

Specific Rights of Aborigines: A Response to Sohail Inayatullah

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Introduction

Inayatullah in this paper raises, creatively, the problematic nature of much of the debate on rights and its underpinning assumptions. By extension of argument the rights are inevitably extended to new classes of beings, not previously recognized as having rights, he claims the robots will inevitably be given rights.

This line of argument, he honestly accounts, has given rise to mockery, ridicule and anger. In particular, colleagues in developing countries have been angered by the suggestion that, while they struggle for basic human rights, he is concerned over the rights of technological forms. I must admit from the outset that I am sympathetic to the concerns of his colleagues.

However, I am intrigued by the proposition, central to his argument, that we are, with some cyclical exceptions and rises and falls, on a steady course of improvement, of enlightenment, of increasing recognition of the rights of groups, previously exploited by the dominant. He argues that there have been a series of revolutions in rights in the European context by which rights were extended to new groups, including peasants, aristocrats, the bourgeoisie, proletariat, women, nature, the Third World and indigenous people. Robots are, along with plants and animals, now unthinkable in terms of rights, but he attempts to be creative and think the unthinkable.

Rights for Australia Aborigines

It was once true that rights for Aboriginal peoples in Australia were unthinkable. At the least, the dominant groups in non-Aboriginal society

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thought that any rights we may have should be limited and restricted to any rights that do not interfere with the rights they themselves claimed to appropriate land, life and labour in the pursuit of capital gain and wealth.

When the first European to visit my people, the Yawuru of Western Australia, outlined his views, we were regarded as less than human. Charles Dampier described the people he met in unflattering terms, regarding them as the miserablest people in the world:

Setting aside their human shape, they differ but little from Brutes... They have great Bottle noses, pretty full lips and wide mouths... Neither have they any beards. They are long visaged and of very unpleasing aspect; having no one graceful feature in their faces... They have no houses, but lie in the open Air, without any covering; the earth being their bed, and the Heaven their Canopy... There is neither Herb, Root, Pulse, nor any sort of Grain for them to eat, that we saw, nor any sort of Bird, or Beast that they can catch, having no instruments wherewithal to do so. I did not perceive that they did worship anything... These people speak somewhat through the throat, but we could not understand one word that they said.

This inability to communicate led to a skirmish on the beach and the first shot fired in anger, which wounded a young Yawuru man. In retaliation, a “nimble young crewman”, not nimble enough, was speared in the face. Both sides withdrew to tend their wounded. Dampier stayed in the area for two weeks, getting water in the upper reaches of a creek that now bears his name, before setting sail for Timor.

On his return, he was court-marshalled on charges raised by an officer of the ship, found guilty, deprived of his three years pay and declared unfit as a commander. He would later go on to write bestsellers on his travels that sparked exploration fever in England and the Gulliver’s travel fantasies of Jonathan Swift. He also had a career as a showman (selling tickets to view the Tattooed Prince, a Filipino slave). Rogue perhaps, but his reports shaped English attitudes to Aboriginal Australians for more than a generation.

His negative views on our humanity have coloured the nature of our ongoing history and made our struggle for recognition of our rights one that is incomplete today. Because Aboriginal people “differ but little from Brutes”, we could be treated as brutes, as a species of indigenous pests that needed to be established, for our land to be taken. We had less than our rights as humans.

Because he wrongly viewed us as having “neither Herb, Root, Pulse, nor any sort of Grain... to eat”, laws could be made that released our land for leasehold without consultation, negotiation or compensation. Resistance to theft was met with sanctioned violence.

Universal and Specific Rights

But what were those human rights that were denied us? What was their origin? What were they grounded in? How could we know what we were missing out on? The rights that colonialism denied to my people were both universal and specific. It cannot be doubted that we were denied access to universal basic rights of the kind that are declared in the Universal Declaration of Human Rights adopted by resolution of the United Nations fifty years ago, rights expressed in the Declaration were being denied. They are still being denied in Australia today. Measured against that benchmark, process has not been universally consistent.

But where did that body of rights come from? We have seen that the body of views expressed by Dampier persisted over time and was a key component of popular thought at the time. But at the same time, there were intellectual and social forces at work that disagreed with that view, that saw value in human life regardless of how different or how primitive that life was seen to be. These were the views of the Enlightenment, that period of the last fifteen years of the eighteenth century that gave the Western world some key documents declaring the rights of man, such as those of the French and the thirteen uniting American states.

