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Rights and liberties: the individual, the collective and the clash of ideologies, values and institutions

This chapter examines government's role of protecting rights and liberties in the concrete normative contexts of Pacific communities with their distinctive universes of meaning, social practice and discourse. The violation of individual rights and liberties in the Pacific in the name of any number of gods provides the foil for the discussion.¹

The state's duty of protecting citizens' rights and liberties as required by the *Universal Declaration of Human Rights 1948* is my point of departure.

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

The *Eminent Persons' Group Review of the Pacific Islands Forum* (Eminent Persons' Group 2004:n.p.) is similarly emphatic on the need to protect rights and liberties: 'The Forum should support the work of members in developing national human rights machinery. As part of this process, those Leaders who are not already engaged with the Asia Pacific Human Rights Forum might consider becoming so'.

Rights violations and Pacific gods

When rights violations are perpetrated in the name of religion, we read each other out of the kingdom of heaven, beat the toms-toms of our religious rituals as well as the heads of our religious opponents in the name of some god. When undertaken in the name of custom, we acquiesce in the violent worship of the tribal deity of cultural chauvinism and the philosophical god of essentialism. And when undertaken in the name of the modern state, most people happily follow Socrates' lesson on the value of silence, unlike the ignorant sheep that complained that the watchdog was doing nothing.

The danger, in short, is the progressive whittling away of rights and liberties. In due course, small sins will become big sins. As underlined in *Thomas v Collins* (1944) 323 US 516 at 543, 'it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when [restraints] are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty'.

Promulgating a rights jurisprudence as a mobilising theme, my objective is not to promote the apotheosis of the individual but to avoid a collective nightmare of paralysed Pacific individuals. This position requires steering a middle course between the two evils of claustrophobic collectivism and egocentric individualism. And grounding rights and liberties in the normative contexts of Pacific communities requires balancing individual rights with the custom, traditions, social structures, values, and protocols of the Pacific peoples themselves. We find a major overture to this balancing exercise in the Samoa Court of Appeal's constitutional approach in the case of *The Attorney General v Saipaia Olomalu* [1980–1993] WSLR 41.

[T]he Constitution should be interpreted in the spirit counseled by Lord Wilberforce in *Fischer's case*. He speaks of a constitutional instrument such as this [the Constitution of Samoa] as *sui generis*; in relation to human rights of 'a generous interpretation avoiding what has been called the austerity of tabulated legalism'; of respect for traditions and usages which have given meaning to the language; and of an approach with an open mind. This involves, we think, still giving primary attention to the words used, but being on guard against any tendency to interpret them in a mechanical or pedantic way.

This is essential in the respect that rights and liberties do not arise, or are practised, in a vacuum or in a manner divorced from the social context in which they operate. Dworkin (1977:369) notes, '[t]he rights people have depend on the background justification and political

institutions that are also in play, because the argument for any particular right must recognise that right as part of the complex package of other assumptions and practices that it trumps up'. More fundamentally, as Judge Learned Hand has pointedly emphasised,

liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it (cited in Rishworth 1998:133).

This underlines the point that rights and liberties are more than mere constructs of the mind; they are more fundamentally habits of the heart and moral convictions of the soul. For rights and liberties to trump, they must be embedded in the community's culture and *Volksgeist*, ingrained in the people's hearts as it were.

This chapter also underlines the inevitability of change, true democratic change that is sometimes very slow, change of the two steps forward one step back type. Abjuring a Machievellian overthrow of the institutional order, change requires established Pacific verities, institutions, protocols and practices to be constantly revised. If we cannot counterpoise reverence for national and cultural symbols with freedom of revision, Pacific societies will ultimately decay either from anarchy or from the slow atrophy of a life smothered by irrelevant cultural, religious, and political forms. Stated bluntly, we need to change what needs to be changed and retain what should not be changed. Sometimes that means transcending cultural prejudices, parochialism, and chauvinism.

Pacific constitutions as entrenched bills of rights: reinforcing and renegotiating the culture of individual rights and liberties

The propriety of a bill of rights, whether incorporated and entrenched in a written Constitution as in US constitutional jurisprudence or as an ordinary act of parliament as New Zealand's *Bill of Rights 1990*, continues to be a matter of debate.² In most Pacific jurisdictions, bills of rights have been incorporated and entrenched in written constitutions.³ This seems to have been guided by the understanding that rights and liberties will be securely protected if they are incorporated and entrenched in a written constitutional text. In this, Pacific jurisdictions appear to be following US constitutional practice.

In defence of an entrenched bill of rights, I refer to Justice Black's justification of the US Bill of Rights in *Adamson v California* 322 US 46, 91 L. ed. 1903 (1946),

I cannot consider the Bill of Rights to be an outworn 18th Century 'strait jacket'... Its provisions may be thought outdated abstractions by some. And it is true that they were designed to meet ancient evils. But they are the same kind of human evils that have emerged from century to century wherever excessive power is sought by the few at the expense of the many. In my judgment the people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted, enforced and respected so as to afford continuous protection against old, as well as new, devices and practices which might thwart those purposes.

A bill of rights is a shield against arbitrary rule. It demands the state to protect citizens' rights and liberties, sometimes through 'the use of the physical force of the state' (Glanville 1957:259). Part II of the Constitution of Samoa 1960, for example, is an entrenched bill of rights. This guarantees and protects fundamental rights and liberties: life; personal liberty; a fair trial; freedom from inhuman treatment; freedom from forced labour; rights concerning criminal law; freedom of religion; rights concerning religious instruction; rights regarding freedom of speech, assembly, association, movement and residence; rights regarding property; and freedom from discrimination. These are subject to reasonable restrictions such as national security, public order, and community morals.

Underlining the fundamental importance of part II, Professor Aikman in the Constitutional Convention of Samoa 1960 emphasised that '[t]he intention of part two of the Constitution is, of course, that no part of the Government of Western Samoa, whether it be the Head of State, Cabinet, Parliament or any other authority, shall infringe the rights set out in this part of the Constitution' (Constitutional Convention of Western Samoa 1960:Vol I, 73). Leaving no state institution outside the reach and demand of part II, the term 'State' is therefore defined in article 3 of part II as follows: 'In this Part, unless the context otherwise requires, the State includes the Head of State, Cabinet, Parliament and all local and other authorities established under any law'.

Clearly, the guarantee and protection of rights and liberties was meant to be comprehensive, perhaps reflecting the constitutional framers' awareness of the danger an all-powerful state would pose to the citizens. While government has been empowered by the citizens themselves to govern on their behalf, part II is a clear statement that

the citizens have retained certain rights and liberties, and that power to take them away has been withheld from government. Significantly, the bill of rights is more than just a parchment barrier or a pedantic lesson on community ethics. It is, in fact, intended to be a shield against arbitrary rule, a constitutional limit on the power of the state.

Critical in this connection is article 2(1) which makes the Constitution the supreme law of the State of Samoa. The supremacy clause is buttressed by the inconsistency clause in article 2(2): 'Any existing law and any law passed after the date of coming into force of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void'. Explaining the practical application of article 2, Professor Aikman emphasised that '[i]f the Legislative Assembly were to pass an ordinary law which denied [fundamental rights], that law would not be valid—in other words, it would not be a law at all' (Constitutional Convention of Western Samoa 1960:Vol. I, 68).

To protect rights and liberties given under part II, article 4(1) provides for their enforcement by application to the Supreme Court, which is authorised by article 4(2) 'to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any rights conferred under the provisions' of part II. 'Because the Supreme Court is the most important Court in this sense,' said Professor Davidson in the Constitutional Convention 'it has been described and referred to in article 4. It is felt that these matters of fundamental rights are so important that they should be taken directly to the Supreme Court or to a Judge in the Supreme Court' (Constitutional Convention of Western Samoa 1960:Vol. I, 86). Article 81, though placed outside part II, is structurally related to article 4 discussed above. Extending the jurisdiction of the courts in respect of fundamental rights and liberties, article 81 provides that '[a]n appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceedings under the provisions of Article 4'.

Article 15(1), placed in part II, mandates equality before the law and equal protection under the law, and proscribes special treatment or discrimination. This is captured by article 15(2), which provides that '[e]xcept as expressly authorised by this Constitution, no law and no executive or administrative action of the State shall either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage' on the grounds of race, sex, and so on. The exception to

this general principle is a concession to the custom and traditions of Samoa. There are cases where 'preference [must] be given to certain people to enable certain posts in the government to be filled by those who ought to fill them in accordance with Samoan custom' (Constitutional Convention of Western Samoa 1960:Vol. I, 221). Taken in its entirety, article 15 is critical to the guarantee and protection of fundamental rights and liberties—the framers were well aware that the protection of rights and liberties would depend very much on 'the impartial administration of justice' (Constitutional Convention of Western Samoa 1960:Vol. I, 221) by the courts.

