TAJA The Australian Journal Of Anthropology

The Australian Journal of Anthropology (2014) doi:10.1111/taja.12100

The contingency of 'rights': Locating a global discourse in Aboriginal Central Australia

Sarah Holcombe

The Australian National University

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations (UN) General Assembly in 2007 and endorsed by the Australian Labor government two years later. This achievement is an essential element in the global politics of Indigenous recognition and includes unique rights, such as the right to a cultural collectivity and Indigenous Cultural and Intellectual Property, while reinforcing the right to self-determination. Yet this new Indigenous rights regime is both underpinned and constrained by the UN human rights system, the implications of which include constraint within a secular neo-imperialist liberal paradigm. However, this human rights paradigm can also offer generative potential to challenge existing relations of power. According to Kymlicka, the UN's system of human rights has, after all, been 'one of the great moral achievements of the twentieth century'. How can these tensions between the aspirations to universal secularism and the right to culture, for instance, be accommodated within the Indigenous human rights discourse? And how does this new international legal and norm-setting instrument speak to the glaring disjunct between declaration of rights and social fact in central Australia, the focus of this research? The move toward an anthropology of human rights looks squarely at this conundrum and attempts to locate spaces of continuity and co-option or, conversely, subversion and rejection as local cultures of human rights are articulated.

If 'human rights' is the answer, what is the question?

This rhetorical statement was made by political scientist Danielle Celermajer, as she was summing up the Sydney University 'Culture and Rights' Symposium that was held in July 2012. For my purposes it suggests the impossible—yet hopeful task—that has been assigned to human rights.

Since the Bill of International Human Rights was conceived by the fledgling United Nations and its allies after the Second World War, it has been asked to do some heavy lifting in terms of ensuring a universal socio-moral anchoring in secular liberalism.[1] To use Will Kymlicka's terms, the United Nations system of human rights has been 'one of the great moral achievements of the twentieth century (Kymlicka 2007: 30). It would be fair to say that in many places, however, and not only in non-western countries, uptake of this 'moral achievement' has been limited. The key criticisms of the human rights regime, from anthropologists and critical legal scholars alike, derive from both the abstracted legal instrumentalist nature of the rights regime and its aspirations to universalism. Yet these criticisms can distract from a fundamental ethnographic concern as articulated by Sally Engle Merry: 'instead of asking if human rights

are a good idea . . . explore what difference they make' (Merry 2006a: 39). For my purpose these differences are usefully framed in terms of their discursive capacity to challenge existing power relations and local responses to globalisation, and are a generative source for a modern moral imagination.

Yet this article realises the tensions in this discourse by working through two assumptions. The first assumption, following Ronald Niezen, is that the 'human rights movement, by its very nature, is profoundly anti-relativist, transcend[ing] human differences with few qualms' (2003: 116). So how, then, can 'culture' be accommodated, how can a dialogue be performed between the local—where the offending 'cultures' tend to be found—and this secular global phenomenon? This question has to be asked because my second assumption is that there is value for Aboriginal people in engaging with this human rights discourse, because at its heart are strategies for re-articulating the relationship between the self and society within the Aboriginal polity and between Aboriginal people and the State. Recourse to this discourse offers access to a higher or external authority, either to the State or beyond it, so that the language of rights can act as the interlocutor and thereby legitimate change. Yet, at the same time, this discursive act has to be accompanied by a deeply subjective shift affective at the level of the individual. The act of becoming a 'human rights holder', an individual who asserts their rights and by doing so reinforces the rights of others, has deep implications for Aboriginal personhood and identity.

That the concept of 'rights', ubiquitously referred to by the unique Anglo-Australian concept of the 'fair-go', permeates Australian public discourse tends to disguise the myriad ways in which such discourse is deployed—often to competing ideological ends.[2] These frictions and contradictions were nowhere better exemplified than within the Federal Government's five year Emergency Intervention (NTER) into the Northern Territory that began in June 2007. Yet contradictions about the meaning and limits of rights are also evident within the United Nations Declaration on the Rights of Indigenous Peoples (The Declaration). This paper will begin to consider these apparent contradictions and frictions, and the ways in which Indigenous rights are both recognised and circumscribed within the new Indigenous human rights regime. Who is the Indigenous human in Indigenous human rights as embodied in this UN Declaration? What sort of 'culture' are they allowed to practice? What are the limits on the tolerance of difference within this Indigenous human rights discourse? Although more than 20 years in development, The Declaration was adopted by the UN General Assembly only in 2007 and endorsed by the Australian Labor government two years later. This is, therefore, a very new international legal and norm-making instrument.

This article will focus on problematising this discourse, unpacking some of the assumptions embedded within it and articulating a sliver of central Australian engagement with, and understanding of, this discourse. Notwithstanding the aspirational intent of the Universal Declaration of Human Rights and The Declaration which both espouse the 'inherent dignity, the equal and inalienable rights of all members of the human family', there is nothing intrinsic, natural or inherent in humans that leads to a confer*ence* of 'rights'. Hannah Arendt, most notably, posited early the fundamentally

political nature of rights as 'the right to have rights'—or the right to belong to a political community that will ensure and uphold rights (2003: 37). For her argument, political communities are States and she was concerned for the 'stateless' post the Second World War. For my purposes, such a political community that can enable 'rights' and which is closer to home, is an Aboriginal community within the Australian state.[3] De Souza Santos has suggested that we have enough theories of rights; we need to develop a 'theory of context' (1996). The theory of context for this project is girded by power relations: between Aboriginal people and the State, its various actors and institutions, and between Aboriginal people within the Aboriginal polity.

