9. Human rights and the promise of a good life

When the planes crashed into the World Trade Centre in New York on 11 September 2001, they threw into stark question the modern social imaginary and, with it, the fragile ascendancy of reason and of an international moral and legal framework articulated through the discourse and practice of human rights. These features of modernity were never absolute, as the history of the twentieth century had made brutally clear, and had been under escalating assault over the same period as ‘the decade of human rights’ in, among other places, Somalia, Bosnia, Rwanda, the Palestinian territories and Israel. Evil played its role, in shocking manifestations of hatred and cruelty, but was neither the cause nor the ultimate consequence. Nor were we witnessing a clash of civilisations, although culture, and a plurality of certainties, were factors. Rather, what was being played out, and continues to be played out, was a stark contest between opposing ideas of the good: whose good, what constitutes the good, what is the moral source of the good, what are the necessary conditions for a good life; or, in the case of some, a good death. The actions of those who carried out the attack, and the subsequent retaliations in the war in Afghanistan and then in Iraq, suggest that we have sacrificed the possibility of imagining or working together to achieve a common good. The invasion of Iraq in particular, carried out by the United States and its allies in defiance of the United Nations, puts at risk those very values of freedom and democracy in whose name the war was executed. The existence of the United States’ detention camp at Guantanamo Bay, removing detainees from any due legal process or protection under either international or national law, is a radical denial of the rule of law, of human rights, and of the underlying principle of respect for the bond of common humanity. Modernity, like Cronus, appears to be devouring its own children.

But this is to privilege ‘the discretionary judgements of contemporary managers of the power of liberal states’: the view from the top. Critical as that is, it leaves out ‘the pivotal role of the democratic agency of ordinary citizens in making practical the ethics of human rights’. It is this democratic agency of ordinary citizens and the agency of ordinary people that has been the focus of my book. I began with an account of the inquest into the deaths of two women, Nurjan Husseini and Fatimeh Husseini, and the circumstances of their families who were seeking asylum in Australia. Despite their bewildering initial brush with modernity, its complexities and its institutions, despite the draconian actions

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1 Huntington (1993).
2 Phrase offered by Anne McMillan, personal communication.
of the Australian Government and even its offer to pay people to return to Afghanistan, Musa and his family, Sayed, their young witness, Ali Reza, and his brother maintained their choice to seek a better life in Australia. They were all finally recognised as refugees and now live in this country.

The interim period remained bleak. Although he was allowed to attend school, Reza was held under armed guard in a Perth motel for 11 months while immigration officials assessed his refugee application. In an interview published in *The Australian* newspaper, he was quoted as saying:  

> The motel was like a detention centre, it was prison for me. I was in the room and there were two officers there all the time watching me. Many times I was told I was taking very long showers and that Australia did not have enough water…but it was my only privacy. I would go in there and sit in the shower and think about the future. I decided to suicide, many times, but I thought about my family and that stopped me.

In 2004, he was granted a temporary protection visa and was finally able to live with his older brother. Later that same year, he was awarded a Rescue Medal by the Royal Life Saving Society for outstanding bravery for his attempts to save Nurjan Husseini.

After the inquest, Musa was sent back to detention on Nauru and Sayed to Christmas Island. Months later, Sayed was forcibly relocated to Nauru.

In May 2004, two and a half years after their rescue from the *Sumber Lestari*, Musa and his family and Sayed were officially recognised as refugees and released from detention on Nauru. Their next step was to gain Australian citizenship. Sayed expressed his desire for this goal in terms that Fatimeh is buried on Christmas Island. For him, in spite of all that has happened, she is part of Australia and continues to evoke the dream of a better life that they had hoped to share.

### From ‘bare life’ to human rights

In becoming stateless persons, asylum-seekers and refugees are seen both by governments and by many humanitarian organisations as figures of ‘bare life’.  