Finally, article 109(1) is significant in that it entrenches the provisions of the Constitution. Accordingly, any of the provisions of the Constitution (except article 102 which prohibits the alienation of customary land) may be amended or repealed, and new provisions added, only by means of a special procedure. First, a bill for any of the purposes referred to above must be supported at its third reading by votes of not less than two-thirds of the total number of members of parliament (including vacancies). Second, the third reading of the bill comes 90 days after the second, to give citizens ample time in which to assess the merits or otherwise of the proposed legislation. On the overall significance of entrenching the provisions of the Constitution, Professor Aikman underlined the legal status of the Constitution as a list of the 'basic and fundamental [laws which should therefore] be protected by a special procedure for amendment' (Constitutional Convention of Western Samoa 1960:Vol. I, 55). In mandating that special procedure, the framers thereby firmly secured the protection of rights and liberties, and limited the power of parliament, the executive, or any other institution of the state to take away citizens' rights and liberties.

A final observation. The end of colonialism gave Samoa its independence; independence gave Samoa a Constitution; and the Constitution gives Samoa a bill of rights. Embodied and entrenched in the Constitution, the bill of rights is a fundamental dimension of Samoa's jurisprudence. Each of the articles in part II sets a standard, and those standards collectively constitute, in a very significant sense, the measure of Samoa's success or failure as a constitutional democracy. When rights are violated, the question arises: does the list of rights and liberties provide sufficient guarantee in practice? If not, the constitutional guarantee of rights and liberties becomes nothing more than a misleading literary conceit or just an empty promise.

Rights violations also highlight the issue of the clash of ideologies, ethics, institutions, and objectives which is a perennial problem in the Pacific. The clash between Western ideologies, ethics, institutions, and objectives and their Pacific indigenous counterparts is a complex issue. Occurring at critical points of the body politic (in the family, schools, churches and government), this clash continues to cause uncertainty in virtually all levels of society. Unravelling this perennial clash of epistemologies and its consequences, with particular reference to the institution of rights and liberties, is the major focus of the remaining part of this chapter.

Liberal-individualism versus communitarianism in the existing rights discourse

This section briefly sketches the individual/collective dichotomy in the existing rights discourse, couched, as it is, within the framework of the liberal-individual position, on the one hand, and communitarianism or collectivism, on the other. This discussion provides the context for my discussion of Samoa's negotiation of the individual/collective dialectic in the next section.

The polarisation of liberal-individualism and communitarianism is such that they 'are not to be thought of as liberal bedfellows who have already settled the basic terms and conceptions of their association. They are tensions at a deep philosophical level' (Waldron 1995:99). This tension is tied up with conflicting modernist, postmodernist, and poststructuralist assumptions about selfhood, human dignity, emancipation, the nature of the community, transcendentalism or contingency, and so on.

The liberal-individual position naturally focuses on the individual in keeping with liberalism's privileging of individual rights and liberties.⁴ Postulating a plurality of interests in the community, liberalism

grants people a very wide freedom of choice in terms of how they lead their lives. It allows people to choose a conception of the good life, and then allows them to reconsider that decision, and adopt a new and hopefully better plan of life (Kymlicka 1995:80).

At the centre of liberalism's cosmology is the Kantian autonomous self: unique, inviolable, sacrosanct, an end itself and not a mere means to an end. This conception of the self is predicated, to some extent, on the Cartesian dualistic notion that the individual can have a transcendental (metaphysical) self—the core self—that, somehow, can

be separated from one's contingent self, which is tied up with a particular culture or socio-historical context (Descartes 1979; Kant 1964). Adding to the postulated priority of the self, John Rawls (1973:560) speaks of the self as something 'prior to the ends which are affirmed by it'. And pushing the individual into the international arena of the global village, Waldron (1995:111) speaks of a cosmopolitan self with multiple associations and attachments, a kind of 'cosmopolitan manager, standing back a little from each of the items on the smorgasbord of its personality'. This process of extending the cosmopolitan self's horizons, Waldron (1995:110) claims, is 'a richer, more honest, and more authentic response to the world in which we live than a retreat into the confined sphere of a particular community'.⁵

Underpinning the individualist ethic are important principles such as the moral primacy of the individual over the interests of the collective, and that only the individual (not the group or the collective) has moral standing for right-holding purposes. And given that the community is not an abstraction but a community of persons, its interests and objectives have significance only in so far as they promote the welfare of its individual members. Furthermore, the moral legitimacy of the community lies in the consent and acquiescence of its individual citizens in community interests and objectives. Without that consent, we have a community of slaves acting under coercion and who have to be moved by naked force, thereby plunging the legal and moral legitimacy of the political order into chaos. In the final analysis, whatever importance the community has, that should be understood as essentially derived from the importance of its individual members.

So pervasive and compelling is this liberal version of social reality that it has been said that 'we seek to escape it at the cost of becoming historically irrelevant' (Bowles and Gintis 1986:62). The hegemony of liberal discourse aside, in a positive sense, liberalism's 'discourse of rights has framed the hopes... of ordinary peoples' for centuries (Bowles and Gintis 1986:25). The individual, to put it bluntly, is not (and should not be reduced to) a mere cog in the system, whatever the system.

While confirming the foundational importance of the individual and his inalienable rights and liberties, the inherent danger in liberalism's view of the world is its atomistic bias, the exaltation of the individual, that usually fails to give adequate consideration to peoples and societies for whom communal life is central, even vital, and often sacrifices the traditional ethic of self-restraint and duties to others, thus creating the beasts of isolationism and egocentrism, sustained by the ethic of the

maximisation of individual interests. The issue is not, to use Waldron's (1995:101) pointed critique of communitarianism, cultural immersion or 'hiding in Disneyland...and evading the complex actualities of the world as it is'. The issue, rather, is that liberalism's individualist premises often preclude proper consideration of the communal dimensions of life, which are clearly much more important than some liberals recognise.

This is the basic thrust of the criticism of liberalism by proponents of communitarianism.⁶ Richard Flathman (1976:49) argues, 'writers of a communitarian persuasion argue that rights (indeed rights of all kinds) encourage an individualistic, even an egoistic, ethos that is destructive of the most valuable kinds of human relationships, and productive of an anomic and politically vulnerable society'. Methodologically, the liberal-individual position is clearly skewed in favour of a particular political ethic. But, of course, it is 'shrewd of the philosophers of liberalism to insist that their world of private values is the only possible world. So long as they...maintain that fiction, dissatisfaction with the ideals of liberal society can be dismissed. Once the ideals of affective, productive, and rational community are defined, however, we see quite clearly that the dissatisfaction stems not from the poverty of human experience... but...from the poverty of liberalism' (Wolff 1968:194–5). Indeed, the real danger is that of fracturing social harmony and destroying human relationships, and of the individual arrogating to himself rights without limits or duties.

The communitarian position, in contrast, naturally focuses on the community and its vital role in the emergence, meaning construction and acquisition, identity formation, and even survival of the individual. Since the individual is ultimately rooted in the community, his interests and actions are therefore meaningful only within the collective context from which he emerges—not outside it. This is not mere sentimental attachment to a particular spiritual view or background. Rather, it is about the community providing the frame within which people 'can determine where they stand on questions of what is good' (Taylor 1989:27). Whether or not the community could reasonably be seen as ontologically prior to its members in 'a non-ethical ontological' (Jones 1999:372) sense is a moot point. It seems certain though that the community was there before the individual was born and it will be there after the individual is gone. In a sense, therefore, the community is cognitively prior to the individual.

Critical to the communitarian school of thought is the notion of the self as an entity that is always concretely situated, embedded in, and constituted by a particular culture, language, and history.⁷ Louis Althusser (1971:218–9) perhaps aptly summed up the negation of a transcendental self (that is, the non-immersion of the self in a particular context) in the following terms

Since Marx, we have known that the human subject, the economic, political or philosophical ego is not the center of history—and even, in opposition to the Philosophers of the Enlightenment and Hegel, that history has no center...In turn, Freud has discovered that the real subject, the individual in his unique essence, has not the form of an ego—that the human subject is de-centered, constituted by a structure which has no center either.

Problematising the Cartesian ego, Madan Sarup (citing Claude Lévi-Strauss) describes it as the ‘spoiled brat of philosophy’ (Sarup 1989:1). Applied to the holding and practice of rights, Flathman (1976:65) decries the

notion of a purely individual or private practice of rights, whether by a Robinson Crusoe living apart from other men or by an individual living in a society but asserting to himself that he has rights against himself (e.g., against his better or worse self) [as] metaphorical. If taken literally it would have the same well-rehearsed difficulties as the notion of duties to oneself.

Add them all up and we find the cumulative argument that the notion of the self on which the liberal-individualist position is predicated is too disembodied and atomistic to capture the actual needs and interests of real people in the real world. Even Will Kymlicka (1995:105; 1989), despite privileging individual choice, insists that

liberals should recognise the importance of people’s membership in their own societal culture, because of the role it plays in enabling meaningful choice and in supporting self-identity...Cultural membership provides us with an intelligible context of choice, and a secure sense of identity and belonging, that we call upon in confronting questions about personal values and projects.

Disputing the proclaimed virtues of liberalism, John Gray (1989:235) proposes that

the sustaining myths of liberal modernity—myths of global progress, of fundamental rights and of a secular movement to a universal civilisation—cannot be maintained even as useful fictions in the intellectual and political context of the last decade of our century .

