



Human rights and the borders of the human

M. ANNE BROWN

RMIT University, Australia

Abstract

Notions of human rights and the technologies deploying those notions, legally, institutionally, in advocacy and social discourse, enact a tangled knot of contesting and asserting borders. Universalist assertions of human rights seek to transcend national borders, appealing to a wider grasp of the human, but the formal pursuit of rights establishes rights as mutually constitutive with the state. In advocacy, calling on human rights is a way of recognising people's political, economic and socio-cultural needs, dignity and suffering, beyond state borders. The idea of the human and the universal implicit in prevailing notions of human rights, however, reproduces dominant Eurocentric ontologies of individual and collective life, and patrols a narrowly conceived territory of the universal. These ontologies can be profoundly counterproductive in practice. Because notions of human rights are one of the few internationally available tools for working against the systemic imposition of suffering, we need to work with them in ways that are more open to different ways of being human and of grasping our individual and collective lives. The discussion concludes by sketching a more relational, dialogic conception of human rights.

Keywords: human rights; relationality; dialogue; Eurocentrism

Introduction

Notions of human rights can be a powerful tool in working against the systemic imposition of suffering or harm wrought by patterns of direct and structural violence. They can provide a critical avenue for societies to confront the questions of how we care for each other, how we live together and the impact of entrenched patterns of direct and structural violence (Brown M 2002). But they can also enact forms of the human and the universal which reproduce dominant Eurocentric ontologies of individual and collective life and patrol a very particular territory of the universal (Nandy 1998). The exclusionary character of the models of the human and the universal are not always germane to the context or form of abuse at hand. When they are, however, they can embed their own forms of marginalisation and abuse or obscure patterns of violence and suffering, as what can be the inability of notions of human rights to engage with (for example) diverse Indigenous ways of being demonstrates (De Leon 2018). Despite this, ideas and practices of human rights are called upon in different circumstances around the world (Destrooper & Merry 2018). The challenge is whether over time the praxis of pursuing human rights enables approaches that are more open to different ways of shaping collective and individual life and to overlooked forms of suffering. Meeting this challenge would require not simply expanding the list of potential rights but a more self-reflective, dialogic and enquiring commitment to undoing entrenched patterns of violence (Reilly 2011; Brown M 2002).

Borders (both conceptual and material) are relevant to human rights in at least two, closely related ways. The first way concerns what happens when

something that is understood to be universal and to transcend the borders of states is not universal, but is instead dependent on bordered constructions of entities and territories, often legally but even more so conceptually. The aspiration to be applicable to human beings everywhere is an important part of the power of notions of human rights. Nevertheless, while the aspiration is potent and valuable, the claim remains premature. Notions of human rights draw fundamentally upon constructions of the human as a highly individuated entity operating within a modern state, albeit sometimes also able to make claims to international forums and courts. The operation of human rights can thus entrench particular constitutions of what it is to be human. To then overlook this dynamic by claiming an already achieved universality threatens to further mask ways of being human and forms of suffering that are already marginalised by dominant models of rights.

The second way that borders are relevant to human rights concerns whether borders and the content they delineate are taken to be impermeable and fixed or more fluid. Borders map territories of different kinds—material, symbolic, conceptual (Massey 2005). Because they concern processes of differentiation and contribute to the marking of identities, they are fundamental to ways of grasping the world. Fences can have many purposes, however, and operate in different ways (Wittgenstein 1978). Borders not only define entities or spaces, they animate systems of interconnection that trace relations, articulate interaction and link as much as they divide. They could be imagined (and in practice often operate) not only as the line delineating a space but the lines tracing the interconnections and intersections of spaces and their trajectories. Borders tend to be associated literally or metaphorically with walls, the separation and fixing of spaces and entities and this is how their enactment is often represented (accurately or otherwise). But they could equally be understood, and perhaps more often operate, as dynamic and permeable—as stories of crossings and enmeshments, of trade, intermarriages, co-minglings and flows of many kinds (Bawaka et al. 2016).

How we understand borders relates to how we approach human rights, and in particular how we constitute the categories of the human and the universal. Do we understand the person more as a highly individuated entity with clear, relatively impermeable boundaries of personhood or more as a relational,

contextual being (Bawaka et al. 2016; Graham 2008; Massey 2005; Brown W 1995)? This second, more relational view might include only human persons. But might it be conceivable, feasible and desirable to extend notions not just of legal rights but of 'human' rights beyond human beings (so that other dimensions of life could be holders or co-holders of rights, for example)? Are rights conceptually located wholly in the person or might they more accurately start with the character of relations between people (or actors)? Would a relational emphasis enable more inclusive and far-reaching approaches to working to undo patterns of suffering? As discussed later, how the human is identified affects what is visible as suffering or harm, but it also affects the models of agency involved in pursuing and promoting rights (Brown W 1995; Brown M 2002).

The debate between universalism and relativism similarly circles between relatively fixed, abstract conceptions of the universal pitted against bounded, essentialised conceptions of culture (Gupta & Ferguson 1992; Merry 2006). But the universalism of human rights can also be approached as an ongoing orientation towards engagement and mutuality across differences in the context of working against direct and structural violence. Such a universalism would be consistent with, and not opposed to, the 'relativism' of taking account of the dynamics of time, place, meaning and difference in the efforts to undo patterns of violence.