HUMAN RIGHTS: LIMITS ON LEGITIMACY IN AUSTRALIA

In the last 20 years there has been a flowering of ethnographic research on the social practice of human rights—led principally by US anthropologists, notably Sally Engle Merry, Richard A. Wilson, Terence Turner, and Mark Goodale, and those from Europe, such as Harri Englund, Kirsten Hastrup and Jane Cowan. In a review essay on three recent texts on human rights by Amartya Sen, Mark Goodale and Harri Englund, Ronald Niezen observed that this study of human rights, which involves focusing on the lives of people directly affected by them, is a recent innovation. He explains this 'disappointing delay' in the social study of human rights as caused, amongst other things, by the quasi-utopian search for ideal justice and the inherently abstract nature of law in its quest for impartiality (Niezen 2011).

Engagement with the concept and practice of 'rights' has not been an active field of research in Australian Indigenist anthropology. One might even suggest that there has been a conspicuous silence around the ethnographic treatment of 'rights' in this country. Yet the same can't be said for the disciplines of history and law, scholars of which have developed concerted fields of analysis in this area. In the discipline of history Bain Attwood's *Rights for Aborigines* (2003) springs to mind, while in law there is an extensive body of research, much by Indigenous academics such as Megan Davis (2007, 2008) and Larissa Behrendt (2005, 2011).

It has only been very recently that that Australianist anthropology has directly engaged with this rights discourse as a field of research, as indicated by the University of Sydney Symposium (Culture v. Rights) in 2012 mentioned earlier (see in particular Macdonald 2013).[4] But perhaps this circumspect engagement is simply reflective of the wider societal norm, as constitutional legal scholar George Williams suggests: 'in the absence of a charter of rights, human rights ideas can lack legitimacy in the parliament and in the community' (2010). Indeed, as the only liberal democratic state without a national Bill of Rights, the Australian State's relationship to human rights is tentative to say the least (Byrnes et al. 2009).[5] The question of whether Australia should have a national Bill of Rights goes back to the 1890s—before Federation—when the Constitution was beginning to be drafted. The framers copied many aspects of the United States Constitution and, as constitutional lawyer George Williams stated, 'it was only natural that they would also consider including protections from that

nation's Bill of Rights' (2010). However, these protections were not inscribed because the 1901 Australian Constitution contained laws that discriminated on the basis of race, as part of the 'White Australia policy', which began to be dismantled in 1949. The only two original references to Indigenous people were both couched in the language of exclusion. Indigenous peoples were effectively made non-citizens or, to borrow Georgio Agamben's concept, were made *homo sacer* or 'bare life' (1998, 2005). As Agamben reminds us, the act of sovereignty effectively determines what or who is to be incorporated into the new political body through the structure of *ex-ception,* the core concept essential to sovereignty. The law then defines the citizen's bundle of rights and the excluded's absence of rights. Through the colonial practice of establishing sovereignty—in this case the Australian state—the legal fiction of *terra nullius* (of land belonging to no-one) could be sustained only by creating these non-people or non-citizens; the people without rights. So the constitution had to deliberately write Indigenous peoples out of it (see Havemann 2005; Goot and Rowse 2007).

The 'race powers' remain in the Constitution and so the federal parliament can override the legislative protection offered by the *Racial Discrimination Act* 1975 (RDA) and adopt laws that specifically discriminate on the basis of race (AHRC 2009: 21, 94).[6] As recently as 2007, the RDA was suspended in order to pass the Northern Territory Emergency Response (NTER) legislation. This was only possible as the Constitution does not include protection for the right to racial equality and because Australia lacks a national Bill of Rights. As a result, what we might think of today as simply an outdated Constitution—a racist legacy—remains legitimate and relevant for today's government and their policy makers.[7]

According to Williams, every Australian federal Labor government since the Second World War had sought to bring about major change to national protection for human rights (2010). The Rudd Labor government, the fourth to go down this track, established the National Human Rights Consultation Committee. After an exhaustive process of research and public forums the Brennan Committee reported in late 2009. Eighty-seven percent of the submissions—over 35,000 of them—were in support of a human rights act, while many wanted more, in the form of a constitutional bill of rights. The Brennan Committee stated in their foreword to their Consultation Report that 'The clearest finding from our work is that Australians know little about their human rights—what they are, where they come from and how they are protected' (Commonwealth of Australia 2009).

This lack of public awareness of human rights mirrors the pattern of disaffection by the Australian State towards legally systematising and so legitimising human rights. In 2010 the government announced that it would not act on the recommendations of its own Human Rights Committee inquiry and that it would adopt only a small number of its findings. Instead of a national human rights act, in 2011 we got a *Human Rights Framework* and a *Human Rights Action Plan.*

So what exactly *are* human rights? While it is clear that there is little effective relationship to law in Australia, these normative concepts do nonetheless work on a range of levels: as discursive political tools, as tacit elements of contemporary mainstream

'culture', as a set of principles to which various governing bodies abide, as mere rhetoric and as a moniker for modernity and globalisation. Before I sketch how some of these various articulations of rights do their work (albeit briefly), this human rights history requires some contextualisation. Recalling their Anglicised genealogy is essential in recognising why few Aboriginal people in remote central Australia seem to 'claim' their rights.

The history of the rights discourse began with the *Magna Carta* in twelfth century England and developed in a concerted way during the Enlightenment of eighteenth century Europe. The philosopher John Locke is widely considered to be one of the founding fathers of the contemporary rights discourse. Locke's three principal 'natural rights' are the rights to life, liberty and property. Such rights are today associated with civil and political rights, or 'first generation rights'[8] and may be regarded as the first firm statement of the ideas of western liberalism and a symptom of the growing individualism of Anglo culture. Such individualism can be seen during the same period in the epistemology of Descartes, who made the *cogito*, the thought of the individual thinker, take the place of authority as the foundation of all knowledge: 'I think therefore I am' (see Raphael 1965: 2).

This discourse of rights evolved along with the secularism of modern western science and core concepts of selfhood, including 'rationality' and 'conscience' (per Article 1 in the Universal Declaration of Human Rights). In many States it is implicated with the hegemony of the west and its program of modernity. 'Asad, among others, noted: the historical convergence between human rights and neo-liberalism may not be purely accidental' (in Englund 2006: 30). Yet which human rights are we referring to? While the current approach is to assert the indivisibility of rights; the civil and political, the economic, social and cultural rights being 'interdependent and interrelated',[9] we know, in effect, that States including Australia routinely cherry pick which rights they will promote and which they will disregard. This is also the case within public discourse and, indeed, in all real world contexts, including amongst Indigenous peoples.