Communitarianism or collectivism, however, faces its own distinctive problems, for example, what is a group for right-holding purposes, and what is a group or collective right? On Peter Jones’ (1999:354) characterisation, ‘[a] right is a group right only if it is a right

held by a group qua group'. On the 'collective' conception of group rights (associated with Raz and others),⁸ three conditions must be met: (1) individuals (as a group) share a common interest; (2) that common interest relates to one specific matter; and (3) that collective interest is sufficiently significant to justify creating duties for others. On this view, the defining feature of a group right is a common interest—identified, shared, pursued, and sufficiently significant to impose duties on others. Rejecting the collective conception as too generous and too broad, Jones (1999:365) proposes the 'corporate' conception of group rights, according to which, 'a right-holding group has a clear identity as a group'.

Unlike the collective conception which takes the collective moral standing of the members of the group as its only moral and legal warrant, Jones' corporate conception posits that the group itself 'has a pre-existing moral identity as a group,' that is, a moral standing that does not depend on the collective moral standing of the members of the group. Importantly, investing the community with moral standing and treating the group as a moral community in its own right entails treating the community as an ethical unity with moral and ethical imperatives which guide and sustain the community as a whole.

The principal problem with communitarianism, despite its virtues—for example, it appropriately emphasises the importance of the collective and the embeddedness of the self—is that it, too, tends towards exaltation. That is to say, while liberalism exalts the individual, communitarianism exalts collective. Even Jones (1999:375), notwithstanding his passionate defence of group rights, concedes that '[a]t the limit, a group as a corporate entity may possess a moral standing so inclusive and complete that it deprives the group's individual members of any independent moral standing: the group becomes everything, the individual nothing'. Perhaps, in view of that danger, it could be argued that the group must not be recognised as a subject for right-holding purposes where such rights would conflict with and potentially override the claims of individuals, at least, not without legal and/or moral justification.

It could be argued that both the 'collective' and 'corporate' conceptions of group rights stand or fall on this issue. Whereas there may not be any credible impediment to the notion that a group can have rights, there is no legitimate legal and/or moral justification for the violation of the rights of the individual by the group simply because the group is bigger and stronger. Without such justification, individual

citizens may legitimately withdraw their assent to and acquiescence in the rule of the group, thus creating law and order problems and throwing the group into legal and moral confusion.

In summary, the two extremes of liberal-individualism, on the one hand, and communitarianism, on the other, have their pitfalls. Preaching either of the two with ideological dogmatism (some liberals, on the one hand, and most Pacific conservatives, on the other) often produces supporting arguments that are simplistic in the extreme and which, unfortunately, drive an insurmountable wedge between the individual and the collective.

The individual and the collective in Samoa's universe of meaning, social practice and discourse

Using Samoa as a case study, it is argued that some societies conceptualise and approach the relationship between the individual and the collective in ways that are more complex than either liberal-individualism or communitarianism recognises. This underlines the point that the world view and system of ethics a particular society adopts depend on a complex range of cultural, moral, psychological, and other factors, and that the character or temperament of a people is not an academic lesson in abstract principles but a community enterprise to reinforce community values and virtues which are taught and practised in everyday interpersonal interactions. After all, virtues are not mere thoughts of the mind but habits of the heart which persons acquire, practise and develop by acting out those virtues in their everyday lives.

The existing framework of rights discourse set out above usually polarises the issue as a conflict between the individual and the collective. This has two unacceptable results. First, it misconceives the debate as a conflict between individual rights and group rights. The debate is rather more correctly conceptualised as a conflict between different types of individual rights which need different types of collective protection and enforcement. For instance, the right to freedom of movement needs the government to restrict its reach and scope by imposing limits on the exercise of that right such as through the law of trespass to land. By comparison, there are individual rights with social and communal dimensions like the right to belong to and share in one's indigenous culture. These rights also need collective protection and enforcement, such as through affirmative action laws or through the adoption of

customary means of governance, customary laws, and traditional means of dispute resolution. The two types of rights view the individual and the role of the community from different perspectives, and in both cases, the individual and the collective are mutually interactive.

Second, the individual/collective debate is usually viewed through the classical prism of liberalism versus communism. And, usually, all non-Western societies are haphazardly lumped together in the communist/fascist camp of illiberal, oppressive collectivities. Contradicting this common misperception, the Samoan normative worldview occupies a position somewhere in between the two extremes of egocentric individualism and claustrophobic collectivism. It takes the individual as a primarily political animal who could live a meaningful and full life only in the *polis/nu'u* which, empirically, was there before the individual came on the scene. Although this does not make the collective superior to the individual, it does mean that human nature cannot be properly defined without reference to community meanings and values.

That said, there may sometimes be an intrinsic bias slightly in favour of the collective in Samoa's traditional thinking and praxis, especially when individuals make idiosyncratic assertions of their rights and liberties to the exclusion of everything and everybody else. While that may be the case sometimes, the Samoan individual and collective—for legitimate reasons and for the most part—are not pitched against each other in a winner-takes-all tug of war. In fact, the individual and the collective do and must cooperate, thereby avoiding a survival of the fittest scenario which reduces everyone else to either a competitor or a mad enemy who must be defeated or, better still, eliminated.

It needs to be acknowledged as well that Samoa's normative view of the individual/collective relationship has undergone fundamental structural changes (both good and bad) over the last 50 years. I will deal with this issue below. Suffice to note at this juncture that the inevitability of change raises the important point that we must allow for the possibility of the balance between the individual and the collective being able to shift—without causing intolerable conflict—as ideas, interests, and needs change in response to internal and external influences.

Treating the individual/collective relationship as less a matter of intellectual abstraction and more primarily a pragmatic issue, I advocate the view that, for pragmatic reasons, the Samoan individual and collective should not be promoted as mutually exclusive but must rather

cooperate for the mutual benefit of all. Among other things, this involves a reaffirmation of Samoa's normative conceptualisation of the individual/collective relationship, minus the exalted individual of liberalism and the exalted, reified collective of sociological/cultural determinism. The appropriateness of this position for the Samoan people themselves is predicated on moral, cosmological, structural, sociological, psychological, economic, and property considerations rooted in Samoa's own symbolic universe, social structure, and interpersonal intercourse.

First, the Samoan self has always been and will continue to be embedded in multiple groupings: the immediate/extended family defined by blood ties; the tribe defined by titular and property relations; the village defined by titular, political and property associations; the traditional district defined by titular and political affiliations; and the nation defined by ethnicity. The Samoan individual, therefore, is not some kind of disembodied and atomistic self but an individual embedded in kinship structures, some of which entail a very important relativising effect. This problematises, even subverts, egocentric individualism as an acceptable axis of value in the cultural script of Samoan society, one centering on the collective good and on a culture of responsibilities to the family, the tribe, the village, the district, and the nation.

The individual is indeed fundamentally important, not as an isolated organism but as a member of the collective. This is defined by Samoa's structural positioning of the individual at the centre of the world. But this is not simply a privileged position. The individual is not only placed at the centre of the world but at the centre of a network of duties and responsibilities. Accordingly, the individual not only has rights but corresponding duties and responsibilities. When he exercises only his rights and disavows his duties, there is a disruption in the equilibrium of the social order with serious consequences for both the individual himself and others. And this is incompatible with the social and moral imperatives of a community which prioritises social harmony and equilibrium.

Second, that notion of the self is underpinned by the social construction of the individual. From birth to death, the Samoan individual is oriented very strongly towards others in the individual's multiple groupings. It is also underpinned by the constitution and social construction of society whereby the whole, the community, the collective is seen as prior to its constituent parts, that is, without ascribing to the

community 'a non-ethical ontological status' as noted above. This is in line with the socio-cultural emphasis on the common good and collective well being. While the individual is ultimately important, the notion of the interest-maximising individual is a second-order axis of value in traditional thinking and practice. The main emphasis is on one's others. This is a moral imperative in Samoa's normative view of life and reality.

Third, the cumulative effect of the above is the generation of a Samoan personality that may be broadly described as dyadic. That is, Samoans are oriented very strongly towards others. This is not the Dr Jekyll/Mr Hyde split personality syndrome that the word dyadic (from *δυο*, meaning two) seems to imply. Nor is it a case of extroversion which empties the self of any meaning or value. Likewise, the negative implication that an other-oriented personality is one that depends somewhat forlornly on others to provide that person or group of persons with a sense of worth and identity is undercut by the fact that Samoans (as individuals and as an ethnic group) do not need non-Samoans to provide them with a sense of worth or identity. Nor do Samoan individuals hopelessly prostrate before other Samoans or the Samoan collective begging for appreciation, approval, or a sense of identity. Already rooted in multiple social attachments and human associations, every Samoan individual knows where he comes from and who he is. Rather, dyadic personality means that Samoans are, by nature and through socialisation, other-oriented in their interests, objectives, and actions. This moral imperative is fully in keeping with the socio-cultural emphasis on the common good and Samoans' sense of collective well being.

Fourth, this highlights the significance of a Samoan's 'significant others' (Berger and Luckmann 1967:151)—family members, those in authority, village elders, *matais*, fellows, and so forth who constitute one's chorus of significant others. This is manifested, to some extent, in social structures like patronage. As a social imperative, patronage binds the individual to the extended family, the tribe, the village, the district, and the nation. Operating reciprocally, patronage also binds the extended family, the tribe, the village and others to the individual in a network of reciprocal relations manifested in social structures like kinship, that is, a complex web of interlocking human relationships based on blood-ties, socio-political alliances, and economic ties. As a self-adjusting system based on shared values such as benevolence and gratitude, patronage defines and governs the relationship between the

individual and the collective as a pragmatic question, not an academic or philosophical issue.