Human rights are key principles in the modern world, even if often subverted or ignored, so it is not surprising that they are also significant in establishing the matrix and character of relations defining key socio-political elements of this world: the individual, the state, and the zone of the international. While rights tend to be seen as attached to humans, they could as well be seen as attached to or generated by this deeply naturalised matrix. Because prevailing notions of human rights are grounded in a Eurocentric ontology and because of the implication of that ontology in the colonialist history and entrenched inequities of the contemporary world order, human rights concepts and practices have faced persistent criticism as 'Western' and 'imperialist' in their operations in non-Western or post-colonial contexts (Nandy 1998). Human rights and the liberal foundations of those rights have also been critiqued as masculinist and recognising only a narrow range of difference (Brown W 1995; Tully 1995).

Nevertheless, notions and practices of human rights are not static even if change is often slow, difficult and uncertain (Bunch & Reilly 2019). Their history through long struggles shaping and reshaping significant elements of contemporary life in diverse contexts has given rights a complex and fractured reality (Sikkink 2017; Destrooper & Merry 2018). Human rights 'both conceal and affirm the dominant structure but they can also reveal inequality and oppression and help challenge them' (Douzinas 2007, p. 108 in Reilly 2011, p. 62). Critiques of human rights as fundamentally exclusionary and imperialist, while having significant purchase, are themselves in danger of essentialising and homogenising the operation of rights, viewing them as forever fixed in a hegemonic political order. Concrete efforts to unpick a pattern of abuse carry the opportunity to no longer 'conceal and affirm the dominant structure' and to begin to reshape relations of power (Merry 2009). Approaches to human rights may learn better over time from the challenges of working to undo the relentless realities of structural and direct violence in multiple contexts. Notions and practices of rights remain one of the few widely usable political and conceptual frameworks available for addressing the value of people, individually and collectively, and cannot be lightly abandoned.

The following discussion, then, is put forward in the spirit of seeking to contribute positively to ideas and practices of human rights. This is done on the basis that greater self-reflexivity, acknowledging the limits of our understanding of the complex life of 'the human', and more attentive engagement with other ways of being alive are fundamental to strengthening and transforming the understanding and practice of rights (Brown, M 2002; Reilly 2011). This requires more than opening the category of the human to an expanded array of, for example, cultural characteristics. It also concerns changing the way the categories of the human, political community and the universal operate as *categories*. How borders are taken to work, whether as definitive lines or more permeable points of interaction and relation, provides insight into the remaking of these categories. Greater self-reflection and humility is also a way of addressing different models of agency and enabling different relationships in the pursuit or promotion of human rights, away from the delivery of a message by a truth-bearer as the pre-eminent model of the pursuit of rights to an emphasis on listening and exchange in which all parties may have things to

learn (Reilly 2011). Through considering both what the operation of borders can mean for notions of human rights and alternative, less categorical and more relational approaches to boundaries and the categories they might patrol, the article considers how the understanding and pursuit of rights might shift to become more able to recognise or articulate different ways of being human.

The idea of human rights

A great deal is asked of concepts of human rights. They are called upon in different ways and multiple contexts: to operate as a critical international legal framework; incorporated into many states' domestic legislation; as the basis of advocacy for many non-government and community-based networks; a recurrent language of aspiration and protest by individual citizens and collective movements and 'a vocabulary of justice' (Macklem 2015, p.1). The universalist assertions of human rights seek to transcend national borders, appealing to a wider grasp of the human where rights stand as 'a special sort of inalienable moral entitlement' that attaches 'to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group' and underpinning that which is necessary for human dignity (Burnell 2018, p. 1). For many, rights 'frame the moral, shape the political, and distinguish the legal in places as local and diverse as the family, the school, the workplace, the community, the nation, and the State' (Macklem 2015, p.1).

This extraordinarily expansive reach indicates the appeal and power of human rights and suggests how widely valued is their aspiration to inclusivity. It also makes clear the deeply protean character of the idea of rights. Yet to understand rights as that which fundamentally speaks for moral life wherever it is, for example, already fails to recognise other ways of articulating justice, identifying structural violence and abuse or constituting how we care for each other and the world. Or it is to place other ways of 'framing the moral' as less worthy of attention or simply as less 'moral'. In effect, to approach rights as that which 'frames the moral' subverts the need to listen to and learn from others and their sources of suffering and of redress. At worst, it becomes an assumption of superiority and sufficiency which 'affirms and conceals' embedded power dynamics. Believing that one holds the key to moral right

weakens, if not removes, the need for exchange. This undermines the process of coming to recognise and counter patterns of suffering and in so doing, reifies human rights. As Ashis Nandy noted regarding this impulse, the West 'may have a well-developed language of co-existence and tolerance and well-honed tools for conversing with other civilisations. . . . But, culturally, it has an exceedingly poor capacity to live with strangers. It has to try to overwhelm them or proselytise them' (Nandy 1998, p.143).