THE DIVERSE WORK OF 'RIGHTS'

A brief consideration of Peter Sutton's approach to the concept of rights, in 'The Politics of Suffering', allows me to further analyse the tensions inherent in the rights discourse, including its divisible nature, as these played out in the NTER. Though Sutton appears to dismiss 'rights', referring to the concept as an 'abstracted notion constrained by a liberal consensus', political scientist Jessica Whyte recently argued that he is, in fact, only selective in the rights ideology he espouses (Whyte 2012: 38). As a reference to the moralisation of politics, the 'Politics of Suffering' is claimed by some to have provided the intellectual capital for state intervention in the Northern Territory. Sutton's framing of rights aligns with that pioneered by 1970s NGOs such as Amnesty International, as the amelioration of suffering through the pretence of a non-political interventionist humanitarianism. As Whyte explains, 'at its inception,

the "right to intervene" was conceived as a non-state idea that would enable NGOs to cross state borders to protect the vulnerable' (2012: 39). Since then it has become a legitimising discourse for state militarism and international bodies like the UN, as the idea of the prevention of suffering 'one individual at a time' replaced concerns for self-determination and collective justice (2012: 38–39).

Cartoonist Peter Nicholson summed up the public sentiment at the time by depicting the then Minister for Aboriginal Affairs, Mal Brough, in army uniform declaring to a bemused Aboriginal man 'we're replacing rough justice with Brough justice'.

Acknowledgement Cartoon by Nicholson from *The Australian* newspaper 7 August 2007: www.nicholsoncartoons.com.au

This logic to governing held sway with the then Howard government because, as Aboriginal people are embedded within the Australian state, they too have a duty to comply with the rights regime (though much of it tacit) that holds other Australian citizens to account. As they didn't *all* comply—women and children were abused—the State activated its responsibility to intervene. The fact that there was a much broader set of interventions, including punitive measures for parents who did not ensure their children's school attendance, universal social security income management, acquisition of the 73 'prescribed' (remote and town camp) communities through leases, and abolishing the Community Development Employment Program (CDEP), for instance, is not inconsistent with a neo-liberal reading of the human rights discourse. Not surprisingly, the government's selective reading of this discourse

was one of the key criticisms of the NTER in the *2007 Social Justice Report*. Edmunds notes that the analytical framework of the then Human Rights and Equal Opportunity Commission rested on the indivisibility of human rights (Aboriginal and Torres Strait Islander Social Justice Commissioner 2007; Edmunds 2010). The government had clearly 'cherry picked' the rights it chose to enforce.

Thus, to generalise, the rights discourse as it has been alternatively deployed—during and post-2007—for policy interventions or for advocacy, can be seen to be loosely aligned along two axes. The government axis, which might be called 'non-optional rights', tends toward a focus on the individual being held to account for their actions. Recalling the specific NTER measures, these non-optional rights were those that were not sufficiently activated by Aboriginal people and so the government ensured their uptake coercively, as the obligation to enact them was no longer optional. Drawing on the Universal Declaration of Human Rights, it seems to me that such rights were: the right to be free from violence (Article 5); the right to own property (Article 17); the right to work (Article 23); the right to an adequate standard of living, with mothers and children entitled to special care (Article 25); and the right to education (Article 26). Coercion is thus justified on the basis of these apparently fundamental rights as the government enforces the inter-dependency of rights and obligations. This mutuality might be further clarified if we consider the foundational principle headlining the International Bill of Human Rights, which reads in part, 'All human beings are ... endowed with reason and conscience and should act towards one another in a spirit of brotherhood' (Article 1, UDHR).

Also drawing on the Universal Declaration of Human Rights, the other axis of the rights agenda might be termed 'progressive rights', to use Sutton's label, as the approach of advocates and scholars who were opposed to, or critiqued, the NTER (see for instance Altman and Hinkson 2007). However, these rights that were discounted emerged from the same stable as the government's 'non-optional rights' that counted. They might include: equality before the law (Article 6); non-discrimination (Article 7); that no one shall be subjected to arbitrary interference with his privacy, family or home, nor attacks upon his honour or reputation (Article 12); that everyone has the right of freedom of movement (Article 13); that everyone as a member of society has economic, social and cultural rights indispensable for this dignity and the free development of his personality (Article 22); and that everyone has the right to freely participate in the cultural life of the community (Article 27). Finally, it seems to me that Article 19 is perhaps the most fundamental right that this progressive rights agenda attends to. It reads: 'everyone has the right to freedom of opinion and expression, including the freedom to hold opinions without interference, and to seek, receive and impart information and ideas through any media regardless of frontiers'. This Article leads us into the murky area of participatory rights, which are distinct from substantive rights. Although this Article is arguably a substantive right—as it is within the Universal Declaration of Human Rights—as Edmunds indicates, 'the processes required for the implementation of these rights are not specified ... Consultation and informed consent constitute participatory, rather than substantive rights' (Edmunds 2010: 7).

The 2007 Declaration on the Rights of Indigenous Peoples does, however, elaborate on these participatory rights through the principles of 'self-determination' and 'free prior informed consent'. The marginalisation of these principles within Indigenous public policy discourse falls in the shadow of the global trend (led by the US) where the discourse of tolerance marks out certain cultures and religions that are *ineligible for tolerance* through the culturalisation of political conflict (Brown 2006).

This brief, over-simplified reading of two polarised interpretations of the rights discourse as 'non-optional' rights versus 'progressive rights' suggests that within the human rights discourse there is ample room to frame a range of ideological positions in the name of rights. The diverse work of human rights—at one end reformative and assimilationist and at the other advocating tolerance for difference and autonomy—resonates for me with the dialectical motif that runs through the work of ethnomethodologist Kenneth Liberman, when he writes, 'wavering between two sides of the same truth may be more . . . productive that settling for one side or the other' (in Harris 2009: 455).