Finally, human interdependence that binds together the individual and his multiple groupings takes place within the context of a broader holistic cosmology that conceptualises humans in their totality (that is, as people with bodies, minds and spirits) and connects humans not only with other humans, but with their physical environment (the land/earth, the sea, the sky) and the spirit, supra-mundane world. This spiritual connection between the individual and his physical environment is grounded in the Samoan conception of the land as a kin that is more than a commodity to be exploited, but something that must be cared for and protected. The notion of kinship amongst humans and their physical environment manifests itself in the institution of communal ownership of customary land held by the *matai* (the head of a Samoan family) as a *de facto* trustee of that land subject to the state's trusteeship of such land.

Mention of Samoa's *matai* (traditional chiefly) system, the heart of Samoa's symbolic universe and a ubiquitous feature of Samoan culture (Vaai 1999), is warranted in this connection. Significantly, the *matai* system encapsulates the Samoan negotiation of the individual/collective polarity and the Samoan individual's other-orientation. The term *matai* comprises the noun *mata* (meaning eye as a proper noun or the more abstract noun seeing or looking) and the preposition *i*, which, in the accusative case, connotes direction towards someone or something. Taken together, the term *matai* denotes the act of looking towards or at someone or something, that is, away from oneself. It defines the individual as an 'I' in community with 'others'; the one and the many are mutually interactive and interdependent.

The term *matai* thus evokes a cosmology and is expressive of the disposition of the Samoan people, manifested in the Samoan dyadic personality discussed above and the privileging of the individual's significant others. The *matai* system as a whole and individual *matai*s operate within this traditional worldview of cross-cutting social relationships, political alliances, mutual expectations, and economic ties as their *modus operandi*.⁹

Essentially a servant, a *matai*'s role is that of a *de facto* trustee (*tausi mea*) of his family's title and lands, the caretaker of the family property. The *matai*, in other words, is bound by fiduciary duties to his family. The land of which the *matai* is trustee is, in traditional cosmology, the

fanua which belongs to the whole family. It follows that the *matai* has no authority in law or custom to alienate family lands, at least not without the consent of the members of his family with legal interests in those lands.

As an individual, the *matai* is not without bridles. As the family representative in the village council of *matais*, a *matai*'s views on the governance of village affairs are supposed to be informed by the perspectives and interests of family members. In a speech at the United Nations General Assembly on 18 December 1960, the first prime minister of Samoa aptly characterised the true nature of the *matai* system as 'a system of representation; not one of domination' (United Nations General Assembly 1960). The *matai* as an 'I' is not a self-centred, isolated, atomistic individual.

Through the process of selection, a person is appointed by extended family members to be the holder of the family title (the *matai* title) with its ascribed social status, authority and corresponding duties. In most cases, the appointment has to be endorsed by a wider cluster of extended families with connections to the *matai* title and by the village council of *matais*, whose consent is vital in conferring legitimacy on the title-holder for the purposes of village affairs. The appointment of a *matai* is therefore a process of election over more than two stages, and the consent of innumerable others is indispensable. That is to say, the individual does not exalt himself to the status of a *matai* through usurpation, deceit, or by sidelining his significant others.

Underpinning the *matai*'s power of representation are important democratic principles: trust reposed in the *matai* as a decision-maker; the transfer of authority from the many to their representative; the exercise of that authority within prescribed limits and in accordance with the principles of justice, fairness, love and service; and the consent of those with a vested interest in how the *matai* exercises their representative authority. Put differently, the *matai* as an individual is embedded in a complex web of social relationships, organisation, powers, rights and corresponding duties, mutual expectations, property relations, and group morals and ideals.

Against that backdrop of Samoa's normative worldview, I offer the following caveats of caution. First, as already noted, Samoa's normative conceptualisation of the relationship between the Samoan individual and collective defined above is indeed changing. One of the main effects of liberalism has been the increasing privatisation, and, in some cases, dislocation of the Samoan self. Samoans, too, have been caught up in

the conflict, the competition between the individual and the collective. The Samoan individual and collective are becoming increasingly alienated from each other. This is perhaps inevitable since all societies (Samoa included) are susceptible to the multiform conflicts (external and internal) that regularly accompany the construction and maintenance of social worlds. This also challenges the somewhat one-sided view of the social order as an integrated system without problems, disagreements and conflicts. Internationalisation and globalisation have likewise propelled Samoan individuals into the arena of the global village, with its own milieu of ideologies and cosmologies. Those forces have significantly influenced the way in which Samoan individuals now see themselves in relation to their collectivities.

For some people, the Samoan collective is now too restrictive, even oppressive. Induced to conform to the majority by a society of consensus ruled within the parameters of paternalism and deference, the liberal individual naturally finds her right to choose or dissent seriously compromised. Consensus politics indeed has its benefits, but conducted within an aristocratic framework it seems inevitable that a sadistic, authoritarian cast of mind will arise and exert control. The right to choose or dissent is most likely to suffer as a result. And this calls for a fresh negotiation of the individual/collective relationship, one that is decisively in favour of the individual over the collective, as some have argued. The alternative danger—and the point must be emphasised—is an unnecessary and unwarranted alienation of the individual from the collective, and the emergence of a Samoan self which has

arrived at freedom by setting aside all external obstacles and impingements [and which is therefore] characterless, and hence without defined purpose, however much this is hidden by such seemingly positive terms as 'rationality' or 'creativity' (Taylor 1978:157).

Second, given that, I underline the point that the more appropriate position is that which neither condemns the individual to the arbitrary will of the collective nor sacrifices the collective good to gratify the idiosyncratic whims of the individual. As Allan Hutchinson (1988:88) has correctly reminded us,

whereas communitarianism sacrifices the individual to the collective will, liberalism worships the individual at the expense of the collective good. An individual is more than an automatic functionary of some holistic society and less than an obsessive egoist in an alienated world.

Avoiding the two extremes, I offer the following points of reference to the ongoing search for balance.

On the one hand, the danger is exalting and reifying, even deifying, the collective.¹⁰ But worshipping a sanctified collective in the spirit of the tribe which prays to idols of its own making is as heinous a sin as worshipping the individual. The concomitant corollary of exaltation and reification is the reduction of the individual to nothing more than a cultural dope, a mere 'tape recording of his culture' (Chinoy 1968:128), a mere actor playing out the role in a script provided by society. Society, when exalted and reified, becomes a reality that thickens and hardens, an objective entity that confronts the individual as a fixed reality, a society either devoid of humans or, otherwise, 'a forbidding prison' or 'a gigantic Alcatraz' from which humans cannot escape (Berger 1976:110).

We need, therefore, to take seriously the individual as an acting subject with a choice, 'an active being who...possesses the capacity for innovation and deviation and may through his actions significantly influence and change the nature of his culture or society' (Chinoy 1968:129). We need to affirm that humans are active participants in social life; that social life is not just a product but a process, an active engagement in social life; and that humans can create ideas, construct meanings, live and often fight against social structures that oppress them. This is an affirmation of the wealth of social life and of the 'ingenuity human beings are capable of in circumventing and subverting even the most elaborate control system' (Berger 1976:129).

Rejecting altruism as too convenient a rationale for individual actions, it may be argued that the 'great majority of good actions are intended not for the benefit of the world, but for that of individuals, of which the good of their world is made up' (Cohen 1961:344). In terms of world construction, individuals externalise themselves and project their 'own meaning[s] into reality' (Berger and Luckmann 1967:122). As they externalise themselves, they thereby construct a social world. Through externalisation as 'an anthropological necessity' (Berger and Luckmann 1967:70), individuals become and remain human. And being human means breaking out of one's idiosyncracies, the 'closed sphere of quiescent interiority' (Berger and Luckmann 1967:70), and continually externalising oneself in meaningful activity.

On the other hand, the problem with the liberal-individual position is the apotheosis of the individual at the expense of the community. But, quite frankly, the community is an essential variable in the social construction of reality. After all, world construction is a social enterprise; people work together to produce a human environment. Just as it is

impossible for a person to develop as a person in isolation, so it is impossible for one person to produce a human environment all by himself. 'One cannot be human all by oneself and, apparently, one cannot hold on to any particular identity all by oneself' (Berger 1976:118). Nor can 'the organism and, even more the self...be adequately understood apart from the particular social context in which they were shaped' (Berger and Luckmann 1967:68).

In terms of the individual's consciousness of who and what he is, this does not result from the 'autonomous creations of meaning by isolated individuals, but begins with the individual "taking over" the world in which others already live' (Berger and Luckmann 1967:150). Knowledge, or what individuals accept as reality, is not produced by 'passively perceiving individuals, but by interacting social groups engaged in particular activities' (Barnes 1977:18–9). Individuals acquire the concepts that they use 'within a social context' (Toulmin 1972:96). This underlines the importance of the individual's chorus of 'significant others' who are indispensable to the maintenance of the objective and subjective reality of society. It also underlines the fundamental significance of the institutional order of the community.

On the level of meaning, the institutional order represents a shield against terror. To be anomic, therefore, means to be deprived of this shield and to be exposed, alone, to the onslaught of nightmare (Berger and Luckmann 1967:119).