It is common for resistance or scepticism of rights claims to be put aside as the voice of '[l]ocal leaders [who ...] resist the human rights claims of subordinated groups by asserting that this is an alien, Western import not suited to local normative systems, a position framed most strongly in the claim that "Asian values" are distinct from human rights' (Merry 2006, p. 38-39). Yet rights claims are by definition occurring within contexts of debate and contestation that frequently involve conflicts of values, interpretations, interests and power. They are often part of the broader terrain of social debate and processes of changing social values, as forms of suffering that were previously not recognised as a matter of legitimate concern become so recognised (e.g., in some societies, the extension of the principle of non-discrimination to include sexual orientation) or as new patterns of marginalisation, exclusion or victimisation emerge (e.g., through the impact of changing economic relations, such as the monetisation of previously non-monetised exchanges). Friction can also result from conflicting, legitimate calls on rights (e.g., in some contexts, tensions between Indigenous and gender rights, Brown M 2018; Merry 2006). It is easy to dismiss discomfort with rights claims as resistance to dilution of power, privilege or authority, the inability to understand or empathise with those suffering abuse, or unwillingness to widen the circle of those with a claim on compassion and justice. While such motivations are common enough, people can also reject or suspect notions of human rights when they do not see themselves sufficiently reflected in the 'humans' who are the subjects of rights, or feel that ideas and proponents of rights do not recognise their dignity, or their marginalisation or suffering, or engage with their concerns, values or vulnerability (Taylor 2008).

In the decades since the Universal Declaration of Human Rights was agreed in 1948, out of the conflagration of World War 2, the language of human rights

has become increasingly familiar, albeit contested. The conceptual underpinnings of human rights took shape much earlier, however, also prompted by a long, debilitating war across Western Europe, and continued to evolve through the political struggles of the early modern and modern state (Minogue 1989). These struggles primarily concerned restraints on state power and greater autonomy and political participation for the growing middle classes within the state. As a result of colonisation and subsequent self-determination, the formal structure of the state is now a global phenomenon. The ubiquity of human rights today thus reflects the global purchase of the form of the state as well as the availability and utility of rights as a tool in a wide range of political and social struggles (Reilly 2011). These struggles have at times pushed the scope of human rights beyond the earlier, highly exclusive understandings and application of the term, as noted below. Nevertheless, they have not clearly expanded the character of that human, or of the universe in which that human operates (Reilly 2011).

At the risk of oversimplification, human rights could be thought of in terms of two streams. One stream is rooted in models of the citizen, the state and the universal which flow from the early modern and modern period, changing as states have changed, but nevertheless still deeply marked by their ancestry. The other stream of human rights is a broad, fluid set of assertions about the intrinsic value of all people that draws significantly from more formal principles of human rights but that is substantially shaped in response to atrocity or abuse and by the practical action and socio-political advocacy that emerges to counter that abuse. While these two streams mingle, the first, embedded in liberal social contract theory, still shapes the grammar, politics and imagination of contemporary rights to a notable degree, particularly as it is approached by governments and promoted internationally in development programs. This in turn substantially affects international fora. To have a better understanding of the shape of the tool that human rights are and the challenges reshaping faces, it is important to examine briefly elements of this constitution of human rights, and of the human and the universality it envisages.

Universality and the state

Notions of human rights are based in liberal, most notably Lockean, social

contract theory. Social contract theories developed in the context of the turmoil of the Wars of Religion and the economic and scientific revolutions of the Enlightenment (Brown C 1999). They sought to base government on science and rationality by providing an underpinning logic and rationale for government that was essentially independent of the prevailing religious authority while nevertheless recognising religion (Minogue 1989). Social contract theories emerged from traditions of natural law which regarded the person, as divine creation and image, as intrinsically sacred and valuable, but they also represented a radical break from those traditions. Natural law conceived of a universe of interwoven visible and invisible patterns of meaning and an all-encompassing community of creation, participating in a single ethical reality (Tully 1991). This reality was interpreted by (dogmatic) spiritual authorities who also claimed an overarching temporal power—a universal power—across a web of multiple local powers across Christendom. Contestation for power among various of these players was the backdrop to long-running ‘Wars of Religion’. The need to find a solution beyond the battlefield that brought an end to these wars and enabled states to more fully exercise sovereignty drove a re-imagining of the idea of universality. What had hitherto been understood as a teleological spiritual whole mirrored through Christendom became a universe of segmented parts, still ultimately whole, but now grasped through rationality and ‘science’ (Minogue 1989) and expressed through the state.