RIGHTS AS POLITICALLY DISCURSIVE AND AS RHETORIC

Two recent quotes by two high profile Aboriginal women from central Australia offer an insight into the diversity of perspectives about the ability of the rights discourse to affect Indigenous people's lives in the NT (and the lives of others elsewhere):

> *Rosie Kunoth-Monks:* '[In] 2007, we had the visit from departmental staff, the army and the police, who told us we were now under the Intervention. Suddenly there was a policy in the Northern Territory that took away our rights. It was assault'. (Foreword, Amnesty International August 2011)

and

> *Bess Price:* 'When the government tries to do something for them ['for the abused children, the women who are killed raped and beaten'] you call them racist and you blather on about the UN. Ask the Syrians what they think of the UN'. (Alice Springs News Online 2012)

These two perspectives highlight the tensions between the universality of this rights discourse and its local applicability; as between 'rights' as a discursive political tool and as mere rhetoric. For Kunoth-Monks, recourse to Amnesty International Australia (AIA) provided access to the global Indigenous discourse with which to lobby federal and Northern Territory politicians for the right to remain on outstations and not be forced into the Territory 'Growth Towns'.[10] For Kunoth-Monks the NTER was paternalistic, denying the Alyawarr the rights to continue to live alternative lives and, notably, their right to practice culture: 'we need to stop the destruction of the oldest living culture in Australia' (AIA 2011: 5). The idealisation of Indigeneity is a key plank of her argument and The Declaration is a tool for advocacy, galvanised by the AIA machinery. The reification of the cultural difference entailed in this approach, however, nods to the 'Aborigine as victim' thesis with urban progressives as their

saviours. Nevertheless, according to AIA, their advocacy work with Utopia residents ensured that outstation funding was maintained and then boosted (AIA 2013), as they indicate: 'Thank you to everyone who has written emails and letters, signed petitions and made phone calls—this win is in no small part because of you' (AIA 2012). Although the role of this international NGO in matters close to home seems an uneasy one, recourse to civil society organisations to both shift public opinion and motivate political change in Indigenous affairs may escalate as minority group interests become increasingly marginalised with the return to the 'tyranny of the majority' as the democratic approach suggested by the policy settings of 'mainstreaming' Indigenous affairs (De Tocqueville 1946).

For Bess Price, at that time a candidate for the NT Country Liberal Party (CLP), it was the rights discourse that was paternalistic and mere rhetoric: 'where whitefellas from southern cities think [they] can speak for us'. Referring to AIA as 'racist and undemocratic' she articulates a neo-liberal view emphasising individual agency and responsibility, where her Indigeneity articulates closely with her citizenship (Alice Springs News Online 2012). She cites the unprecedented 2012 Northern Territory elections where in two central Australian electorates she and two other Aboriginal candidates stood against each other. Since Price made this statement, she and Alison Anderson—both CLP—have been elected to the large desert electorates of Stuart and Namatjira, respectively. Price implicitly rejects the victimhood tag through her embrace of the 'mainstream', the democratic majority, and so she refuses to be a minority requiring their patronage or largesse.

The point here, however, is not to find a simple juxtaposition between Rosie Kunoth-Monks as an advocate of 'rights' and Bess Price as a 'rights' sceptic. Rather, both of them frame variants of 'rights' discourses as political programs. They may be different political programs, yet they are being used for the same ends—to regain a degree of Aboriginal autonomy and recognition on their own terms.

Similarly to Bess Price, MLA Alison Anderson is disparaging of those 'from down south' who invoke the rights discourse and by doing so shore up the divide between the remote and the urban Indigenous activist. Any of those on email list-serves—such as 'womenforwik' or WGAR the 'Working Group for Aboriginal Rights'—are daily aware of the outrage that urban Indigenous activists and their supporters feel for those under the NTER, now the Stronger Futures policy legislation. Yet there appears to be a growing disconnect between life worlds: the Indigenous urban activists campaigning on behalf of remote Aboriginal people—but which ones? Since the CLP 'landslide' win in the August 2012 elections—where the issue of the NTER came out as secondary to the local (Labor NT Government) issue of the 'Super' Shires—it is less clear who these Aboriginal people are who need or seek this advocacy. As Alison Anderson, then Labor MP, stated in her early support of the NTER 'My people need real protection, not motherhood statements from urbanised saviours' (*Sydney Morning Herald* 29 October 2007). Anderson doesn't elaborate on who 'her people' need protection from, but as she is a politician (in power at the time she made this comment) one assumes that it is not from the government, but rather from each other. I will discuss the issue

that this raises of the inter-dependence between rights and responsibilities, and the right of the State to intervene (which Anderson advocated at that time) if these responsibilities are not taken up, later in this article.

Nevertheless, for this project, the fact that the major Conventions and Declarations, such as the Universal Declaration of Human Rights and The Declaration for instance, purport to convey a universal set of socio-moral truths is an essential ingredient that, for me, makes engagement with this rights discourse compelling. The global language of rights provides a larger set of parameters and generative possibilities that, far from operating as reductionist, provide opportunities to explore the same 'wicked problems' (see APSC 2007; Hunter 2007) in a new guise and on a new scale. I subscribe to the view that universals emerge through friction; they are a relational condition. Anna Tsing, writing about 'engaged universals', suggests that universality in the abstract remains a chimera (Tsing 2004).