Elaborating on the work of Hannah Arendt, Giorgio Agamben distinguishes bare life from political life. The critical distinction they both make is between the bare natural life (*zoe*) of humans simply as humans and the political life (*bios*)
of the person as citizen. Their focus is on the break-up of the identity between man and citizen. Implicit in their argument is that a good life is only achievable by those who are citizens, since the Rights of Man only belong in the sphere of the nation-state.\footnote{Agamben (1995: 117).}

The paradox…is that precisely the figure that should have incarnated the rights of man \emph{par excellence}, the refugee, constitutes instead the radical crisis of this concept. ‘The concept of the Rights of Man,’ Arendt writes, ‘based on the supposed existence of a human being as such, collapsed in ruins as soon as those who professed it found themselves for the first time before men who had truly lost every other specific quality and connection except for the mere fact of being humans.’ In the nation-state, the so-called sacred and inalienable rights of man prove to be completely unprotected at the very moment it is no longer possible to characterise them as rights of the citizens of a state…The Rights of Man represent above all the original figure of the inscription of bare natural life in the legal-political order of the nation-state…Rights, that is, are attributable to man only in the degree to which he is the immediately vanishing presupposition (indeed, he must never appear simply as man) of the citizen.

This analysis would suggest that a bare life cannot become a good life, since a bare life is lived outside the law, outside politics; in a sense, outside society. For Agamben, the refugee ‘unhinges the old trinity of state/nation/territory’ and threatens not only ‘the very foundations of the nation-state’\footnote{ibid., pp. 117, 118.} but also the possibility, at least in terms of Agamben’s own argument, of achieving a good society. In this view, there is no substantive move from the limited Rights of Man to a concept of universal human rights that does not rely on a distinction between bare life and political life, or on the inclusion of individuals within any particular nation-state. And it ignores the possibility of an active rejection by refugees of a bad society that denies them the option of a good life and the driving desire to be accepted into a good society in order to achieve one.

The circumstances of the men in the dock in Fremantle, and of Musa’s wife and children back on Nauru in indefinite detention, might seem to have borne out Agamben’s view, with their rights, even their attendance at the memorial vigil to mark the first anniversary of the deaths of Musa’s mother and Sayed’s wife, denied by the government of a state of which they were not yet citizens. But this is only part of their story. Musa’s and Sayed’s lives in Afghanistan had been political lives of a sort, even under the limitations for Hazara people under the Taliban regime. But they were not just political lives. When they
became refugees, they also carried their own histories and their culture. Their rights were not just the Rights of Man discussed by Arendt and Agamben, but human rights as set out in the *International Bill of Human Rights* and elaborated with specific reference to refugees in the 1951 Refugee Convention. Indeed, the Refugee Convention was one of the earliest UN declarations after the 1948 *Universal Declaration of Human Rights*, affirming the principle ‘that human beings shall enjoy fundamental rights and freedoms without discrimination’. The Convention makes clear that the rights of the refugee are precisely rights that do not depend on the status of citizen; they are not the rights of man as citizen. They are human rights dependent upon the mere fact of being humans.

For asylum-seekers arriving by boat after 11 September 2001, those rights were not honoured by the Australian Government. Their breach represents a weakening of the agreement that established international standards for the treatment of refugees and asylum-seekers. At the same time, those formal standards for rights were precisely what provided the critique by civil society of the Government’s position. They also enabled the insistence on the application of rights under Australian law, through the Human Rights Council of Australia and others, that led to the holding of the inquest into the deaths of the two women; a small step, but one taken. Despite its undermining in recent years, particularly through the privileging of security and of the state of exception in the so-called ‘war on terror’, the discourse of human rights remains a powerful legal as well as moral instrument. The case studies in the book suggest that it is also one of the key factors in transforming the experience of modernisation into an engagement with modernity.

**Human rights as a transforming discourse of modernity**

**Thailand**

In the struggle to develop new meanings during the period of the Thai ‘democratic experiment’ of 1973–76, the appeal to rights played a pivotal shaping role. For industrial workers and peasants, the advent of democracy after 14 October 1973 provided the first serious opportunity to assert rights, including the right to establish legal associations, in order to improve their conditions, protect and promote their interests, and as an avenue to a better life. The trade unions and the Farmers Federation became vehicles for linking people with the possibilities...
offered by the implementation of rights and for pursuing those possibilities in practice. The events of 6 October 1976 made clear that such pursuit of rights within the context of democracy posed too great a threat to traditional values and practices. The new social imaginary remained at the level of ideas without being translated into sustainable practices or making sense of existing ones.\textsuperscript{12}