In the political sphere the re-imagining was in terms of a figure of everyman and an origin story for the state. The person, as everyman, remained a divine creation in the state of nature. The condition of nature was not safe, however, and so in order to afford protection from external attack, adjudicate disputes and provide a secure context for economic life, everyman joins together to establish government and form the state, ceding some aspects of freedom in return for the greater freedom afforded by enhanced security (Locke 1966). Unlike everyman, the state is neither natural nor a divine creation, but a human construction based on rational decision-making and answerable to the society of decision-makers. As the rational decision of the universal everyman, however, ‘the state constitute[s] itself as universality’ (Marx 1972, p. 31). This relationship between the rational, transcendent figure of everyman and the

state broke the logic according to which temporal power was a consequence of a unified universe interpreted by spiritual authorities and established a new circle of universality. It was part of a new, segmented vision of the universe, but one traversed by everyman as both universal citizen and knowing subject. The mutual constitution of everyman and state established a notional, ideal, public and secular sphere of the state which allowed greater autonomy and participation for some. The secular sphere of the state assisted management of a longstanding source of violence and came to be seen as 'the discovery of the proper basis of social and political life' and a 'rational solution to all human conflict' (Minogue 1989, p. 6). While states and societies may vary, according to the social contract, 'the underlying logic of the story by which particular political orders are constituted by and bound to the subject does not' (Brown M 2002, p. 26).

In contemporary advocacy, human rights are often understood as fundamentally independent of the state due to their universality (Moyn 2010) while the state and international bodies are seen to be almost in principle in conflict over rights. 'The strength of this [state] sovereignty principle in human rights presents a major contradiction' (Reilly 2011, p. 63). It is true that in practical terms such conflicts are common. Moreover, in the context of classical liberalism, much of the function of rights is to protect the citizen from misuse by the state of its considerable power, introducing from the start an incipient tension between the state and the citizen's human rights. Despite this, for the liberal origin narrative of rights, the sovereign state and the rights-bearing person are fundamentally interdependent. Everyman, as the universal man (a gendered figure, as discussed below) is the notional authoritative origin for the state but everyman can only find his human rights through the state. Rights assert and define the sovereignty of the citizen within the state, but the sovereignty of the citizen depends upon the 'sovereignty of the state and its capacity to assert that sovereignty in the world' (Brown M 2002, p. 200).

The United Nations and the Universal Declaration do not stand apart from national sovereignties, as is clear from the actual Declaration, but are made up of them. The Universal Declaration could be read as not only aspirational and normative in practical political terms, but a statement, even a reminder, of what stands as the ideal relations among interlocking, mutually constitutive

categories of state and citizen. In practical terms too, while human rights are understood as attached to all humans, the formal pursuit of rights is conceived and structured in terms of relations between state and citizen or between citizens (or other legal entities) but upheld by the state. Alongside bringing to light and protesting individual or collective abuse, national, international and multilateral bodies concerned to pursue human rights have frequently understood that task in terms of promoting liberal models of the state—a notable dimension of US foreign policy from the 1970s to the 2000s (Moyn 2010). On the relatively rare occasions when international agencies and courts are involved in pursuing actual cases of abuse (in contrast to setting standards, negotiating agreements or providing programs of support regarding rights) the actual rights holders (the victims) rarely figure except as evidence.

The human

In this origin story the figure of everyman appears as that which is universally human, but nevertheless stands as a specific, limited figure. Everyman is (notionally) free and equal, rational and autonomous, fully formed (rather than in a state of development), self-interested, unencumbered and able to cross between nature and the state, and between the private and public spheres (Brown W 1995). Everyman operates in this way through a series of constitutive exclusions. Women and children belong to the affective domain of nature; they do not step by rational decision into the public sphere of the state but are classified within the private sphere, created by this binary division. The division of public and private life such that the public, political, rational and historical are the sphere of men and the private, natural, affective and timeless the sphere of women and children has been extensively analysed and critiqued (see, e.g., Wendy Brown 1995). In effect it has meant that 'rights do not apply in [the sphere of the family]; rather this realm is ... governed by norms of duty, love, and custom in addition to nature' (Brown W 1995, p. 181). In a similar way, work within the household was not counted as contributing to economic labour, which belonged in the realm of civil society.

This organisation of the social contract has had profound and continuing practical effects. It has contributed significantly to the effective exclusion of domestic violence, marital rape and child abuse from public view and often the

reach of the law in liberal states until approximately the 1970s onward, as attitudes and constructions of rights and of criminality, and the thresholds of what suffering was visible and what was occluded shifted as a result of ongoing socio-political struggle and socio-economic change. The struggle to fully recognise domestic violence is very much ongoing, however, while understanding of what constitutes violence in this context continues to evolve. It is notable that Amnesty International argued against including violence against women in their pursuit of human rights until the 1990s (Bunch & Reilly 2019). While violence against women was recognised as a matter of human rights by the United Nations (initially in 1993) and by many states, practical action remains meagre. '[V]iolence against women is recognized now as real and pervasive But it is not necessarily seen as important enough to expend significant state resources on ending it' (Bunch & Reilly 2019, p. 73). Moreover, while women are now more firmly included within the public sphere, it is not clear to what extent this notional domain has itself been effectively re-imagined or socially entrenched notions of public and private have been untied. Meanwhile the relative invisibility of domestic labour continues.