LOCATING THE INDIGENOUS 'HUMAN' IN INDIGENOUS HUMAN RIGHTS

On this note I turn to the new universal identity construct 'Indigenous'—as this is the person who is to be served by the Declaration on the Rights of Indigenous Peoples. As a 'quintessentially modern phenomenon', this term, though now ubiquitous, has only actively been used for the last few decades to describe a particular category of human society (Niezen 2003). Niezen's research in the field of 'transnational Indigenism' frames this world-wide phenomenon of contemporary Indigenous identity making (2003, 2009; see also De Costa 2006; Rowse 2011). The UN is, as one might expect, deeply implicated in the development of this construct as an international legal tool. I don't have the time here to analyse the evolution of this construct—Niezen has done that, notably in *The Origins of Indigenism: Human Rights and the Politics of Identity* (see also Merlan 2009b; Venkateswar and Hughes 2011). Suffice to say that the adoption of this term, from the 1980s,[11] is both a political category that serves as a bridge to the global and a form of resistance against the centralising tendencies of the state. This scaling up of identity speaks of difference and solidarity with others elsewhere who also identify as 'Indigenous'. Deeply implicated in the global movement, voices are shared, experiences corroborated. As Niezen observed, '[d]espite the development of 'modern' treaties and agreements between Indigenous peoples and states, the most significant source of identity are broken promises, intolerance and efforts to eliminate cultural distinctiveness or the very people that represent difference' (Niezen 2003: 91).

Yet this new Indigenous rights instrument is firmly embedded within the UN human rights system; a system which is profoundly secular and anti-relativist. What implications does this have for Indigenous identity politics? Is this also merely a mechanism on a global scale to eliminate difference? As Kymlicka has pointed out, 'Every international declaration and convention on these issues makes the same point —the rights of minorities and Indigenous peoples are an inseparable part of a larger human rights framework and operate within its limits' (2007: 7). These limits are prescribed by a liberal paradigm of democratic tolerance that underpins the western

political concept of multiculturalism. As Merry observed, there is a critical need for conceptual clarification of 'culture' in human rights practice, as the word tends to be used to describe the developing world rather than the developed world, and often has the legacy of pre-modern, as in pre-universal, human rights (2006a,b). Rajagopal described this conundrum in this way: 'human rights is to modernity what culture is to tradition' (2007: 274). The concept of multiculturalism is both guided and constrained by a foundational commitment to principles of individual freedom and equality. This is articulated within The Declaration as follows (2007, authors italics):

> *Article 1*: Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of *all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.*

and

> *Article 34*: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in some cases where they exist, juridical systems or customs, *in accordance with international human rights standards.*

and

> *Article 40:* Indigenous peoples have the right to access to, and prompt decision through, just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the Indigenous peoples concerned *and international human rights.*

So, those who self-identify as Indigenous have human rights, as well as an additional category of rights that specifically address their circumstances as Indigenous peoples. Yet, as indicated, this recognition is bound by the parameters of international human rights law. Many of the Declarations and Charters within the International Bill of Rights system are referenced in the Annex and throughout the 46 articles of The Declaration. The term 'Indigenous human rights', rather than simply 'Indigenous rights' is therefore appropriate as the encompassing term.

That human rights entail, in equal measure, both rights as entitlements and as obligations and responsibilities provides the backbone for the enaction of rights as a normative socio-moral framework. The First Article of the Universal Declaration of Human Rights articulates this clearly: 'all human beings are born free and equal in dignity and rights and should act towards one another in a spirit of brotherhood'. The Judeo-Christian tenet of 'do unto others, as you would have them do unto you' is the historical precursor to this same tradition. The rights principles of equality; the right to life, liberty and security of person; the right not to be subjected to cruel, inhuman or degrading treatment; the right to marry freely; the right to own property and so on are in the realm of taken-for-granted norms for most readers. These are norms that are practiced. They carry a heavy moral load and all of our judicial and governmental

systems enforce them—at least on the level of stated principle. Yet these same norms are applied by the Australian state to Aboriginal people in remote central Australia to varying degrees and they cannot be assumed to be practiced as normative by Aboriginal people. That these norms are not readily rendered legitimate within Aboriginal social structures, as these are deeply familial, asymmetrical and gendered, may not be news to anthropologists. Yet it seems to me that reconsidering these issues in light of this discourse may assist in re-framing the terms of the debate on difference.

How does the model of Indigenous personhood, as it is underpinned by 'human rights' and thus grounded in Western ideals of the individual, relate to Aboriginal notions of personhood? Can this rights practicing human—who seems to be socially dis-embodied—also accommodate ideals of the relational person? (per Strathern 1988; Da Cunha 2009). This concept of Aboriginal identity as being profoundly relational has been closely articulated in central Australia by Myers (1986, 1988). Indeed, as Glaskin recently noted, 'a consideration of the [Aboriginal] person immediately implicates kinship and ... aspects of exchange' (2012: 299). However, according to Arendt our recognition of ourselves as 'rights bearing individuals' is a result of the willing act of 'human artifice', whereby 'we are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights' (cited in Bhabha 2003: 169). This construct of rights speaks to the challenge of developing the independent Aboriginal agent free from the burden of late colonialism, responsible for their choices and so reinforcing the rights of others and their mutual freedoms. This ideal offers radical possibilities for challenging existing power relations both within the Aboriginal polity and beyond it. Yet those in positions of power first need to be successfully challenged. Alternatively, those without power need to resist the demands and, in doing so, find support from within the re-shaped Aboriginal polity or from the State as new protector.

As my core interest is ethnographic, these assumptions about universal normative human values and morals are the ground to be interrogated. My first attempt at translating this concept of the 'individual' into Pintupi–Luritja—the principal language of Papunya in central Australia—met with some confoundment. The smallest person unit I was given was *miitarrara* (lit: spouse pair)—a husband and wife unit.[12] The fact that this is the smallest *social* unit speaks to the indivisibility of the social from the self. A person can be physically alone—so one can be described as being seated alone—but they cannot live valued lives if they continue to remain in this state. The typical example of a person being alone, as an ongoing state, is the dangerous outsider—the *kutatji*—the non-social being who lives threateningly on the margins causing fear and providing the rationale for peculiar and murderous happenings. Note that there is also no definition of 'individual' in the Hansen's Pintupi/Luritja dictionary (1992). So if the Pintupi–Luritja individual is fundamentally familial and social, this has as yet unexplored implications for the applicability and relevance of the Indigenous 'human' as they are to operate as rights bearing individuals. Yet this isn't to suggest that such a concept and all it embodies may not be useful for *Anangu* (as Pintupi–Luritja refer to

themselves) in the contemporary complex diasporic world they now inhabit as such concepts become 'vernacularised', to borrow Merry's term (2006a,b).