For the Bang Khen factory workers, already experiencing working conditions that were superior to many others in the nation, this disjunction was less extreme. By deciding to seek employment in the factory, they had already exercised a choice to take advantage of the modernising processes starting to impinge on Thai society; but they encountered a workplace that did not demand a drastic rupture with their past, that integrated practices associated with merit (\textit{bun}), obligations, reciprocity, gratitude, doing good. Making merit itself was a source of happiness, of feeling good, but even the work, monotonous and noisy as it was, allowed greater benefits such as ‘more time to yourself’.\textsuperscript{13} Nevertheless, their experience of modernisation was itself transforming, leading them to engage with the emerging moral discourse and practice of rights, expressed mainly as fairness. The establishment of their own trade union was a move to a form of communicative action, to explore through dialogue the possibility of a change from the patron–client hierarchy to relations based on equality rather than benevolence. The establishment of the trade union also represented an incipient recognition that achieving a better life is a collective as well as an individual project, that a good society is a desirable, indeed necessary, context for a good life. For the radical students, that link was essential but led to catastrophe. For the Bang Khen workers, engaging with modernisation meant a shift from acquiescence in traditional forms of social relations to a cautious participation in redefining traditional forms and practices within a changing modern environment.

The crises of 1976 and of Black May 1992, the more recent crisis surrounding the leadership of Prime Minister Thaksin Shinawatra and the associated violence, and the impending crisis around the succession to King Bhumipol: all suggest that Thailand has still not come fully to terms with modernity, that the country has yet to establish sufficiently strong and accountable democratic institutions. At the same time, inherent in these crises also are meanings that continue to draw on a customary order and moral framework that, in turn, reinforces those meanings underpinning particular notions of the good and of a good society. As Jackson suggests, the diverse crises of Thai modernity are productive not of a cultural convergence with the West but of novel forms of cultural difference

\textsuperscript{12} Taylor (2003: 2).
\textsuperscript{13} See Chapter 2.
and differences of understanding and meaning.\textsuperscript{14} The transformation of the traditional Thai social imaginary, like Thai modernity itself, remains in a process of becoming.

Spain

For the nuns in Spain, human rights also became central in the wake of the Second Vatican Council, though their focus was on working for rights for the disadvantaged. This was not the impulse to a charity towards the poor that was incorporated from the beginning into the life of their religious order but left unchallenged a social as well as a religious hierarchy. Their commitment to the practice of rights was to an egalitarian social justice. For them, the change was a direct result of a change in meanings: the reinterpretation of the relationship of the Church to the world brought about through Vatican II. Not only did the Vatican Council shift its gaze from heaven to earth and look for the ‘signs of the times’,\textsuperscript{15} as well as for spiritual guidance. Its message was not confined to the faithful, or developed with the goal of conversion, but addressed to ‘the whole of humanity’\textsuperscript{16} in the spirit of Pope John XXIII’s ‘Message to Humanity’ at the opening of the Council.

For the nuns, central to this shift in interpretation was what Taylor identifies as a key characteristic of modernity, that is, the affirmation of ordinary life. The corollary is the rejection of a spiritual hierarchy reflected in the distinction between religious and laity.\textsuperscript{17} The nuns’ response was to embrace involvement (inserción) in the world: they changed their religious habit for ordinary clothes; many moved out of their stately convents into ordinary housing (pisos); they sought new work in areas of disadvantage away from their elite schools; they engaged in the political struggles of the late Franco years. Their understanding of a good life became inextricably linked to the achievement of a good society, that religious life was not a better life, but a life dedicated to making a good life for others, and doing so firmly ‘in this earthly city’.\textsuperscript{18} In time, their very commitment to social justice and achieving rights brought many of them into conflict with a nervous authority, both in Madrid and in Rome. But their experience of modernity had also reoriented their understanding of obedience and shifted, in an echo of one of the generative moments of modernity, to the primacy of individual conscience. Having lived the changes, few were prepared to return to an unquestioning acceptance of traditional practices. While

\textsuperscript{14} Jackson (2004: 351, 357).
\textsuperscript{15} Abbott (1966: \textit{Pastoral Constitution on the Church in the Modern World} [Gaudium et spes], para. 4).
\textsuperscript{16} ibid., para. 2.
\textsuperscript{17} Taylor (2003: 216–18).
\textsuperscript{18} Abbott (1966: \textit{Lumen Gentium} VI, p. 46).
retaining some links with a past that they saw as having ongoing meaning in
their present, they did not see as negotiable the new moral space that they had
come to inhabit.