Other categories of human were also excluded from the scope of the universal subject of rights. Slaves were excluded, as were those who did not till the land or engage in recognisable economic activity (Locke 1966; Tully 1995). Agriculture and other forms of economic production were a defining feature of civil society. To not engage in them was not to constitute a civil society or a political community. For Indigenous Australians, for example, this contributed to the classification of Australia as *terra nullius* or empty land. While it was clear the land was populated, those populations were not seen as constituting societies or political communities, their complex forms of socio-political order, kinship, spiritual life, food production and land management notwithstanding. As a result, no treaties were sought, in the context where a treaty (however unsatisfactory it may be) was a form of recognition of the other as a holder of rights and as possessing capacity for participation. While *terra nullius* has been overturned in the legal domain (with the Mabo judgement in 1992), it continues to have profound effects on the constitution of the country's political and social life and has left deep, ongoing rifts of trauma and suffering (Dodson 1995; Fogliani 2019).

Certain modes of economic activity, and by extension certain kinds of economic relations between humans, and between humans, land and animals were established as intrinsic to being human. Economic life, as part of civil society, was seen to be grounded in 'human nature'. This allowed difference in wealth to be counted as a reflection of difference in industry: 'the consent of men have agreed to a disproportionate and unequal possession of the earth' (Locke 1966, p.140). The structural violence constituted by systemic impoverishment, within states or between them, was rendered not political and so beyond the scope of the earlier, post-war iterations of human rights.

Women and Indigenous peoples in many states have long been included as subjects of rights while economic and social rights (the so-called second-generation, positive or welfare rights) are now more widely recognised in principle. These inclusions, however, do not necessarily now make visible what has been rendered effectively invisible through particular constructions of the human. Certain forms of labour, for example, or of violence, continue to be marginalised and systemic impoverishment overlooked, while notions of human rights scarcely recognise the social, economic or spiritual constitutions of many Indigenous peoples, or peoples of significantly non-liberal, often customary forms of socio-cultural organisation (Vaai 2019; De Leon 2018). As a result, fundamental forms of vulnerability and suffering do not easily register as zones of potential or actual abuse, even though the consequences of destruction may be clear. Patterns of land tenure upon which societies in many parts of the Pacific Islands rely are not clearly protected by the legal system, for example, and when they are, are construed primarily in terms of property rights, or are seen by external or even national official actors as obstacles to economic growth (Filer et al. 2017). This can lead to dispossession and inter-generational marginalisation. The liberal architecture of human rights does not have clear ways of recognising differently constructed sources of collective meaning and patterns of life, such as different relationships to land, despite these being a fundamental part of the political, social, spiritual as well as economic life of many peoples (Graham 2008; Vaai 2019). While Indigenous land rights have been implemented in a number of states, they appear rather as legislative additions (albeit important) than something which changes the architecture of, or is fundamental to, how human rights are constructed and understood.

Human rights as the possessions of entities

Human rights have been conceptualised as inhering in or attached to entities, whether an individual person or citizen (as everyman, the original scope) or, in response to Indigenous, minority and self-determination movements, to groups in the form of collective rights. Conceptualising rights through individuated entities influences the narratives that are generated around systemic marginalisation and violence. While this might work effectively enough for certain circumstances, framing rights as individual possessions draws attention towards a victim and perpetrator, and away from contexts of social, political and economic relations and the dynamics of power that generate abuse (Brown W 1995). It abstracts and decontextualizes those involved, as victim and perpetrator, and the abuse itself, both conceptually and in common forms of practical redress in ways that favour (at best) a legal or welfare response. Legal and welfare responses (when they occur) are important and can be critical. Nevertheless, the social and political context of both the person suffering abuse and the forms of suffering in question can require a more sustained process of transforming patterns of socially, institutionally and politically embedded violence and more fundamental shifts in relations of power and participation (Merry 2009). While approaching rights as individual possessions does not foreclose more broad-ranging efforts to shift underlying causes of abuse or stifle the politics that might be swirling around individual cases, nor does it enable or shed light on the need for contextualised engagement with power and the webs of relations through which power works.

The expansion of the concept of rights to include collective forms has brought important benefits, for example through the international legal recognition of Indigenous rights and women's rights as human rights in the context of the United Nations framework. Nevertheless, collective rights have not broken out of the pattern of conceptualising human rights as the possession of an already given entity, in this case the supra-individual of an identity group. This approach can again essentialise the identity of the group and so intensify the dangers of abstracting abuse from the socio-political context which generates it.

In the context of transnational, cross-cultural or cross-ethnic accounts of violence, for example, essentialised portrayals of 'victims' and 'perpetrators'

slide easily in narratives of 'inherent violence' and 'us and them' (Das & Kleinman 2000). These narratives ignore the 'dense histories of exchange ... which confound closed categories of self and other, Indigenous and exogenous, and interweave the most local and personal details with national and global interactions, shifts and pressures' (Brown M 2018, p. 42). Such frames for working with abuse are not only not likely to be effective, they compound abuse and are their own forms of violence.