Taking the middle position between the two extremes of atomistic individualism and claustrophobic collectivism, it is argued that, in the final analysis, the individual is neither a Robinson Crusoe living alone on some uninhabited island nor a mere function of the collective. Reiterating Hutchinson's (1988) characterisation, the individual is 'more than an automatic functionary of some holistic society and less than an obsessive egoist in an alienated world'. It may be noted that this is, to a large extent, in keeping with Samoa's normative negotiation of the individual/collective relationship. However, given the intrinsic bias slightly in favour of the Samoan collective noted above, the Samoan collective needs to be relatively liberalised.

The pertinent considerations include the recognition of competing or conflicting interests in society, striking a more favourable balance between individual liberty and community interests, and a broad conception of the good society that rejects the determinism of community interests and provides a framework of rights and liberties within which people may pursue their interests either individually or

collectively. Instead of forcing people to espouse and conform to a particular view of life, diverse world views are tolerated and social cooperation in the pursuit of diverse interests is more vigorously promoted. Even though the individual is invariably rooted in the community, nonetheless, she must always retain her liberty, including her right to criticise, revise or even change her view of what is good. Individuals must not be tied to the pursuit of a particular conception of the good but must be allowed to choose and live according to his own conception of the good life. The individual, for her part, must exercise her rights and liberties in a manner that is responsible, considerate, consistent with community values and objectives, and does not fracture or destroy human relationships.

There is a need to redefine the contours of the existing rights discourse as well. Instead of rights in the abstract, they need to be re-conceptualised as relative to the distinctive social structure and value system of a given community. Deconstructing the notion that rights have an unchanging, universal application, we must take seriously the fact that notions of rights do shift and change, depending on particular contexts.¹¹ And most certainly, we need to reconstitute the exceedingly isolationist, atomistic and individualistic conception of rights in the liberal-individual camp, and emphasise the notion of rights that affirms solidarity as well.¹²

As noted above, internationalisation and globalisation now significantly influence perceptions of the (post)modern self. Waldron (1995:100) is quite correct that we now 'live in a world formed by technology and trade; by economic, religious, and political imperialism and their offspring; by mass migration and the dispersion of cultural influences'. But hybridisation can be taken only so far. That is, the 'hybrid lifestyle' that Waldron seems to be promulgating, if taken too far, will ultimately produce utterly transcendental selves that are neither here nor there; they belong nowhere because they are everywhere. But most certainly, the celebrated citizen of the world must have originated from some particular place, some specific country, some distinctive culture that the so-called citizen of the world may legitimately call his own. Thus, Waldron's (1995:100) charge that immersing 'oneself in the traditional practices of, say, an aboriginal culture might be a fascinating anthropological experiment, but it involves an artificial dislocation from what actually is going on in the world' overlooks the point that the citizen of the world is ultimately a Fijian, a Samoan, a Tongan, a New Zealander, or an Australian.

Finally, the emancipation of the individual from collective determinism which liberalism heralds is always a refreshing antidote to the reduction of the individual to a mere cog in political or cultural systems. The legitimate caveat is this: liberalisation does not mean destruction. '[F]inding a way to liberalise a cultural community without destroying it is a task that liberals face in every country, once we recognise the importance of a secure cultural context of choice' (Kymlicka 1995:170).

Freedom of movement and residence versus banishment: the Samoan individual, the Samoan collective, and the dilemma for a courteous judiciary

This section uses the problem of reconciling the constitutional right to freedom of movement and residence with the Samoan custom of banishing people from a Samoan traditional village to ground the issues raised in this chapter. My point of departure is the Samoa Court of Appeal's approach to constitutional interpretation. Treating the Constitution of Samoa as *sui generis*, the court emphasised the particular history and distinctive social structure of Samoa as pertinent factors of constitutional interpretation. In the area of fundamental rights and liberties, the court counselled the avoidance of a mechanical legalism and a dogmatic, pedantic approach in favour of a careful balancing of individual rights and liberties with the custom and tradition of the Samoan people. The court's approach, in turn, raises a number of important issues to which the following discussion will advert in due course.

The right to freedom of movement and residence is guaranteed by article 13(1)(d) of the Constitution of Samoa 1960: 'All citizens of Western Samoa shall have the right to move freely throughout Western Samoa and to reside in any part thereof'. Clause 4 of article 13 imposes limits—'reasonable restrictions...in the interests of national security, the economic well-being of Western Samoa, or public order, health or morals, for detaining persons of unsound mind, for preventing any offence, for the arrest and trial of persons charged with offences, or for punishing offenders'—on the right to freedom of movement and residence. Underlining the significance of article 13(1)(d), Professor Davidson in the Constitutional Convention 1960 affirmed this as an important right subject to 'the practical restriction that one should possess some land on which to live or to be living in someone else's

house and on their land with their permission' (Constitutional Convention of Western Samoa 1960:Vol. I, 199–200). In substantive terms, this is a right of action which presupposes a person or subject (A) with a legal and/or moral warrant to have or do something (X), and that it is legally and/or morally wrong for other persons (B and C) affected by the exercise of that right to refuse to honour A's right.

The legality of banishment¹³ was one of the issues in the Samoa Court of Appeal case of *Italia Taamale & Others v The Attorney-General* (CA. 2/95B) which, as Lord Cooke put it at 2, 'raises an issue of importance in Western Samoan society as to banishment from a village' and which at 32 was 'a test case which the appellants were justified in pursuing'. The issue was whether banishment violated article 13(1)(d). The facts included a petition by the council of *matais* of the village of Sapunaoa to have the appellants and their families banished from the village. The allegations included the appellants' insulting behaviour and refusal to comply with village obligations. Under section 75 of the Land and Titles Act 1981, Samoa's Land and Titles Court on 28 January 1994 granted a banishment order and ordered the appellants to leave the village. On 11 April 1994, the appellants filed an application for leave to appeal to the Appeal Division of the Land and Titles Court under section 79 of the Land and Titles Act 1981. The Appeal Division under section 89 of the Land and Titles Act 1981 suspended the banishment order.

On 9 September 1994, by way of case stated, the matter was reserved for the opinion of the Supreme Court on the issue whether the banishment order issued by the Land and Titles Court was violative of article 13(1)(d) and article 4 of the Constitution which vests power in the Supreme Court to enforce the rights in part II and to 'make all such orders as may be necessary and appropriate to secure' the enjoyments of those rights. On 23 January 1995, the case came before Sapolu CJ who held that the banishment order was not in breach of the Constitution and that the Land and Titles Court has jurisdiction to issue banishment orders.

On 10 February 1995, a notice of appeal to the Court of Appeal was filed and granted. And so it was that the case came before the Court of Appeal for hearing on 7 August 1995. Upholding the Chief Justice's decision, the Court of Appeal held at 31 that '[i]t is that history and social structure [of Samoa] and those references in the Constitution which lead us now to hold that, within the meaning of article 13(4), banishment from a village is, at the present time, a reasonable restriction

imposed by existing law, in the interests of public order, on the exercise of the rights of freedom of movement and residence affirmed by Article 13(1)(d)'.

I confirm that the court's approach is the more reasonable and rational one. However, critical analysis of the central planks of the court's decision unravels important issues which illustrate the dilemma which confronted the court. *Italia Taamale* also brought to the fore the issue of liberty being divided along dichotomous lines and described as 'two types of freedom, the foreign and the local one' (Constitutional Convention of Western Samoa 1960:Vol. I, 206), a mindset which continually threatens to divide society on a single axis, producing a conflict with very serious implications. I note the following matters.

- 1 The court held that banishment from a Samoan traditional village is a custom long established in Samoa, relying on the *Report on Matai Titles, Customary Land, and the Land and Titles Court 1975* and the Chief Justice's findings which confirmed banishment as an important sanction vested by custom in the village council of *matais*. In upholding that custom, the court appropriately deferred to the custom and traditions of the community. That said, whether or not the Samoan judiciary had successfully performed its constitutional role of protecting the individual, the weak, the vulnerable, and the disadvantaged remains a moot point. The Court of Appeal did set out at 28 a number of 'principles and safeguards' which should limit the Land and Titles Court's exercise of the power to issue banishment orders. Accordingly, the court's jurisdiction is to be exercised only 'for truly strong reasons', including the preservation of public order and the stability of village life and organisation. In cases where the individual outrageously indulges in an idiosyncratic assertion and practice of his rights and liberties, banishment is perhaps appropriate. Even so, banishment remains an extreme measure of social control and an order to that effect must never be lightly made.
- 2 Extolling the virtues of banishment actually masked issues of justice and fairness which must have been nuanced and more forcefully addressed. Banishment, despite its proclaimed virtues, often (if not always) affects an entire family, 'innocent people such as children' as the Court of Appeal put it at 29. A timid reminder, perhaps, given the subjunctive tone in which

it was expressed. Nevertheless, a note of reservation had been struck. The highest court of the land had spoken with a note of caution, thus signalling (hopefully) the eventual dismantling of the fallacy that there is nothing wrong with banishment. Where innocent people are in fact affected, one wonders whether there is any credible legal and/or moral justification for the suffering of innocent victims, unless we resort to the suspect Hebrew view of God visiting the sins of the fathers on their children.