At the same time, they recognised the ongoing tension between their religious
and secular interpretations of the good. For a few, this was a terminal tension
and drove them increasingly away from the Province and from the rest of the
order. Others were prepared to accept it as a creative tension, not without pain,
but one that required some flexibility as well as ingenuity in maintaining both
autonomy and cordial relations with ‘the provincials’. The religious bond, but
a religious bond infused with reason, became their basis for communicative
action, realised as a ‘noncoercive intersubjectivity of mutual understanding and
reciprocal recognition’. The approach allowed them to engage in an ongoing
dialogue within the Spanish Provinces, to reach sufficient consensus on a shared
notion of the good while maintaining practical diversity, and to retain their
imagined community of the order as a whole.

The Pilbara

For Aboriginal people in the Pilbara, struggles over the Harding Dam and the
Marandoo mine became their defining encounters with the broader discourse
and practice of land rights and, through that, of Indigenous rights and human
rights. The pursuit of rights—through the fight against the dam, the Royal
Commission into Aboriginal Deaths in Custody, the native title claims—became
central to transforming their experience of modernisation as marginalisation to
their own version of the indigenisation of modernity.

This has not been a straightforward or simple process. The costs have been high,
for both individuals and for communities. Communities have fragmented and
different groups have sought to benefit from the new environment provided
by native title in different, and often conflicting, ways. The court found that
Ngarluma and Yindjibarndi people continued to hold native title over significant
areas of their claim, but that the Wong-Goo-TT-OO claimants held native title
only as part of the broader Ngarluma/Yindjibarndi group and not in their own
right, and that the Yaburara/Mardudhunera families had no native title to the
overlapping claim areas. Nevertheless, both Wong-Goo-TT-OO and Yaburara/
Mardudhunera families continue as parties to the Burrup Agreement, which was
concluded prior to the native title determination under the future act regime.

20 Anderson (1983).
This gives them ongoing status in the native title domain despite the court’s decision against them, reinforcing ongoing resentment and disputes that would not have been resolved by any decision.

The original Bunjima native title group also split, as we saw, with the Martu Idja Bunjima lodging their own overlapping claim and taking both the benefits from their status as registered native title claimants as well as high-profile action in areas of joint cultural heritage concerns. In 2008, they were granted a special hearing of the Federal Court to take evidence about a site that would be demolished as part of the development of the Hope Downs mine. They have taken the lead in the media over the impact of the dewatering from Hope Downs on Weeli Wolli Creek and the downstream Fortescue Marshes and Millstream. Their adoption of this leading role itself caused dissension with other groups who have traditional rights and responsibilities for both areas.

But underlying the articulation of rights has been an increasingly confident approach by Pilbara Aboriginal people to using the resources of the colonising society to defend their connection to country as their moral source of the good, and their traditional ways as legitimate and desirable components of a good life. By affirming their own social imaginary and its place in the modern world, they have moved from the margins into a dialogue with modernity. Such dialogue may be sporadic, episodic, fragmented, contested, but the terms are set at least in part by Pilbara Aboriginal people. This is not the sinister exclusion by the liberal state and ‘scarring of indigenous alterity’ argued by Povinelli and others. Nor, on the evidence of the changes that have taken place in Roebourne since the Harding Dam controversy, or in the Pilbara more broadly since Marandoo and, more significantly, since the recognition of native title, is the notion of dialogue merely a mask for ‘the political cunning and calculus of cultural recognition in settler modernity’. To argue this is to reduce the complexities and ambiguities, as well as the pleasures, sorrows, and mundanities, of Aboriginal life in the Pilbara or elsewhere to the single and totalising dimension of relations of power. It is also to deny Pilbara Aboriginal people agency. As Habermas argues in his critique of Foucault, power operates but is not an inevitable component of reason nor the sole organising principle of social relations. Rather, it is precisely along what he calls the ‘seams between system and lifeworld’ that new potentials for emancipation, resistance and withdrawal have and can develop. We are back to Bhabha’s third space: ‘the cutting edge of translation and negotiations’, the

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22 French (2008: 1).
23 Povinelli (2002: 35–6).
24 ibid., p. 45.
26 ibid., pp. 391–6, especially p. 395.
powerful ‘in-between space’.\textsuperscript{27} As suggested in Chapter 1, Habermas’s work is a sustained investigation of the proposition that only in a society in which a general notion of reason can be invoked can we hope to sustain a good society.\textsuperscript{28}