At that time, history has revealed that the British shaper of colonial law, the Colonial Coffee, was attempting to restrict the freedom of the new West Australia colony in making laws for the indigenous inhabitants, especially in the north of the colony where my people lived. There were debates in newspapers, letters and in the British Parliament over the essential repugnance and immorality of the denial of human rights to Aboriginal people. Massacres, well documented and undeniable, were regarded as indicators of an immaturity of the rule of law in Western Australia. The response of the Colonial Coffee was to attempt to withhold, for as long as they could, the regulatory power of the colonial government in its management of Aboriginal issues.

They also wrote into the condition of pastoral leases that Aboriginal people had rights of access in order to pursue our hunting, foraging and

ceremonial practices. This issue, created by a tension between the Dampier and the Enlightenment views, has become a major political and legal issue in contemporary Australian society. The Australian High Court, in the *Mabo* and *wik* cases, has declared this survival of those rights on modern pastoral issues, inside the framework of the common law.[1] It goes against the view in the Inayatullah paper which says that exclusion is giving way to inclusion, to now see the efforts of the Australian government turning back the clock on our rights, using its statutory to overrule the common law.

These common law rights have their origin, their wellspring, their core in traditional Aboriginal laws and customs. Not in the Enlightenment.

The Enlightenment, however, gave air and space to the idea that Aboriginal people were human, that they had souls, that they were subject to God's goodwill and humanity's recognition. It created a window for the future that has enabled the contemporary common law in Australia to recognize Aboriginal rights, specific to the culture and law of our people (Presenter's comment: A law which goes back 40,000 years)

Those rights are different from the universal rights espoused in the language of the Enlightenment and the United Nations. They are specific rights to land, to culture, to language that are encoded and transmitted in the specific context of the Yawuru system of beliefs, our own religious worldview. There are commonalities with other Australian aboriginal values systems, but there are distinctive elements as well, belonging to our place, our country, our ceremonies, our Dreamings. It is wrong in principle to assume that these can be codified or generalized across Australia, or even translated from our country to the world.

From the Point of View of Yawuru

Inayatullah points to a wave of emerging issues, apart from robot rights, that are changing how we see ourselves and others. Genetics, multiculturalism, the women's movement, postmodernism, information and communication technologies, he argues, promise to alter how we see nature, truth, reality and self. There are four levels to these changes, each of which can be looked at from an Aboriginal perspective:

The first change relates to what we think is the natural or nature. The Yawuru view of nature is different in kind and force from the Western view. We see the land, the sea, the water, as creations of the Dreaming ancestors. It is not outside of human agency, but a part of us as people.

Next Inayatullah poses transformations in what we think is the Truth. There can be no doubt that the Truth, as experienced and understood by the Yawuru was different in kind and type from the truth that Dampier and other Europeans who followed held to be self-evident. The images that he used to write about our people show that his view of space, time, history and humanity were a product of the period of society in which he lived.

Inayatullah also sees a process whereby there is a rethinking of what we consider as Real. Again the Yawuru saw reality where the Europeans saw Mythology. These processes of change, according to Inayatullah, lead to a transformation in what we think is Man. For our people, humanity is not a linear construct. We see our ancestors and their actions in life today. We see people, not as individuals, but as belonging to vital grouping of family, of kin and of affiliation to country, to places in the landscape and other living beings.

Conclusion

Thus the author is right in seeing that the universal basis of rights claimed by the Western world and delivered through global institutions is a specific construct under attack at the same time that this framework is gaining enormous political acceptance across the world. As the world reaches for a unanimous view of what is right and of what right flow to each person, regardless of their race gender, class, ethnicity and country of origin, that view is under criticism because of its claimed universality.

What we need to find is a mechanism for dialogue that separates origin from function. What does it matter if our code for treating other humans comes from Christianity or Confucianism, from Zen or Cybernetics, from Yawuru or Whitehall law? Theology should be set aside. Claims of universal human values should be rejected.

What matters is that we can sit down and agree on what is required in order to achieve a world characterized by common decency. We then reach what Anthony Langlois sees as "a political legal instrument for enshrining a common set of values which are supported locally by a multitude of different ethical, religious and cultural moral systems". There is no need to resort to notions of divinity or a higher moral force. Simply grounding human rights in what it means to be human is enough. Perhaps they have, like hal in 2001, a personality

that needs to be accommodated. But, I believe, until we can define and agree on a process for agreeing on a common platform for reaching a higher standard for human interaction, the robots should wait in line.