The example of Indigenous health status in Australia also suggests that understanding the collective suffering of peoples subjected to structural violence in terms of the prevailing model of collective rights can enable siloed definitions of need or harm and support the misapprehension that responding to such silos (when response is forthcoming) is sufficient, without a fundamental reframing of relationships. There have been decades of government-led efforts to improve Indigenous health outcomes in Australia and 'reduce the gap' between Indigenous and non-Indigenous health status (Brown M 2002). Despite these efforts and welcome improvements in both Indigenous and non-Indigenous health the gap between Indigenous and non-Indigenous mortality and life expectancy rates remains obdurate and increasing (Ring et al. 2016; AIHW 2017). While often cast in the language of self-determination, rights and partnership these health interventions have been (with some exceptions) largely pursued through welfare measures based on external professional assessments of Indigenous health needs. It is no criticism of the work of the health professionals to say that these interventions have not been based within a context of coordinated recognition of, and effort to, shift the structural violence which shapes fundamental aspects of Indigenous Australians' lives and is widely recognised as a leading cause of and context for engrained patterns of ill health, trauma and self-harm (AIHW 2017; Holland 2018).

The Australian Institute of Health and Welfare notes that the health inequality suffered by Indigenous Australians is a consequence of colonisation while the Aboriginal and Torres Strait Islander Social Justice Commission addresses Indigenous health in the context of the need for forms of effective constitutional recognition and local Indigenous decision-making (AIHW 2017; Holland 2018). Drawing these links is not new (Dodson 1993, 1995). Nevertheless, initiatives intended to explore how to undo broader patterns of structural

violence have been repeatedly rejected or overlooked at the level of national government (Holland 2018). As a result, despite positive local activities, health initiatives have not occurred in a broader context of seeking to change relationships between Indigenous and non-Indigenous Australia, to recognise and engage with Indigenous sovereignties over time or to comprehend that '[t]he right to self-determination is the right to make decisions' and participate in shaping political community at all levels (Dodson, 1993: 41). The persistence of poor health status and high levels of self-harm, alongside other clear evidence of structural violence, such as rates of Indigenous incarceration and deaths in custody, have not been approached as essentially political matters, despite numerous reports indicating that that is fundamentally what they are (e.g., RCIADIC 1991; Fogliani 2019). Rather, the collective subject of rights has been defined by lack while overcoming entrenched, systemic infliction of suffering has in effect been treated as a service delivery issue, the nature of which is largely defined by the rights upholder (the state). That is, it has not been approached as a matter of rights understood as questions about how recognition of others, or of each other, in the circles of exchange and participation that constitute political community might be able to take place.

Change?

Efforts to pursue and apply human rights over the past decades and more could be understood as an account of gradual improvement, whereby the static, heroic, ideal categories of the human, the state and the universal and the terrain that they map gradually open to greater diversity (Donnelly 1999). Resistance to this diversity could be seen as reflecting broader political and economic conflicts and to not be reducible to the character of the discursive technology of rights. Nevertheless, while the significance of broader conflicts and resistances are certainly fundamental, the ongoing exclusions and occlusions generated by prevailing models of human rights remain deeply etched into how many understand the nature of political community, the human, what we owe and share with each other, and our place in the world. While it is not simply the character of the human rights narrative that holds back significant political movement on non-Indigenous recognition of First Peoples in Australia, for example, the ways of constructing the world in which that

narrative is embedded contribute to shaping and obscuring the dynamics of power in play. The institutionally entrenched power of the social contract narrative (linked as it is to other accounts of the human, the world and knowledge), the struggles for and history of change, but also the uncertain quality of that change are all important to the question of whether it is the emancipatory capacities of rights that are preponderant.

While the human as the subject of rights has become more inclusive and expanded beyond the everyman hero of the original contract, the character of the category itself remains ontologically particular and marked by its ancestry. It is a character moving in an enclosed logic of relations that many may not be able to occupy with any agency, or that is too deeply foreign, irrelevant or threatening to the actual movement of people's lives (Taylor 2008; Tully 1995; Brown W 1995). In the same way the invitation to previously excluded categories of people to join the 'public sphere of the state' is rarely taken as an opportunity to reshape or reconceptualise these domains. ('[W]omen enter civil society on socially male terms', Brown W 1995, p.184). Those that are now more or less included, depending on context—women, minority groups—might need to tread a delicate line between forms of assimilation, where their entrance and significance remain subsumed into the already established terms of operation, and the potential of their presence to genuinely shift those terms and effect change. The experience of Indigenous peoples in Australia, for example, has been shaped to a significant degree not simply by not being included as subjects of rights, so that they could now simply be added, but by the long, violent history of marginalisation and exclusion from categories of rights (Kidd 1997; Bottoms 2013). The categories that many Indigenous Australians have inhabited, in the view of non-Indigenous Australians but also affecting many self-perceptions, have been constituted by exclusion (RCIADIC 1991; Fogliani 2019). From this perspective alone, simply 'adding' Indigenous peoples is not in itself a pathway into genuine inclusion and exchange.