The notion that there are tacit or implicit elements of the human rights discourse embedded within our everyday work practices, and that these are partly due to accountability, is one avenue where a human rights consciousness can evolve, as a discussion with Nungurrayi on the issue of her management of family violence suggests. Nungurrayi was describing how her son had been in jail for several years for violence against his wife and while he was out on parole he was violent toward her again, so was soon back in prison. She stated; 'I'm scared too, cause I work for Department of Children and Families and I might lose my job—that's what I always explain to my daughters and sons. Don't get involved with a fight or with anyone cause I'm working for Department of Children and Families—I don't want to lose my job. I always say that to my daughters; [I] just tell them to mind your own business and go'. The desire to maintain this job, in a remote community, is drawn on by Nungurrayi to qualify not only why she doesn't agree with 'pay-back' or retributive violence, but also why she doesn't like to lend her personal car and why she doesn't drink.[13] Nungurrayi is one of two Aboriginal employees in this community for the Remote Aboriginal Family and Community Program that was established as part of the NTER measures. So it is not simply about maintaining *any* job. In this case there appears to be a moral coherence between the responsibilities of her position, which focuses on 'child protection' and her position in the community. Such work on child safety is fostering a modern moral rationality. Although Nungurrayi may not articulate this as such, the outcome of her actions is an assertion of responsibility for oneself, as against others, no matter what others do. Yet she is, in effect, shifting responsibility for her actions to her government employer. This outsourcing of responsibility or shifting blame away from the family group to 'outsiders' is a mechanism for maintaining calm and also for negotiating change within the contemporary Aboriginal polity (Myers 1988; Holcombe 2005). While Nungurrayi's use of this *Anangu* social technology is a positive one, as she can affect change to the status quo, outsourcing responsibility is not always harmless or positive (see Brady 1992; Sutton 2009).

The coupling of rights and responsibilities has increasingly become 'mainstreamed' within the Indigenous policy realm since it was first articulated by Indigenous public intellectual and lawyer Noel Pearson in the booklet entitled 'Our Right to Take Responsibility' (2000). The Howard government's enthusiasm for this policy approach was seen in the post-2004 'Regional Partnership Agreements' and 'Shared Responsibility Agreements' (SRAs) that tied welfare entitlements and discretionary 'development' funding to behavioural change. As Sullivan noted, 'SRAs resonated well with the public increasingly convinced of Aboriginal irresponsibility with well-intentioned public funds . . . With [the signing of each Agreement] the media was invited to celebrate the gift of yet another facility to the native population in return for its promise to be good' (Sullivan 2011: 39). Although the following Labor government 'quietly allowed SRAs to drop out of its policy tool box' (Sullivan 2011: 33), the 'policy settings' of shared responsibility have continued as a coercive means to an end.[14]

Yet for current Indigenous leaders such as Central Land Council Director David Ross, taking responsibility is now coupled with self-determination. As he stated in a recent Aboriginal governance summit, 'I am very keen that we don't spend all our time and energy talking about what should be delivered by government . . . I am most interested in what you can do for yourselves, how you determine your own futures . . . implement your own initiatives and take **responsibility** for your **decisions** and **actions**' (Ross 2013, emphasis in original). In throwing out this challenge to over one hundred Northern Territory Aboriginal participants, and though acknowledging the structural disadvantages that have led to inequalities and the 'service rich, but outcome poor' context, Ross was fundamentally advocating a radical cultural shift. In doing so he was rewriting the language of the left, a language that has traditionally not been comfortable with attaching responsibilities to citizenship nor with adopting a concrete approach to promoting these responsibilities (Kymlicka and Norman, in Rowse 1998: 79).

'CULTURE' AND INDIGENOUS POLICY

Whether 'culture' is understood as the problem or the solution has been a key focus of considerable and heated debate over the last 10–15 years in Australian anthropology and in Indigenous policy discourse. This was perhaps catalysed initially by Peter Sutton who noted in 2001, somewhat controversially, the relationship between statistical 'disadvantage', remoteness and the practice of 'culture' (2001, 2009); that is, the more deeply culture is practiced the more 'disadvantaged' those people are who practice it. This debate gained further momentum in relation to the NTER in 2007, as the NTER language of 'normalisation' revealed the government's intent to bring an end to the recognition of, and support for, Aboriginal people living in remote communities and pursuing culturally distinctive life worlds (see Altman and Hinkson 2007, 2010).

The tension within The Declaration between 'rights' and 'culture' can also, of course, be framed as the tension between universalism and relativism. Nevertheless, I agree with Merry's approach to human rights anthropology, which is to 'skirt the universalism–relativism debate, which preoccupied anthropologists in the 1990s, and to focus instead on the social processes of human rights implementation and resistance' (2006a,b: 39). The examination of the implementation of the NTER (now the 'Stronger Futures' Policy) through the Indigenous human rights lens is one avenue to get at this engagement.

A raft of legal and advocacy research has found human rights violations by the government in their enforcement of the NTER Policy (Aboriginal and Islander Social Justice Commissioner 2007; Altman and Hinkson 2007; Concerned Australians 2012). This field of research has mostly focused on the coercive mechanisms and processes with which the government has compelled the NTER and its very broad sweep, rather than the initial catalyst or need for concerted action. The observation by Paul 't Hart, that the so-called 'emergency was a label, not a fact' (2007: 53), acknowledged the

cynical nature of the electoral cycle, but nevertheless elided the fact that high rates of family violence, including child abuse, had been active for several generations. On the other hand, the government's Northern Territory Interventionist vision was argued by Sutton, Pearson and Langton as 'delivering' human rights to women and children for their own good—as politics is moralised and 'the right to be free from abuse trumps the right of self-determination' (Whyte 2012: 38). That this final position appears to be setting up a case of human rights trumping Indigenous rights speaks to the apparent paradoxes within Indigenous human rights.

