoring local subjectivities (Rapport 1998: 383, 387). Rapport argues that, even if there is no truth, humane behaviour remains. Does this mean that 'general humanity' takes precedence over 'cultural difference'? This points to a general ontology of the human.

Bibliography

Dwyer, K. (1997) 'Beyond a Boundary? "Universal Human Rights" and the Middle East', *Anthropology Today* 13(6): 13–18.

Elster, J. (1984) *Ulysses and the Sirens*, Cambridge: Cambridge University Press.

Gewertz, D. and Errington, F. (1999) *Emerging Class in Papua New Guinea*, Cambridge: Cambridge University Press.

Gewirth, A. (2000) 'Is Cultural Pluralism Relevant to Moral Knowledge?', in C.W. Gowans (ed.) *Moral Disagreements*, London: Routledge.

Gledhill, J. (1997) 'Liberalism, Socio-economic Rights and the Politics of Identity: From Moral Economy to Indigenous Rights', in R. Wilson (ed.) *Human Rights, Culture and Context*, London: Pluto Press.

Gowans, C.W. (2000) 'Introduction: Debates about Moral Disagreements', in C.W. Gowans (ed.) *Moral Disagreements*, London: Routledge.

Habermas, J. (2000) 'Struggles for Recognition in the Democratic Constitutional State', in A. Gutman (ed.) *Multiculturalism*, Princeton, NJ: Princeton University Press.

Howard, R.E. and Donnelly, J. (1997) 'Liberalism and Human Rights: A Necessary Connection', in M.R. Ishay (ed.) *The Human Rights Reader*, London and New York: Routledge.

Josephides, L. (n.d.) 'Being There: The Magic of Presence or the Metaphysics of Morality?', in P. Caplan (ed.) *Anthropology and Ethics*, London: Routledge.

Josephides, L. (1998a) 'Biographies of Social Action: Excessive Portraits', in V. Keck (ed.) *Common Worlds and Single Lives: Constituting Knowledge in Pacific Societies*, Oxford: Berg Publishers.

Josephides, L. (1998b) 'Myths of Containment, Myths of Extension: Creating Relations across Boundaries', in L.R. Goldman and C. Ballard (eds) *Fluid Ontologies: Myth, Ritual and Philosophy in the Highlands of Papua New Guinea*, Westport, CT: Bergin and Garvey.

Josephides, L. (1999) 'Disengagement and Desire: The Tactics of Everyday Life', *American Ethnologist* 26(1): 139–59.

Josephides, L. and Schiltz, M. (1991) 'Through Kewa Country', in E.L. Schieffelin and R. Crittenden (eds) *Like People You See in a Dream: First Contact in Six Papuan Societies*, Stanford, CA: Stanford University Press.

Leavitt, J. (1996) 'Meaning and Feeling in the Anthropology of Emotions', *American Ethnologist* 23(3): 514–39.

Lukes, S. (1993) 'Five Fables about Human Rights', in S. Shute and S. Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures*, New York: Basic Books.

MacIntyre, A. (2000) 'The Rationality of Traditions', in C.W. Gowans (ed.) *Moral Disagreements*, London: Routledge.

Mackie, J.L. (1977) *Ethics: Inventing Right and Wrong*, London: Penguin Books.

Merry, S.E. (1997) 'Legal Pluralism and Transnational Culture', in R. Wilson (ed.) *Human Rights, Culture and Context*, London: Pluto Press.

Minow, M. (1998) *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston, MA: Beacon Press.

Nussbaum, M. (2000) 'Non-Relative Virtues: An Aristotelian Approach', in C.W. Gowans (ed.) *Moral Disagreements*, London: Routledge.

Ondawame, O. (2000) 'Indonesian State Terrorism: The Case of West Papua', in S. Dinnen and A. Ley (eds) *Reflections on Violence in Melanesia*, Sydney: Hawkins Press and Asia Pacific Press.

Rapport, N. (1998) 'The Potential of Human Rights in a Post-Cultural World', *Social Anthropology* 6(3): 381.
Rawls, J. (1993) 'The Law of Peoples', in S. Shute and S. Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures*, New York: Basic Books.
Renteln, A.D. (1990) *International Human Rights: Universalism versus Relativism*, London: Sage.
Rorty, R. (1993) 'Human Rights, Rationality, and Sentimentality', in S. Shute and S. Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures*, New York: Basic Books.
Strathern, M. (n.d.) 'Losing (out on) Intellectual Resources', unpublished manuscript.
Taylor, C. (1989) *Sources of the Self*, Cambridge, MA: Harvard University Press.
Taylor, C. (1994) 'The Politics of Recognition', in A. Gutmann (ed.) *Multiculturalism*, Princeton, NJ: Princeton University Press.
Turner, B. (1993) 'Outline of a Theory of Human Rights', *Sociology* 27(3): 489–512.
Turner, T. (2000) 'Human Rights, Human Difference: Anthropology's Contribution to an Emancipatory Cultural Politics', in C.W. Gowans (ed.) *Moral Disagreements*, London: Routledge.
Walley, C.J. (1997) 'Searching for "Voices": Feminism, Anthropology, and the Global Debate over Genital Operations', *Cultural Anthropology* 12(3): 405–35.
Wilson, R. (1997) 'Introduction', in R. Wilson (ed.) *Human Rights, Culture and Context*, London: Pluto Press.
Wilson, R. (2000) 'Reconciliation and Revenge in Post-Apartheid South Africa: Rethinking Pluralism and Human Rights', *Current Anthropology* 41(1): 75–87.

Index