The path of fundamental change may take shape through some of the ongoing, practical efforts to undo patterns of violence in diverse contexts and shared reflection on those efforts (Reilly 2011). These contexts can enable exchange across different ways of constituting human life and meaning, including different insights into violence and abuse and ways of countering them, and different

approaches to crafting well-being. Sally Engel Merry's work, for example, describes a more dialogic approach to working with human rights (2006, see also Brown M 2018). Yet what I am describing here is not 'vernacularising' rights (to use Merry's term). Others can have their own ways of preventing or countering the systemic imposition of suffering and harm that are not a translation of global rights talk. They may also have more to say about what generates harm than is commonly included in lists of abuse. 'The thresholds of what is recognised as abuse changes, individually and collectively, often as a result of exchange, interaction and expanded experience, including coming to recognise oneself in the pain of others' (Brown M 2018, p. 41). Entering into exchange is rather to accept that we can learn about patterns of harm and approaches to undoing those patterns from others. This can entail learning as much about oneself and one's own society as about others through the insight and experience of others.

While not offering an alternative narrative of human rights, this describes an alternative, dialogic approach to pursuing rights and an openness to different ways of understanding the human and the universal from which a new narrative might emerge. Particularly when working across cultural difference or in community contexts, an orientation of listening, rather than one of being the holder of already achieved truths, and an emphasis on mutuality and participation, rather than a service delivery or instructional model of rights are key dimensions of a more dialogic approach. Listening, mutuality and learning from others are part of a fluid, permeable model of agency in the pursuit of rights. They suggest too a dynamic universalism, oriented by the goal of working to undo the patterns of violence and suffering that we collectively inflict and endure, but extending out to engage with, include, shape and be shaped by the experience of others. While not mainstream, such approaches to working with human rights are not new, but they have not yet shaped an alternative account or model of human rights.

A relational view of rights

A more relational view of human rights is an effort to build on such dialogic approaches, although these comments only sketch the beginning of an alternative account of rights. Human rights could be understood as a way of

asking and answering, not once and for all, but again and again, the questions of how we live together as communities at all levels without entrenching patterns of harm and suffering. These are questions about the nature of relations that start from a recognition that we live in the context of interconnection in all dimensions of life. While the liberal social contract presumes a context of relations, its central figure is a relatively atomised individual, although one that is offered as a symbol for everyone, while in effect excluding many. The social contract starts with the figure of the largely self-sufficient everyman, in which the dense network of relations is presumed but hidden, entering the state. A more relational, dialogic view of rights starts from the explicit recognition of relationship as fundamental to existence. From a normative viewpoint, this might be framed as the significance of relations of respect. While questions of rights and abuse inevitably concern how people are treated, in a more relational view the nature of the relations in play becomes subtly more central. This is not to reduce commitment to the value of people, whether as individuals or as collectivities. Nor is it to suggest that community values trump individual ones. Rather it is to restore the person to the circle of meaning and connection in which our lives are lived and experienced and foreground the significance of the linkages that give continuity.

Rather than being focussed through an ideal individual, a relational approach addresses the everyday complexity of many, diverse people, focussed through the question of how we live together without perpetuating patterns of violence. The state and citizen continue to be key categories, however, as these remain fundamental elements of socio-political organisation, and the state continues to be significantly responsible for upholding rights. Nevertheless, neither the state nor the individual citizen are taken as universal, rational forms of existence.

This approach has a number of implications. One is analytical and political. If the focus shifts from rights as pre-eminently the possession of individual entities to pursuing rights through countering patterns of violence, the 'wider patterns of power and inequality' in which violence is located come more emphatically to the fore (Merry 2009, p. 59). Analyses of marginalisation and other forms of structural and direct violence already pursue these broader, contextual investigations, as the discussion of Australian Indigenous health above indicates. Such analyses, however, are not generally placed at the core of how human rights are

currently understood. The identification of and appropriate responses to victims and perpetrators are certainly important, when relevant to the circumstances. Nevertheless, part of the relevance of greater attention to patterns of power and inequality is that it can highlight the involvement of your own state, society or group in the historical generation or contemporary perpetuation of suffering and the need and potential for change. That is, it highlights patterns of violence as shared human problems and responsibilities requiring multidimensional responses, often potentially involving the legal system, but also the state, international bodies, communities and individuals.

Delinking rights from the liberal social contract means that progress towards human rights does not necessarily require a modern liberal construction of state, society and economy. The international promotion of human rights is often approached in terms of movement towards more complete liberal political and economic relations, 'the drive to define "modern" human subjects' and the explicit rejection of more local cultural values (Taylor 2008, p. 166). In many contexts, however, for example, across much of the Pacific Islands, 'modern' liberal subjectivity can involve the erosion of the patterns of kin relations, socio-spiritual meaning and communal land holding which underpin much social welfare, social and economic well-being and the sense of self-determination (Filer et al. 2017; Taylor 2008). Moreover, while parts of Melanesia struggle with problems of entrenched violence, a sweeping opposition between working against violence and specifically local cultural values is misleading and unwarranted (Brown M 2018). Not only does such an opposition overlook the broader, post-colonial contexts in which the violence is occurring and local efforts to prevent or manage it, it also alienates those whom the rights promotion is addressing and disrespects the terms of their lives. The alternative is a dialogic approach to pursuing rights, which understands violence as a shared problem about which we all have things to learn and insights and experiences to offer.