COLLECTIVE RIGHTS, CULTURAL RIGHTS AND SELF-DETERMINATION

This acknowledgement that the human rights system underpins Indigenous rights is not necessarily intended to diminish the potential value of the UN Declaration on the Rights of Indigenous Peoples. As the political philosopher Charles Taylor argues, 'due recognition is not just a courtesy we owe people. It is a vital human need' (1992: 26). International law and the Indigenous human rights movement have an important place, as Niezen argues, in recognising traditional identities based on notions of loyalty to family and community, ancestral wisdom, permanent homelands, and cultural durability—and in the process, opening up new strategies of resistance (2003: xvi). Thus, the local is legitimised as authentic by linking 'local primordial sentiments to a universal category' (Niezen 2003: 9).

Even if there are limitations to The Declaration and much of the reality is only rhetoric, as Kymlicka states, it has 'reframed the terms of the debate . . . by changing perceptions about which parties are legitimate actors in it' (2007: 42). Indigenous peoples are now legitimate actors and their transnational stage—though bounded by the human rights regime—now includes a range of uniquely recognised rights. As a thorough-going set of principles that mirror the same structure as the Universal Declaration of Human Rights and incorporate elements of other UN charters, the 46 principles or Articles deal with:

1. Self-determination and free prior informed consent
2. Lands, territories, resources and economic rights
3. Cultural, political and social rights, including rights to language and 'Indigenous Cultural and Intellectual Property'
4. Relocation and occupation, including restitution for land loss
5. Treaties and state sovereignty

And so, as Niezen indicates, 'Distinct Indigenous rights go beyond rights based upon individual equality' (2003: 17). Perhaps the most important and innovative principle in this politics of recognition is that of the Indigenous collectivity; the tempering of the focus of the individual with the realisation that 'culture' can be sustained only by a group. For many years the American Anthropological Association (AAA) has raised the issue of collective rights as fundamental for Indigenous peoples. Indeed,

this focus on the individual within the Universal Declaration of Human Rights was a major reason why the AAA, when asked for their advice on the draft in the early 1940s, was highly critical of the idea (see Messer 1993; Hatch 1997; Goodale 2009). The implications of including 'collectivities' (via the concept of 'peoples') enables and legitimates a formal political voice—allowing, for instance, the new National Congress of Australia's First Peoples to act as a representative body. Yet one can't but realise another irony in this recognition discourse: as we have seen in the operations of the NTER, Aboriginal people as a collective are judged by human rights standards and found to be wanting and so, as a collective, intervened upon under 'special measures'. This irony could be read as yet again the contradictory and contingent work of Indigenous human rights.

Nevertheless, the UN Declaration *has* significantly expanded the definition of human rights to include such principles as the right to development; the right to distinctive political, legal, economic, social and cultural institutions, and so on. Importantly, participatory rights are also spelt out within The Declaration. Such rights are underpinned by 'self-determination' and 'free prior informed consent' as core principles. Unfortunately, within Australia in the years prior to the endorsement of The Declaration, self-determination (with Free Prior Informed Consent as the means), had become relegated to a motherhood statement, encompassing everything but analytically and practically hollow. In the Australian context it has been consigned to a period of failed policy (Dillon and Westbury 2007), while according to Gary Johns self-determination was simply a 'White Man's Dream' where culture is redundant and modernity inevitable (2011). Yet the evidence indicates that 'real self-determination has never been tried' (HREOC 2002: 10; see also Sanders 2002; Rowse 2007; Anaya 2009; Sullivan 2011; Davis 2012; Havnen 2012). In 2012 the 'Yolngu Nations Assembly' prepared a statement to the leaders of the Australian Federal and NT Parliaments rejecting, amongst other things, the Stronger Futures Bill. In an appendix a senior *Yolgnu* man asks, 'where has all that self-determination gone ... These words "self-determination" and "self-management" ... have been taken out of the [government's] dictionary. When our elders first heard these words they were happy. Now after, 40 years [gone]' (Yolngu Nations Assembly 24 April 2012). It may be the work of The Declaration to reclaim this politico-moral concept that has been described as 'the river in which all the other rights swim' (Dodson, quoted in Cowan 2013: 254).

CONCLUSION

Tracing the emergence of a local culture of human rights has only been touched upon in this article. Rather, my pre-occupation has been in dismantling some of the assumptions embedded in this discourse. This has been underwritten by caution against harbouring the pretence of a social engineering reformer, bearing the triumphalist work of Indigenous human rights. Again, Liberman assists me here with a reminder that one must 'continually oscillate between competing realities and

discourses' (in Harris 2009: 456). Yet I anticipate that the insertion of this discourse into local contexts is potentially emancipatory, offering new avenues to articulate contemporary concerns where 'human rights' can act as a higher authority to justify new ways of being and inter-relating. Thus, this discourse potentially offers new opportunities to move beyond the local, as these new modalities of knowledge are articulated. This is the role of the mediating practices of local and regional NGOs and the reflexive activist anthropologist, as they operate as rights interlocutors.

Ironically, too, it is when rights are threatened that their *lack of being* is thrown into relief; they are realised in the negative. As a long term non-Aboriginal resident of Papunya stated as he recalled the advent of the NTER in 2007, '*Anangu* understood completely that their rights were taken under the Intervention'. The reactive, stronger assertion of rights may yet be the outcome of the NTER through reclaiming and remaking the concept of self-determination. As Ross argues, 'It is clear . . . that governments have lost their way in Aboriginal Affairs . . . their own governance and implementation capacity is the lowest it has ever been. At the end of the day governments will come and go, but our people will still be here' (Ross 2013). This assertion of government dysfunction then draws in an Aboriginal program of reclamation, a reversal of the stale paradigm.