At the same time, Habermas is far from suggesting a model of social interaction based on harmony or the inevitable triumph of goodwill. On the contrary, he addresses the paradoxes of modernity, the uncoupling of system and lifeworld in which the lifeworld is subordinated to systemic constraints, and where crisis is also generated.\textsuperscript{29} He identifies action that he calls ‘communicative pathology’.\textsuperscript{30} Ivison argues that the reliance on consensus itself is problematic:\textsuperscript{31}

The achievement of consensus is impossible and hence the ideal is fundamentally ambiguous. Any form of discursive consensus is at best only partial and transitory, since any rules or norms agreed to will always be subject to re-description and change given the dialogical contexts within which they were formed…Residues of misunderstanding, non-consensuality and injustice persist through the various mediums of communicative action which have gone into the construction of consensus. The gap between agreement and its application in practice is thus central and not peripheral to such a political sensibility.

He goes on to suggest:\textsuperscript{32}

We need to take the pluralization of public reason seriously, and aim for discursively legitimated forms of agreements that do not over-idealize consensus. I shall refer to such agreements as \textit{discursive modi vivendi}: discursive because they emerge from the constellation of discourses and registers present in the public sphere at any given time, and subject to at least some kind of ‘reflexive control’ by competent actors; and \textit{modi vivendi} because they are always provisional, open to contestation and by definition ‘incompletely theorized’.

Pilbara Aboriginal people would probably support his view, although they would express it in different and more immediately practical terms like, ‘We just feel it’s nothing. We thought we was getting country back but a native title holder is the same as a claimant.’ They have to live with the native title determination, the gap between that and its application in practice, and the consequences of the Burrup and other agreements. All remain contested within the community and Taylor and Scambary’s investigations demonstrated that

\textsuperscript{27} Bhabha (1995: 38).
\textsuperscript{28} Seidman (1989: 1).
\textsuperscript{29} Habermas (1987: 153–97).
\textsuperscript{30} Habermas (2001: 130–70).
\textsuperscript{31} Ivison (2002: 73).
\textsuperscript{32} ibid., pp. 73–4.
Aboriginal people in the Pilbara generally were little better integrated into the regional economic and social life than they were before native title, a finding that more recent research indicates may be in a process of change.

But it is also true that, in the Pilbara as elsewhere in Australia, the native title process has mediated divergent social imaginaries and, through the concept and practice of rights, brought them into a sufficiently shared notion of the good, and of good action as mutual benefit. Rights, too, remain a project and not a final accomplishment.

The United Nations as a ‘third space’

As we saw in Chapter 8, it is also in their use of the United Nations as a third space, and in engaging in communicative action, that Indigenous people are developing further the scope of indigenous rights within the broader context of human rights. Niezen describes these processes:

Cultural differences have…defiantly entered the public sphere. They have been internationally politicized. Indigenous leaders from Asia, northern Europe, Africa, the Americas, and the South Pacific (including Australia, New Zealand, and the Pacific Islands) meet regularly in groups ranging in size from a dozen to several hundred to discuss the development of human rights standards for indigenous peoples…Indigenous internationalism is both a product of social convergence and an agent of it.

The United Nations is well known as an unfathomable bureaucracy and, frighteningly, also as the arbiter of the world’s important and usually bloody contests, but it is less recognized as a locus for village politics and for struggles between states and marginalized communities. In this new venture, in its regular meetings between Indigenous and state representatives, it has created an original institutional space constituting a distinct social world…The United Nations has thus become a new focal point of ‘indigenism’, a term I use to describe the international movement that aspires to promote and protect the rights of the world’s ‘first peoples’.

Members of the Indigenous NGO Caucus in Durban, including a number from Australia (though none from the Pilbara), exercised their familiarity with the UN system, resulting in a much more strategic contribution from them than

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33 Taylor and Scambary (2005).
34 Edmunds (2012).
from other, more muddled or more belligerent groups. At the same time, neither
the invocation of Indigenous rights in Durban as elsewhere nor the absence of
any biological foundation blunted people’s historical and personal experiences
of racism. One of the sticking points in finalising the Conference documents
that caused considerable surprise and no little consternation was the European
Union’s resistance to including any reference to ‘race’ in the documents. Under
the circumstances, their action seemed almost laughable. Their explanation,
however, was not. Despite the focus of the Conference on racism, their position
was that race does not exist as a biological fact and references to race itself, as
distinct from the social practice of racism, should not therefore be included in
the documents. In the end, they bowed to the general consensus.