Moreover, as the Chief Justice correctly noted, in most cases the onus is on the banished person to seek reconciliation through a public display of remorse and appeasing the displeasure of the village council with a lavish presentation of foodstuffs and fine mats. This is in keeping with Samoa's traditional means of dispute resolution predicated on restorative justice. While acknowledging the need for reconciliation and applauding the banished individual for taking the initiative to end the estrangement with the collective, it is difficult to overlook how the banished person is made to suffer both the indignity of physical dislocation and the economic price for reconciliation. Both the social and economic costs, I might add, are separate penalties for the one and same offence. If this is not double jeopardy, then perhaps we need to rewrite our law books.

- 3 Whereas the Court of Appeal's approach of applying the Constitution with due regard to its Samoan setting is warranted, the issue is that people are being banished even for the most trivial of reasons, the right to freedom of movement and residence is still being violated, and the unresolved issue of the justification of banishment continues to haunt both the Samoan people and judiciary. The Supreme Court case of *Aloimaina Ulisese & Others v Lands and Titles Court Tuasivi & Others* (4 November 1998), decided after *Italia Taamale*, is cited as evidence. The case involved the banishment of the plaintiffs and their families from their village under a 1994 banishment order by the Land and Titles Court. The plaintiffs in June 1998 issued a Motion for Judicial Review of the court's 1994 decision, a Declaratory Order that the decision was wrong in law and fact, and a rehearing of the case. The plaintiffs alleged that the Land and Titles Court had acted

unreasonably and outside the law, and was negligent in exercising its jurisdiction. The grounds included (a) the banishment of a whole family, (b) that the court gave no reasons for the banishment of a whole family, and (c) that members of the family who were not parties nor served with the proceedings were in fact banished.

'It was accepted for the purpose of this case,' Young J noted at 8 'that the allegations mentioned above were true'. There was therefore a clear breach of article 9(1) on fair hearing. It was also a violation of clause 3, which guarantees that a person charged with an offence 'shall be presumed innocent until proved guilty according to law'. On the facts, the presumption of innocence was effectively ignored in their case; they were adjudged guilty (of an unknown offence) without proof. The failure to serve them with the proceedings was, in addition, an infringement of clause 4 which guarantees a person charged with an offence rights such as the right to be informed of the charge against him, the right to defend himself, and the right to examine witnesses both for and against him. On the facts, most of the plaintiffs were neither informed of the charges against them nor given the opportunity to defend themselves. Clearly, this was a blatant miscarriage of justice. Fundamental rights were violated by an institution of the state, raising issues of fairness and natural justice. Those rights violations question in a fundamental way the propriety and legality of banishment.

- 4 In Samoa, with its intrinsic bias slightly in favour of the collective, the court's decision becomes a rather questionable prescriptive solution to the issue of the increasingly problematic relationship between the Samoan individual and the Samoan collective. That is, the decision tends towards creating and perhaps reinforcing a claustrophobic society in which the individual has little autonomy.

As noted above, the problem is the predisposition to exalt and reify the collective, thereby ignoring the individual as 'an active being' and reducing him to a cultural dope who acts according to social determinants and the axiomatic laws of society, a mere 'tape recording of his culture', an actor playing out a predetermined role in a script provided by society in the manner of a puppet. The collective in this social

structure is really a 'gigantic Alcatraz' or 'a forbidding prison' wherein the individual suffers from the determinism of an imperialistic collective. This does not condone the individual acting as a 'spoiled brat', making idiosyncratic assertions of his rights or liberties. Nor do I intend to disparage unnecessarily the importance of the collective and the institutional order acting as a shield against terror, a sheltering canopy: 'The walls of society are a Potemkin village erected in front of the abyss of being [and they] function to protect us from terror, to organise for us a cosmos of meaning within which our lives make sense' (Berger 1976:170). That notwithstanding, a collective with a lot of power over the individual is a threatening reality. It is not difficult to use a variety of gods—cultural, religious, economic, political—as a façade for abuses of power.

- 5 Central to the court's decision was the maintenance of public order. But public order is an amorphous term, and disruption of it can be anything from a simple act that interferes with quiet living to sedition and rioting. Sometimes, public order in Samoa carries a distinctive connotation: obeying the decrees of the village councils. Conversely, disobeying those decrees indiscriminately means public disorder. Whether or not the decrees are just is secondary, and the individual's reasons for disobeying them are seldom taken into account. The invocation of public order as justification for the punishment meted out cannot hide the suppression of the individual.

Underpinning the notion of public order is the functionalist axiom, the view that society has needs such as integration. In this theoretical framework, social procedures, practices and institutions have functions relative to the accomplishment of the needs of society. There may be problems with this functionalist explanation if it is taken too far. For instance, the functionalist axiom may be ontologically wrong in the sense that the notion of society with needs (engendered by the analogy on which it is based)¹⁴ involves the error of reification, treating as an organism something that is not.

The axiom also creates a static view of society, a utopian society that is in a perpetual state of equilibrium and in which there are no conflicts or changes. Consequently, it ignores change and conflict as essential variables in society, and the

precarious nature of the social order given the fact that every society undergoes changes and experiences conflicts everyday and at every turn. In fact, every society is threatened by attacks from external forces or by internal revolutions such as by a competing version of society. The subjective reality of society is similarly precarious built up as it were through the process of socialisation, which is never completely successful, and maintained by contact with others who are liable to change or disappear. And, while the symbolic universe may indeed be challenged by an alternative social order, most often it is the power struggle among those who inhabit the same social world, but who seek to transform it in different directions (that is, a contest between different versions of what the social order should be), which must be acknowledged, illuminated, and resolved.

The axiom entails a related unacceptable corollary: the aims, needs, interests, beliefs, fears and doubts of the individual members of society could be excluded from a functionalist explanation. Sometimes, it excludes what individuals think and feel, their aims, needs, interests, beliefs and doubts. It ignores the ability of people to make rational choices relative to the achievement of their aims and so forth. It creates humans who have no influence on the operation and direction of their society. This is because society is seen to be governed by latent or invisible axiomatic functional laws. Once this proposition is granted, it is a short step to the reductionist view that people are really cultural dopes, tape recordings, and mere actors playing out pre-determined roles on some panoramic stage. The main player in this theatrical drama is a reified society which confronts individuals as a fixed entity—overwhelming and overbearing; a kind of breathing reality with needs such as public order.

- 6 In order to make banishment a Samoan custom that has acquired the force of law, the court took into account statutory provisions and relevant case law.¹⁵ In the final analysis, the court was bound by the doctrine of *stare decisis*, and its adherence to precedents constructed an 'idealised model of the legal process' (Kairys 1982:11–17, 11). As a critical mechanism of legal reasoning, *stare decisis* required the court to follow precedents faithfully. In principle, this is supposed

to produce not only correct results but certainty, stability and continuity in the legal system. As an essential feature of legal discourse, *stare decisis* gave the court's reasoning a formal face. In its operation, *stare decisis* is supposed to involve the court applying precedents in an objective, non-political, almost scientifically mechanical manner. In actual practice, however, some precedents are followed and others rejected simply by distinguishing them.

This issue also surfaced in *Italia Taamale*. I note, for instance, the practice direction issued by Sir Gaven Donne (then Chief Justice and President of the Land and Titles Court of Samoa) that 'no further banishment orders should be made as they were in violation of the Constitution', relying primarily on the inconsistency between banishment and articles 13(1)(d) and (2)(1) and (2). As expected, the Court of Appeal at 21 dismissed the direction on the ground that 'a practice direction cannot settle the law and is usually made without the benefit of hearing argument from counsel'. The court also rejected a press statement by St John CJ to the effect that banishment violated provisions of the Constitution and was therefore unconstitutional. In short, the court could logically decide the legality of banishment by adopting one possible interpretation of the issue and ignoring available alternatives. But the legality of banishment was, it may be argued, amenable to a different answer to the one the court came out with. In justifying banishment as a reasonable restriction in the interests of public order, the court expressed a clear vision of society. By focusing on public order, the court made a clear political preference in favour of the collective over the ethic of individual liberty, perhaps reflecting a suppressed intent to retain a particular order of values, typically the existing one.

This raises a plethora of questions concerning the practice of strict adherence to the doctrine of *stare decisis*. Despite its usefulness, the doctrine is most certainly not perfect; it makes the law 'introspective and backward-looking' (Thomas 1993). Sometimes *stare decisis* is such an open-ended doctrine that one can do almost anything with it. But, then again, the doctrine is necessary to create the picture of judges simply declaring and applying the law, faithfully following precedents. Yet, such a picture of judges could very well be a

fairytale no longer tenable in the modern world. And we do not have to go along with the full panoply of the critical legal studies genre to support the view that sometimes the law can be really incoherent and contradictory.

- 7 Also critical to the Court of Appeal's decision was the construction of banishment as a reasonable restriction.¹⁶ In *New Windsor Corporation v Mellor* [1975] 3 All ER 44, Lord Denning held that for a custom to be good, it must be both reasonable (that is, not contrary to reason, and what is contrary to reason cannot be consonant to law) and certain. As an illustration, Lord Denning referred to two different uses of land. In 1666, the owner of a parcel of land (Bachelor's Acre) complained that his fellow villagers were destroying his grass by dancing on it in line with a village custom of using that land for recreation purposes. Applying the two-limb test, the custom was deemed a good one since it was certain (that is, it was part of the village's history and way of life) and reasonable (that is, it was necessary for the villagers to have their recreation). But if the land in question was arable land being used for farming, then the owner had every right to stop horsemen from riding over the land and destroying his crops.