In learning from others, a more relational approach to rights might explore a wider, more inclusive scope of relations and develop a language of the human and the universal that is open to difference. This reaches beyond a strong, contextual analysis and beyond dialogic engagement in countering violence to touch on some of the different ways of understanding the human that have been

offered by such engagements. Many peoples have a densely ecological sense of the scope of interconnection across which their lives are lived, reaching well beyond other living persons, groups or states. In these contexts, being human is a fundamentally relational matter. '[H]umans ... are connected and made by way of relationships with a wide range of beings, and it is thus of prime importance to maintain and strengthen these relationships' (Graham 2008, p.187).

This might mean, for example as in Timor-Leste, that not only the living, but the dead, ancestors and lives to come are part of a differentiated but interconnected web that is incorporated into decision-making in practical ways (De Leon 2018; Grenfell 2020). It might mean that the sacred does not belong to a 'private' realm but infuses life, or that no sharp division of being is drawn between humans and nature (Vaai 2019). Polynesian writer Upolu Vaai argues that across Polynesia the understanding of community 'is multi-dimensional as it embraces and respects the relationships that are visible, but most importantly those that are invisible to human knowledge, such as air, ancestors, the invisible underground world of trees, and the invisible domains of the ocean, to name a few' (Vaai 2019, p.8). The person is regarded as a 'walking earth' and the earth is a 'living community' (Vaai 2019, p.10).

For non-Indigenous Australians, a deeper appreciation of Indigenous Australians' ways of being human not only offers some insight into other ways of experiencing life and community but is part of building relationships of mutual respect and recognition within our own state. For many Indigenous Australians, relationships with land serve as a model for social and political community. 'The land, and how we treat it, is what determines our human-ness. Because land is sacred and must be looked after, the relation between people and land becomes the template for ... social relations. ... all meaning comes from land' (Graham 2008, p.181). This forms the basis of a custodial ethic grounded in habitual practice, not only towards land, but towards community and others more generally. It offers a strikingly different account to the abstraction of the social contract. In the context of modernist, liberal theory, such approaches belong to the traditional cosmologies which it supplanted, and which thereby appear as markers of irrationality and the past. Yet in contemporary terms, there is nothing particularly 'rational' or 'scientific' about

the narrative of everyman and the social contract.

Two points are suggested here, in regard to these different and more interconnected understandings of the human. The first is to highlight that in recognising abuse, we need to better recognise the forms of violence undertaken against fundamental sources of meaning and value that are not easily recognised in the shape of harm inflicted upon the liberal subject. The destruction of sites, places or objects that are held as sacred or in high esteem is one example. The second is to recognise the potential to enrich the sense of the human embedded in human rights architectures and visions of everyman. Political and social movements have long been agitating to better reflect those categories of life that have been excluded or marginalised in the narrative of everyman. These include categories of people noted earlier, and others not mentioned: women, children, the poor, slaves, Indigenous peoples. As well as these significant groups, however, 'nature' itself appears not only as categorically divided from the human and the rational world of the state, but as a dangerous, unruly zone of uncertainty, emotion and threat. It is that from which the state emerges but which it transcends. While this account may have met the needs of the early modern period in Europe, there is now a pressing need to craft a different understanding of humans in nature.

Everyman and the liberal version of the social contract are not the only conceptual traditions in Western societies or sources of thinking about the human and political community (e.g., as Carol Gilligan's work makes clear), or about the non-human world, although they provide a powerful underlying motif in political and economic spheres. Contemporary versions of everyman are not equipped to deal with some of the world's most pressing problems and forms of marginalisation, including those flowing from climate change but also encompassing deepening inequalities. The motif of the 'human' needs to be opened and enriched, through reconnecting with other sources of thinking and practice, including many areas of science and ecology, but also through greater openness to and appreciation of the insights of other patterns of life. This is not suggesting mimicking ways of thinking or forms of belief which we do not inhabit. It is rather suggesting that we explore ways of recognising and valuing fundamental domains of life that have been overlooked, bracketed or marginalised in the narrative of the social contract and its account of our

relations with each other and with the world and that we are open to appreciating and being changed by others, to seeing differently. Perhaps this would lead to the crafting of 'human' rights (that is, beyond rights attached, for example, to a river as a legal entity) for webs of relations, including with the natural world, and for elements of the natural world itself.

The questions of how to live together in ways that untie patterns of violence and suffering are ongoing and difficult. The language of human rights has provided one set of tools to work with those questions. That language has been extraordinarily potent, but it is also limited and can be destructive. It is burdened by its occlusions and assumptions, by its colonial legacy and the ongoing dynamics of power that are part of that legacy. The understanding, language and pursuit of human rights needs to evolve to be better able to listen to other traditions of observing harm and working against violence. The borders of the human, political community and the universal could become more open to crossings and learn to respect 'what the Polynesians called the *va* (relational spaces) with everything visible and invisible' (Vaai 2019, p.8).

M. ANNE BROWN is a director of PaCSIA, an NGO working on dialogue processes, and an honorary principal research fellow at RMIT University and The University of Queensland. Her research and practice interests focus on political community across division, peacebuilding, governance and state formation in heterogeneous or hybrid states, social dialogue processes, relationality and questions of trust, and the interface of practice and theory. She is author and editor of various books, articles and chapters exploring these issues.

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