Finally I'd like to recall the value of the anthropological human rights program:

> The capacity for culture is tantamount to the capacity for humanity . . . Anthropology's cumulative knowledge of human cultures . . . entails an ethical commitment to the equal opportunity of all cultures, societies and persons to realise this capacity in their cultural identities and social lives. (American Anthropological Association 1995)

This introductory statement, from the AAA 'Committee for Human Rights Guidelines', situates the anthropological research enterprise as fundamentally provocative in its concern for those we work with. It aligns human rights with the capacity to realise cultural identities and social lives and recalls that ours is an ethical project.

ACKNOWLEDGEMENTS

I would like to acknowledge and thank the *Anangu* community members of Papunya and those residing in Alice Springs I have worked with to date on this project. They include, in particular, Sid Anderson, Punata Stockman, Isobel Gorey, Tjunkata Allen Nakamarra, Fabrianne Peterson, Rachael Stockman, Lance Macdonald, Sammy Butcher, Tilau Nangala and Elsey Gorey. An earlier version of this article was given as a seminar in the ANU Anthropology seminar series in October 2012 where I received constructive feedback. Thankyou also to the five TAJA reviewers. This research is funded by an ARC Future Fellowship (FT110100805) awarded in 2011 entitled *Global Indigenous Rights and Local Effect in Central Australia: Tracing Relations of Power and Locating Potentialities*. At the time of writing this article I am about 1.5 years into the project, so many of the issues discussed lay the conceptual groundwork, rather than the providing fulsome ethnographic data.

Please send correspondence to Sarah Holcombe: sarah.holcombe@anu.edu.au

NOTES

[1] The United Nations developed during the same period as the idea of universal human rights and was catalysed by the horror of Nazi Germany's extermination of millions of Jews, Sinti and Romani (gypsies), homosexuals and persons with disabilities. Governments then committed themselves to establishing the UN with the primary goal of bolstering international peace and preventing conflict. Eleanor Roosevelt, the wife of then President Franklin D. Roosevelt, led the development of the UDHR which was adopted by the 56 members of the United Nations in 1948. The vote was unanimous, although eight nations chose to abstain.

[2] The first report by the Australian government to the Universal Periodic Review (UPR) of the UN Human Rights Council noted that 'It believes that everyone is entitled to respect and to a fair go . . . All Australians are responsible for respecting and protecting human rights and ensuring that our commitment to a fair go becomes a reality for all Australians'. (Australian Government, Attorney-General's Department 2011).

[3] The use of the term 'community' here does not assume a 'consciousness of kind' (per Giddings 1922) or shared identity of residents. Rather, I am using the term to refer to the remote settlements that have become the service delivery hubs and homes of Aboriginal people that are usually referred to as 'communities'.

[4] Nevertheless, there has been some explicit consideration of the Indigenous Rights discourse by several anthropologists, such as Francesca Merlan in several articles and commentaries, including an article entitled 'More than rights' (2009a), and by Mary Edmunds who wrote a paper for the Human Rights Council of Australia providing an anthropological perspective of the NTER in terms of Human Rights (2010). These works outline important conceptual signposts on the path to critically engaging with this discourse and the challenges of applying this discourse in absolute terms in remote Aboriginal communities. Gillian Cowlishaw, when she was the President of the Australian Anthropological Society in 2007, also wrote an outraged two-page response in the AAS Newsletter in relation to the then Australian governments' rejection of the UN Declaration.

[5] The UK, France and the US have had Bills of Rights for centuries, Canada more recently since the 1970s, while New Zealand legislated their Human Rights Act in 1990.

[6] The 'YouMeUnity' campaign specifically seeks to change the clauses in the constitution that still discriminate on the basis of race. Section 25, for instance, still exists, though the Electoral Acts may have changed. They also seek to include some affirmative Sections that recognise Indigenous Australians. However, due to lack of wide public support the campaign has postponed naming a date for a referendum.

[7] According to the Australian Human Rights Commission Submission to the National Human Rights Consultation, 'there are many fundamental human rights that the Australian constitution does not protect . . . the right to life, the right to equality and non-discrimination, the right to be free from arbitrary detention, and the right to be free from torture and cruel or inhumane treatment—to name just a few (HRC Report 2009: 21).

[8] The 'second generation' rights: economic, social and cultural rights were articulated during the development of the UDHR, so are more recent than the civil and political rights. Both sets of rights have their own Conventions and at the time the Universal Declaration of Human Rights was developed these two tiers of rights were reflective of Cold War politics. In 1993, at the end of the Cold War, there was an attempt to reconcile these two opposing ideologies and the

qualitative division between these two Conventions with the Vienna Declaration: 'All human rights are universal, indivisible and interdependent and interrelated'.

[9] Per the 1993 Vienna Declaration (above).

[10] This Northern Territory Government policy is no longer active, but the then Labor government was going to focus resources on 21 Aboriginal communities to develop them as 'towns', thereby reducing funding and resources from all the remaining remote and regional communities.

[11] Recalling 1960s Australia, Ken Maddock found that the word 'Indigenous' did not have any currency at that time (2001: 125).

[12] The Hansen's Dictionary states that *miita* is a 'shameful term' for spouse or mate (1992: 60). However, in my experience this term was commonly used among younger Luritja speakers and one may surmise a possible connection with the English term 'meat' that may have 'shameful' connotations. Also note that the—*rarra* is a relator suffix: 'pair' (per Heffernan and Heffernan 1999: 175).

[13] There is also a close link with conversion to Christianity and the sort of behavioural change that includes abstinence from alcohol. I don't have time in this article to discuss the philosophical and moral relationship between human rights and Judeo Christian belief.

[14] While the Rudd Labor government signed more Regional Partnership Agreements than the Howard Government, these are no longer flagship policies, having been absorbed under the National Partnership Agreements (Sullivan 2011: 33).

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