Banishment, like villagers enjoying themselves in dance and other pastimes on Bachelor's Acre, is a custom that has been practised in Samoa for a long time. In this respect, banishment is certain, satisfying the second limb of Lord Denning's test. Unlike the villagers using Bachelor's Acre for recreation purposes, banishment means depriving people of the right to reside in their own homes and requiring them to depart from their land. In this respect, banishment is much more serious than horsemen riding over arable land and destroying the owner's crops. The first limb of Lord Denning's test, that a custom must be reasonable, is not satisfied. It may be argued that, since banishment is contrary to reason, it cannot be consonant with law.

The notion of reasonableness is nevertheless hard to gauge. Lord Cooke in *Webster v Auckland Harbour Board* [1987] 2 NZLR 129 (a judicial review case) associated reasonableness at 131 with reason, and unreasonableness with something 'outside the limits of reason'. In another review case, Lord

Diplock in *CCSU v Minister for Civil Service* [1985] AC 374 at 410 associated unreasonableness with something 'so outrageous in its defiance of logic or moral standards that no sensible person who had applied his mind to the question to be decided could have arrived'. It seems clear from those authorities that reasonableness is a broad concept, with broad categories such as reason and morality providing pointers. It means different things to different people in different situations.

- 8 There is a causal nexus between banishment and Samoa's land tenure system. To some extent, the issue is the limited force of a private property right for the Samoan individual residing on customary land which, by law and in custom, belongs to the collective (the family and the village).¹⁷

There are two issues which need clarification here: (a) the correlation between banishment and the existing land tenure system in Samoa, and (b) the institution of communal ownership of customary land.

First, I offer the following observations in respect of the connection between banishment and the Samoan individual's limited property rights in customary land. Relevant for present purposes is the principle that 'a man's house is his castle'. The issue is the sanctity of the home predicated on the moral dignity of the man—whatever and whoever he is—who inhabits the home. Lord Cooke (1988:160), underlining this principle, enjoined that the 'sanctity of the home, subject to strictly limited exceptions, can be seen as an example of a right existing by natural law'.

The axiom is, furthermore, about a person's common law right to enjoy the security and privacy of his home, and to defend his home and property. The case of *Entick v Carrington* (1765) 19 State Trials 1030 involved officers of the English government who, pursuant to warrants issued by the Secretary of State, raided homes in search of materials connected with John Wilkes' pamphlets attacking government policies and the King himself. Entick, an associate of Wilkes, brought a civil action of trespass against the State agents for breaking and entering his house and seizing his papers under a bad warrant. Delivering the court's judgment, Lord Camden said at 314

The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole...By the laws of England, every invasion of private property, be it ever so

minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil.

Holding that the Secretary of State had no jurisdiction to seize the defendant's papers, the court held that the warrant to seize Entick's papers was illegal and void. Critical to the court's decision was Entick's right of property in his land, home, and chattels protected by law. Underpinning Entick's right of property is the concept of legal ownership as a bundle of rights to possess, use, lend, gift, mortgage, alienate, use up, consume, and/or otherwise deal with that property (Honore 1984). Although Honore does not include the right to exclude, that appears explicitly as a constituent of the rights to possess and to security. Legal ownership thus entails the right to exclude others, even the King himself, from interfering with the quiet enjoyment of one's property. Associated with the right of exclusion is the right to protect one's property against all and sundry.

Unlike Entick, the property rights of a Samoan individual living on customary land are much less substantial and exclusive since customary land belongs to the group. At best, the individual has only the right to possess, use, and enjoy customary land; the family and village council retain an ultimate reversionary interest in that land since Samoa's land tenure system vests ownership of customary land in the collective. Collective ownership, of course, has its benefits such as the non-alienation of land and beneficial title. However, collective ownership should not be idealised; it is problematic.¹⁸ For instance, collective ownership supports the banishment of people from their homes. Lacking an exclusionary right in the land on which the individual lives, it is not difficult at all to banish or even forcibly evict him from that land.

Important also is the justification of private ownership (Nozick 1974). Everyone has a natural right to own property, including the fruits of one's own labour in terms of the Lockean appropriation theory. The instrumental or utilitarian justification of private property is predicated on a number of grounds. Allowing the individual to enjoy the fruits of his labour is conducive to invention and industry. Ownership and control of private property also contribute to personality development; in a real sense, they make a person responsible and provide the incentive to work towards increasing the value of one's property.

Of equal significance as well is the connection between private property and liberty, that private property is 'necessary to liberty' (Dahl

1985:80). As Jennifer Nedelsky (1988:241) has noted, '[p]roperty set bounds between a protected sphere of individual freedom and the legitimate scope of governmental authority'. This was, to some extent, the issue in *Entick*. The court's decision affirmed *Entick's* liberty in his own home and in the ownership of his chattels. This proposition has been extended to embrace more than just property rights. 'It is certainly the case,' argues Nedelsky (1988:261) 'that property has traditionally been associated with the values of independence, privacy, autonomy and participation'. And '[t]he right to private space [in a person's home] is an essential privacy principle' (Longworth and McBride 1994:3).

Of course, private property in capitalist terms has its own defects.

Property as an exclusive right of a natural or artificial person to use and dispose of material things...leads necessarily, in any kind of market society...to an inequality of wealth and power that denies a lot of people the possibility of a reasonably human life. The narrow institution of property is bound to result in such inequality, in any society short of a genetically engineered one that would have ironed out all differences in skill and energy (Macpherson 1977:73).¹⁹

Be that as it may, for present purposes, the issue is the relative ease with which people can be banished under customary property regimes due to their lack of exclusionary rights. Certainly, banishment will not cause a social revolution. Underlining the need to securely protect the individual's property and privacy rights, I quote verbatim what William Pitt said in the English Parliament in 1763: 'The poorest man may in his cottage bid defiance to all the force of the crown. It may be frail—it its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement'.

Second, concerning the institution of communal ownership of customary land, I take the view that there is no philosophical, legal, or moral impediment to collective ownership of property, and that communal ownership of customary land constitutes an instance of group rights defined by a common interest that grounds a group right (on the 'collective' conception of group rights) and/or a clear identity as a group (on the 'corporate' conception of group rights).

Adopting a broad view of the moral standing of the group for right-holding purposes, it may be argued that such moral standing is based on the collective moral status of the individuals in the group (the collective conception) and/or the moral status of the group itself as a moral community in its own right (the corporate conception). In my view, there is no discrepancy between the two conceptions of the moral

standing of the group. Hence both could be invoked to ground and explain the moral standing of the group for right-holding purposes. On either conception, however, there is always the gnawing issue of the proper relationship between the individual and the collective in cases of conflicting interests which disrupt 'a simple symmetry of interests amongst the holders of a collective right' (Jones 1999:370), on the one hand, and in cases where the 'group corporately may hold [or even exercise] rights against, or over, its members severally' (Jones 1999:372), on the other.

Finally, it may be noted that developing property rights into estates in fee simple is now a constant motif in the reform and development agendas in the Pacific (Toatu 2004; Gosarevski et al. 2004) And as Jim Fingleton (2004:97) has correctly reminded, contra misconceptions,

[t]here is a great deal of misunderstanding about customary land tenures. One of the most common mistakes is to believe that customary tenure involves both the communal ownership and the communal use of land. In its extreme form, this view leads critics to see communal ownership as something like communism, whose fate it should share. On the contrary, communal ownership in countries like Papua New Guinea should be seen as a form of private property rights, albeit that the rights are owned by a group rather than by individuals.

Subject to the limitations of individual property noted above, my own position, as a Samoan, is that there needs to be a liberalisation of property rights in the sense of allowing customary land to be used for economic and commercial purposes (for example, through leasehold agreements) while, at the same time, ensuring that the rent money is equally divided amongst all the title-holders and that family land is not capable of alienation. This change, I emphasise, needs to be undertaken with caution, care, and a lot of sensitivity on the part of the donor agencies and international financial bodies pushing this agenda. Failing that, they run the risk of leading Pacific nations into wars over land and profits.

Conclusion

The Court of Appeal's promise to approach issues of rights and freedoms in a generous, unquibbling manner that avoids the austerity of a dogmatic legalism is most certainly the more reasonable and rational approach. Adopting a clinical approach, the court decided the case of *Italia Taamale* with courteous regard to the social structure and history of Samoa. Further constrained to circumscribe its interpretation of the

law by reference to legal precedents and the judicial symbols of certainty and consistency, the Samoan judicial lion, it may be argued, could not help being less activist.

But, at least, we can understand the learned justices' dilemma: either reject banishment as a violation of the Constitution and thereby risk the wrath of the collective, or, justify banishment as a reasonable restriction imposed by law and suffer the moral pain of having to sacrifice the individual to indulge the collective. That said, it is perhaps the case that in a community of individuals who look up to the Court of Appeal as the most reliable guardian of their rights, any judicial activism by the courts would not be seen as a Machiavellian plot to overthrow the institutional order. Most certainly, it would not be dubbed judicial usurpation or idolatry.