The European Union position highlighted that race is a metaphor. In the wake
particularly of colonialism, it has become the ultimate metaphor for the Other.
Racism, which inscribes difference as immutable, is its expression. The practice
of racism therefore is not subject to dialogue, or communicative action, or
renegotiation. It speaks always from a position of power and a will to dominate.
It is a denial of the bond of common humanity. Racism is the product not only
of colonialism, though colonialism has entrenched it in the modern landscape.
Primo Levi talked about its roots and its extreme expression in the Nazi death
camps (Lager):¹⁶

Many people—many nations—can find themselves holding, more or
less unwittingly, that ‘every stranger is an enemy’. For the most part this
conviction lies deep down like some latent infection; it betrays itself only
in random, disconnected acts, and does not lie at the base of a system
of reason. But when this does come about, when the unspoken dogma
becomes the major premises in a syllogism, then, at the end of the chain,
there is the Lager. Here is a product of a conception of the world carried
rigorously to its logical conclusion; so long as the conception subsists,
the conclusion remains to threaten us.

This was the conclusion, along with ‘the scourge of war’, that the United
Nations was established to prevent. This was the threat that the Universal
Declaration of Human Rights set out to defeat with a clear recognition of
our common humanity. The World Conference against Racism was one more
attempt to tackle ‘the sources, causes, forms and contemporary manifestations
of racism, racial discrimination, xenophobia and related intolerance’.¹⁷ The
particular contribution of Durban to the elaboration of human rights was to
go beyond a bald statement of cultural rights¹⁸ to make explicit that difference

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¹⁷ World Conference against Racism, Theme 1.
itself is an intrinsic dimension of our common humanity. The NGO Forum in particular emphasised that ‘the multiplicity of vantage points and worldviews in the public sphere is...not to be filtered or bracketed out, but recognized and accommodated’.39

Myrna Cunningham summarised this aspect of the NGO documents when she presented them to the Conference plenary session:40 ‘We recognize the richness of the diversity of cultures, languages, religions and people in the World and the potential within this diversity to create a World free of racism, racial discrimination, genocide, slavery, xenophobia and related intolerance.’

The Conference Declaration affirms the importance of ‘tolerance and multiculturalism, which constitute the moral ground and inspiration for our world wide struggle against racism’,41 and includes acknowledgment of diversity:42 ‘We further affirm that all peoples and individuals constitute one human family, rich in diversity. They have contributed to the progress of civilizations and cultures that form the common heritage of humanity. Preservation and promotion of tolerance, pluralism and respect for diversity can produce more inclusive societies.’

Despite—or perhaps because of—the unexpected consequences of the encounter with difference,43 Durban reaffirmed difference as part of being human, and openness to an equal other as key to recognition of the bond of common humanity. At the same time, the very phenomenon of racism that the World Conference was set up to tackle demonstrates that difference forges its own moral and political dilemmas. The patent conclusion, experienced but not formally acknowledged in Durban, is that conflict is as likely, or more likely, an outcome of difference as is its celebration. Conflict, too, is part of being human. Hence the need for strong institutions that transform human rights principles into practical and effective action.

**Conflict and human rights**

Conflict has been an experience for the people in each of the case studies in this book. As Bauman and Williams point out:44 ‘The relationships between and within groups and individuals are the fundamental building blocks of a

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40 Presentation on behalf of the International Steering Committee to the World Conference against Racism plenary session, Durban, 5 September 2001.
41 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration (2001), para. 5.
42 ibid., para. 6.
functioning society. They require maintenance and ongoing negotiation and renegotiation...Disputes are a normal part of relationships and decision-making processes. All societies and individuals experience conflict and disputes.’

In now unfashionable, but tantalisingly useful, theoretical language, this might have been analysed in terms of the contradictions inherent in all societies and of their role in the dialectic. Bauman and Williams take the very practical course of reframing the response to conflict as one of conflict management rather than of conflict resolution. They go on to observe that ‘all societies have a range of mechanisms for managing and dealing with disputes, and for bringing to account those whose disputes impact on the social cohesion and structure of the group or society as a whole’. In a society in crisis, such as Thailand in 1973 and 1976 or Spain in the 1930s, the failure of the state to manage radical conflict produced by incommensurable social imaginaries erupted into violence. This was not, however—apart from the nuns who lived through the excesses of the Spanish Republic and the Civil War—how most of the people in the three studies experienced their own conflicts. In each case, even under the circumstances of rapid social change, or to some extent because of them, people had access to a range of procedures set up to manage conflict. Engagement with those procedures itself brought about change.

In the Bang Khen factory, the procedures were in some instances an exercise of authority: the dormitory supervisors dealt directly and usually expeditiously with disagreements and disputes among dormitory residents; Phii Iid took it upon himself to sack Chingchai for his perceived breach of the patron–client relationship. Other procedures—in particular, the trade union and the short-lived Employees Committee—were established on a model of negotiation and dialogue. Even in the case of Chingchai, and despite the military crackdown after 6 October, he and the trade union executive had a right of appeal to the external Committee of Labour Relations, a right that the factory management respected. Life in the factory went on as usual.

For the nuns, Vatican II’s Decree on the Appropriate Renewal of Religious Life (Perfectae Caritatis) set in train an overturning of the unquestioning hierarchy of obedience that had in practice suppressed conflict. The Decree, reflecting the other Vatican Council documents and its whole orientation, revolutionised the governing structures and practices of their religious Order. The Council required ‘an adjustment of the community to the changed conditions of the times’ and directed that ‘the way in which communities are governed should

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45 ibid.
also be re-examined in the light of these same standards’. Constitutions and other directions and ceremonies were to be ‘suitably revised’, requiring ‘the suppression of outmoded regulations’.47

Subsequent General and Provincial Chapters of the Order set about implementing these changes, as we saw in earlier chapters. Not only was the Order’s constitution revised, but also the nuns were no longer subjected every month to the reading of the Letter of St Ignatius on the Virtue of Obedience, which offered the example of ‘Abbot John, who did not question whether what he was commanded was profitable or not, as when with such great labour he watered a dry stick throughout a year’.48 And then there was the monk who obeyed his superior’s order to plant cabbages upside down. Few of the women missed either Abbot John or the cabbages. Most responded by taking the changes further than, in the end, the Province felt it could sustain. Disagreements and disputes surfaced when obedience returned as an instrument of the provincial government after the appointment of a new provincial in Madrid in 1978 and the election of Pope John Paul II in the same year. Nevertheless, the nuns continued to engage in the processes of negotiation and dialogue that they had come to value as central to their idea of the good.

In the Pilbara, disputes such as that between families that had been internal to the groups prior to the passing of the Native Title Act became public through the lodging of overlapping claims. Bauman and Williams comment on the way in which conflict resolution has become ‘universalised’ using ‘western legal paradigms’.49 They argue that ‘developing localised approaches to decision-making and dispute management that are responsive to the needs of Indigenous communities is essential’ and point out that ‘the approaches that are adopted can escalate or exacerbate fundamental pressures and tensions within Indigenous groups’.50 Their particular focus is the native title process, which, in the case of the Pilbara, provided both the means and the resources for the formalisation of internal disputes and a process—not particularly adapted to local needs—for dealing with them. In that sense, native title became both a cause of and a channel for conflict. This remained true of the negotiations over the Burrup Peninsula and continues with other resource negotiations and agreements.

At the same time, the procedures involved—National Native Title Tribunal mediations, Federal Court hearings, agreement negotiations—all did more than manage the internal community disputes as well as conflict between the claimants and other parties. They also legitimated customary knowledge and practice within the broader context of modern Australia. The mediation

47 ibid., para. 3.
48 To the Members of the Society in Portugal 1553 Letter on Perfect Obedience.
49 Bauman and Williams (2004: 5).
50 ibid., p. 3.
conferences for the Ngarluma/Yindjibarndi claim were held in Roebourne. The claimants in general gave their evidence to the court on their own country, not in a formal courtroom. This way of taking evidence was permitted under the Native Title Act, allowing the court to ‘take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders’. In the process, the conscious articulation of customary knowledge to meet the requirements of the procedures has effected change for the native title claimants and holders, but there has been change, too, in the Federal Court. Native title, as happened with Aboriginal Land Commissioners in the Northern Territory, has made common the image of judges conducting hearings in the open air. The caravan of four-wheel-drive vehicles has become a feature of native title as well as Northern Territory land-claim hearings. Attention to the weather is a new duty for the court. And being heard and taken seriously by non-Aboriginal Australia is a recent experience for people in Roebourne and the wider Pilbara.