Regarding the individual/collective dialectic, the appropriate approach, as hitherto argued, is not to promote a telescopic view of the issue, fortifying one type of rights over the other. Neither type, after all, provides a perfect solution to the problems of social life. Liberalism with its focus on individual rights may itself constitute a threat to society when it creates egoist individuals obsessed with nothing else but what they want. Improperly used, rights and freedoms become tutelary deities that sacralise and justify anti-social causes. Overused and exaggerated, the terms rights and freedoms lose meaning and value. As Lord Radcliffe (1961:viii) once warned, '[l]ike a cheap campaign button, they are pinned without discrimination upon this label and that...There is some danger that in western democracies the ideas of individual liberty and freedom will die of fatty degeneration of the muscles of the heart'.²⁰

If liberalism has its pitfalls, communitarianism does not fare any better. A naïve preoccupation with the collective often manifests itself in the absurd reification and worship of the social order: society deified, 'god' as the deification of society, and religion as the sacralisation of society's requirements for human behaviour. In this worship, the individual is invariably condemned as a self-centred, amoral product of Darwin's selfish gene, and the reduction of the individual to a mere function of the system is publicly applauded as part of his education on the virtues and objectives of the collective.

In the final analysis, neither view adequately represents the real interests and needs of real people in the real world. Hutchinson (1988:93) aptly captures the need to take a middle-position between the two extremes as follows

[E]ach vision represents only a partial vision and incomplete depiction of social life and its possibilities. Neither is reliable or realisable as an exclusive basis for social organisation... [O]ne vision is the antithesis of the other. Yet there can be no synthesis for each is the consequence of the other and any attempt to expunge one serves ultimately to reinforce it: they are 'partners as well as antagonists'.

Notes

- ¹ For an overview of human rights in the Pacific, see Bureau of Democracy, Human Rights, and Labor (2003).
- ² On the need for a bill of rights for England, Lord Scarman (1992) has argued that '[n]o democracy can be considered safe whose freedoms are not encoded in a basic constitution'. In Australia, Justice Kirby (1997) opined that '[n]o-one says that a bill of rights alone will protect the rights of the people. But nor does majoritarian democracy in Parliament'.
- ³ See, for example, part II of the *Constitution of the Republic of Vanuatu*. The fundamental rights and liberties in part II are entrenched by articles 84 to 86; also Part I of the *Constitution of Tonga* which, by clause 79, entrenches fundamental rights and liberties given under part II.
- ⁴ For a vigorous defense of the individual-liberal position see, for example, Kukathas and Pettit (1990); and Kukathas (1995).
- ⁵ Compare Smith (1980:1), who states '[t]he dissolution of ethnicity. The transcendence of nationalism. The internationalisation of culture. These have been the dreams, and expectations, of liberals and rationalists in practically every country, and in practically every country they have been confounded and disappointed... Today the cosmopolitan ideals are in decline and rationalist expectations have withered. Today, liberals and socialists alike must work for, and with, the nation state and its increasingly ethnic culture, or remain voices in the wilderness'.
- ⁶ On communitarianism see, for example, Brett (1991) and Green (1991). For a Pacific view of collective rights, see Tomas (1998).
- ⁷ On the contingency of the self, see for example, Rorty (1989).
- ⁸ See, for example, Raz (1986); cf. Jones (1999). Jones distinguishes between what he calls the 'collective conception' of group rights and his own 'corporate conception' of group rights. Central to Jones' conception is the issue of the moral standing of the group for right-holding purposes. The following statement (1999:364) is instructive of Jones' view and the problems that it faces: 'Since, on my view, right-holding depends crucially upon moral standing, the conditions of moral standing will provide the conditions a group has to satisfy if it is to be a corporate right-holder. But since the prerequisites of moral standing are controversial (as is evident from disputes over whether any entity other than human persons can possess rights), that controversy must infect the question of which groups, if any, can possess corporate rights'.
- ⁹ To some extent, the word *matai* also carries the quasi-metaphysical connotation of being set apart or consecrated. Seen in this light, the bearer of a *matai* title is seen as in some sense divinely consecrated for a particular office, a kind of priest *ex officio*. See, for example, Meleisea (1987). While this may explain the special place which *matais* and the *matai* system hold in Samoa's cosmology, it tends to misrepresent the place of *matais* in the socio-cultural system. By structuring society on a vertical axis in accordance with a religious hierarchical ordering of the universe, this explanation runs the risk of elevating *matais* above the common fray and abstracting them from their *modus operandi* which actually gives them meaning, value and significance.

- ¹⁰ Gordon (1982:289) notes that '[the] process of allowing the structures we ourselves have built to mediate relations among us so as to make us see ourselves as performing abstract roles in a play that is produced by no human agency is what is usually called (following Marx and such modern writers as Sartre and Lukacs) reification. It is a way people have of manufacturing necessity: they build structures, then act as if (and genuinely come to believe that) the structures they have built are determined by history, human nature, and economic law'.
- ¹¹ Thus MacIntyre (1984:220) notes 'we all approach our circumstances as bearers of a particular social identity. I am someone's son or daughter, someone else's cousin or uncle; I am a citizen of this or that city, a member of this or that guild or profession; I belong to this clan, that tribe, this nation...As such, I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point. This is in part what gives my life its own moral particularity. This thought is likely to appear alien ... from the standpoint of modern individualism. From the standpoint of individualism I am what I myself choose to be. I can always, if I wish to, put in question what are taken to be the merely contingent social features of my existence'.
- ¹² Rorty (1989:191) notes that '[o]ur sense of solidarity is strongest when those with whom solidarity is expressed are thought of as "one of us", where "us" means something smaller and more local than the human race'. Teasing out the moral and ethical dimensions of solidarity, Rorty (1989:192) grounds the basis of solidarity on 'the ability to see more and more traditional differences (of tribe, religion, race, customs, and the like) as unimportant when compared with similarities with respect to pain and humiliation—the ability to think of people wildly different from ourselves as included in the range of "us"'.
- ¹³ See also the Kiribati case of *Teitinnong v Ariong* [1987] LRC (Const) 517 and the Solomon Islands case of *Remisio Pusi v Leni and Others* (unreported) High Court, Solomon Islands, cc 218/95, 14 February 1997.
- ¹⁴ Pertinent to the functionalist axiom is the analogy between society and a biological organism, and the functions which the different organs of an organism perform for the good of the whole body in much the same way the different elements of society work together to maintain social order. See, for example, Giddens (1972).
- ¹⁵ The precedents included the *Samoan Offenders Ordinance 1922*, the *Samoa Amendment Act 1927*, and the case of *Tāgaloa v Inspector of Police* [1927] NZLR 883.
- ¹⁶ Note the use of the amorphous term 'reasonable restrictions' in article 13(4). Cf. section 5 of the New Zealand *Bill of Rights Act 1990*, entitled 'Justified limitations'. The section provides that the rights and freedoms contained in the Bill of Rights may be subject only to such 'reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society', with the burden of proof on those seeking to limit rights. Of some relevance also is clause 44(2) of the *Canadian Bill of Rights 1960* which provides: 'Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorise the abrogation, abridgement or infringement of any rights or freedoms herein recognised and declared'.
- ¹⁷ Article 101 of the Constitution defines the types of land in Samoa: customary or native land, freehold land, and public land. In the case of customary land, the law makes the state the trustee of the beneficial owners of such land: *Western Samoa Trust Estates Corporation v Tuionoula* [1987] WSSC 1; [1987] SPLR 437 (19 January 1987). This is, of course, a debatable matter. Article 102 governs that

trusteeship by prohibiting the alienation of customary land or any interest therein by way of sale, mortgage, gift or otherwise. Nor shall customary land or any interest therein be used in the execution of loans and so forth. Parliament, however, may authorise through legislation (1) the grant of a lease or licence of customary land or of any interest therein, and (2) the taking of any customary land or interest therein for public purposes, subject to adequate compensation as required by article 14.

- ¹⁸ Note, for example, Mill's (1970:795) criticism of the socialist ethic which allows collective ownership of property: 'It is the common error of Socialists to overlook the natural indolence of mankind; their tendency to be passive, to be slaves of habit, to persist indefinitely in a course once chosen. Let them once attain any state of existence which they consider tolerable, and the danger to be apprehended is that they will thenceforth stagnate; will not exert themselves to improve, and by letting their faculties rust, will lose even the energy required to preserve them from deterioration'. Whereas Mill's criticism is extreme and somewhat simplistic, there is a grain of truth to the claim that common ownership of land is not immediately conducive to economic development.
- ¹⁹ Note also Barry (1986:86–7), who argues: 'As they [capitalists] accumulate more and more property, there is less and less for others. The relative positions of the parties with respect to property is not equal, for as one has gained the other has, of necessity, lost'. But, in a third world context like Samoa, we may need to initiate public policies to facilitate wide acquisition and ownership of property, while, at the same time, preempting the possibility of excessive concentration of property in a few to the detriment of the many. And, personally, I do not subscribe to or support the alienation of customary land.
- ²⁰ See also Glendon (1991) on the negative effects of rights claims such as eclipsing 'the moral, the long-term, and the social implications' of issues from political discourse.