Conflict and culture

In each of the three case studies, people’s approaches to dealing with conflict were culturally shaped as well as procedurally laid down by an external authority. Each of the three groups brought their own cultural expectations and meanings to both the disputes and their management. In each case, the ‘living practice of negotiation and accommodation’ was carried out in a context of modernising social change, acting to transform those expectations and meanings and reinforcing Bauman’s view of culture as both ‘a permanent revolution of sorts’ and ‘a dialogical process of making sense with and through others’. Even conflict, arising out of sameness as well as difference, has its part in this ongoing negotiation of culture, questioning knowledge, ideas, identity, practice, legitimacy, self-interests, agreements and their implementation. The transformation as well as transmission of culture by its inhabitants are part of people’s actions and experience. The production of meaning is an ongoing and contested process. As a living process, and as we have seen throughout the book, the production of meaning involves both moral evaluation and rational judgement. It can re-imagine the meaning of the good and of a good life and it can, under certain circumstances, renegotiate the place of those interpretations in relation to different interpretations. Traditional meanings can crumble under this process, leading to alienation and anomie; but they can also provide a basis for people to act to come to terms with modernity.

51 Native Title Act 1993, s. 82(2).
52 Ivison (2002: 82).
In periods of rapid social change, the production of those ‘webs of significance’\textsuperscript{54} that people themselves continue to spin is also, when it encompasses a whole society, a process of transformation of their social imaginary. This is not a magical or an idealised process. It is carried out by individuals in the mundane and pragmatic compromises of their daily lives. Sometimes it takes place in the public sphere, and the effects may carry moral as well as practical weight. The book makes clear that particular individuals make a difference. It also makes clear the critical link between a good life and a good society. In the short term, all those in the three case studies experienced quite drastic public dislocations while their cultural framework permitted them to maintain private continuities. Their various responses to this disjunction underlie the emergence of three different experiences of modernisation and three different modernities. In these cases, modernisation has not led to cultural collapse. On the contrary, similar modernising—and now globalising—pressures have been themselves transformed in the encounter with three very different cultures and histories.

It is the concept of a humanity that is equal while culturally diverse that I set out to examine in this book. Using an anthropological approach, I have explored the experience of three different groups of people in order to identify how rapid social change, in the form of modernisation, has wrought change in traditionally held beliefs and practices. I also undertook to examine the propositions that concepts of the good and of a good life are human universals and that moral evaluation—morality—and the concept of the good are at the centre of human agency.\textsuperscript{55} What the ethnographies allow has been the testing of a theoretical universalising against the lived experience of the different groups concerned. What they reveal is that the ways in which people hold and live their traditional beliefs and carry out their practices have also made the modernising process and its effects different in each case. The ethnographies place tradition and modernity, as well as religion and secular humanism, not in unforgiving opposition but as an interface, an ongoing and dynamic encounter—a dialectic—shaped by the complexities and idiosyncrasies of individual and group experiences, in which culture mediates the unfamiliar.

The studies, together with the briefer examination of the situation of a small group of asylum-seekers and of a UN World Conference, also elucidate that ideas of the good, and of the practical translation of those ideas into the experience of a good life, are culturally framed. Both generate action; they are at the centre of people’s differing responses to modernisation and of the choices they continue to make between cultural continuity and change. Both are invoked by the people in the studies in making sense of their lives and of the directions in which they wish to move into the future. The shared action identified in

\textsuperscript{54} Geertz (1975: 5).
\textsuperscript{55} Taylor (2003).
the ethnographies is based on a shared notion of the good. Sometimes this has been reached through communicative action, negotiating agreement through a rational dialogue on what constitutes the good. Sometimes it has been a violent assertion of one idea of the good over others, in which the idea of the good is non-negotiable and antithetical to rational engagement.

In all the cases dealt with here, people have continued to act in response to and be acted upon by the demands of modernity. Modernity, the sibling of reason, is also child of the European Enlightenment and, as we have seen, also deeply flawed. Habermas, the strongest contemporary champion of modernity and the most incisive scourge of its critics, has sketched out a critical theory of modernity that analyses and accounts for its pathologies in a way that suggests a redirection rather than an abandonment of the project of the Enlightenment.56

The stories of the people in this book suggest that, whatever the ambivalence of responses, they act to create their own modernity: one that, Janus-faced, includes their own histories and cultures, that offers the promise of a good society, and, on those bases, also permits them to craft a new space. It is in that new space that they struggle to realise their own imaginary of a good life.