Human rights and stranger narratives

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This article argues that the contemporary environment has destabilised many of the narratives that give meaning and legitimacy to terms such as 'rights', 'the state' or 'stranger', and has exposed other narratives which question and change our received meanings. It argues that the controlling narratives which are traditionally thought to give strangers rights are in a crisis compounded by the effects of what are arguably the new controlling narratives of international politics — neo-liberalism and terrorism. It explores the meaning of 'stranger' to bring out its implicit suggestion of negative differentiation, which provide a handle for the politics of fear and self-interest to determine our responses to them. It then argues that attempts to ground a different response in 'human rights' are compromised by their being fragile, far from self-evident conceptions, given birth within the liberal political tradition which, though widely entertained, command only limited allegiance. The article concludes by arguing that the rights of strangers need strange rights, resting upon stranger narratives. These rights and narratives are strange politically, because they defy the agenda of fear and self-interest played out in contemporary politics. Intellectually they are strange, because they require that we affirm a vision of being human that contemporary accounts of what it is to be human seem to have eclipsed or rejected.

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The idea of human rights is one with which we are familiar. It is so familiar that many take it for granted — the old saying, familiarity breeds contempt, could certainly be applied to the attitudes and policies of the present Australian Government. I do not propose, however, to provide an account of the way in which human rights has been treated by the current Government; nor to detail the consequences of this for the individuals and groups of people whose lives have been irreparably damaged by these policies. The task I address takes us back a step from the day to day politics of human rights: the reportage of rights abuses, the provision of refuge to those abused, the preventative and monitoring efforts of the UN, and the provision of welfare and economic means to the dispossessed.

Our familiarity with the day to day side of human rights masks the strangeness of

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the concept of human rights. A consideration of the rights of asylum seekers and refugees has the potential to lift this mask and provoke searching questions; it is not clear to me, however, that this potential has been even slightly realised in our contemporary public discussions. In what follows I reflect on why it is that the concept of human rights is strange and why in particular the rights of asylum seekers and refugees should clarify this strangeness for us. The aim of this clarification is not mere comprehension, however: it is my view that we should become people in whom this strangeness is embodied (McClendon 2002).

Interpreting strangeness

At a simple level, a stranger is one who is new to us, someone we have not met before, someone with whom we are not familiar — or so my dictionary informs me. On this reading of the term, most people are strangers to one another: most have not met before, or are unfamiliar or new to one another. The dictionary entry under 'strange' also includes 'stranger', and here there are more connotations: one who is strange is unusual, extraordinary, peculiar, foreign, distant, unknown, unfamiliar — and even a little mad.

Here, I think, we start to get a sense of something central to what is at stake in the discussion. This latter definition points us in the direction not just of non-familiarity, but of differentiation. Moreover, this differentiation is not just a matter of like and unlike, but may include negative or pejorative discriminations. The different is not only unfamiliar, but there is something of a threat associated with it. The stranger may not merely be different, but may be peculiar — mad, even.

There are many different types of strangers: some mad by 'our' standards, some not. At the benign end of the scale are strangers whom we positively welcome, such as tourists, both interstate and international, students from abroad come to study, diplomats, and business people. These are people whose intentions and presence fit comfortably with the established structures of life in our society. By contrast, asylum seekers and refugees have the potential to challenge and disrupt the comfortable quietude that seems to go with the preferred Australian beliefs about our place in the world.[1]

These strangers — their presence, their beliefs, their cultural differences, their religious and political views — can do much to upset the pieties of Australians comfortable with their identity as battlers: middle Australians, aspirational voters

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1   In this connection, see the discussion in Dillon (1999, 92-124).

and the like. Indeed, the furore created by the presence of these strangers has shown up the tensions and contradictions which exist both in common attitudes towards asylum seekers in Australia and in the policy frameworks which have been developed by government to try and deal with what it perceives as a problem.

What emerges from this furore is a range of different positions in policy, principle and pragmatism, which depend on very disparate interpretations of key events, trends (both domestic and international) and normative ideals. One consequence is that the same vocabulary means different things to different people. To some, asylum seekers are the poor and vulnerable, in need of protection from persecution — others associate them with threat and terror. To some, refugees are a drain on the economy, a threat to the livelihood of real Aussies, and consumers of public money which could be better spent elsewhere. To others, their contribution to the economy over decades far outweighs any cost, and may be part of the answer to weaknesses in our national population policy. In NSW, refugees have proved to be the economic saviours of country towns.[2]

These disparate meanings are partly a consequence of the politics of fear and self-interest: politics which play to the fears and self-centredness of the electorate for partisan political gain; politics which exchange the enduring and revered principles of our major political parties for thirty pieces of silver (Burke 2001: Introduction). These unfortunate, ever-present realities of politics are today being played out on a larger canvas. This canvas is dense with ambiguity and interpretive dilemmas (Dillon 1999). It illustrates a number of critical pathways which lie before us. It is a picture of — fundamentally — change, but also of opportunity and danger. In what follows, I want to consider human rights, in particular the rights of strangers, in order to provide one perspective of what is at stake on the larger canvas. Here my argument is that the politics of asylum seekers and refugees in Australia does not stand alone, but is one example of many that could be proffered (and I shall note two others below) which point to a serious challenge regarding the possibilities for a high humanism in a global world.

The strangeness of human rights

The concept of human rights sit uncomfortably with the general tenor of the late or post-modern world (Langlois 2001: chapters 3 and 5). It does so on a number of different levels. Intellectually, sociologically, economically and politically (both within and between states), human rights are counter-cultural artefacts. The principal reason

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2   <www.heraldsun.news.com.au/printpage/0,5481,6043737,00.html>.

for this is that the concept of human rights sets itself up as a transcendent authority for the judgment and direction of human behaviour in the interests of establishing a culture of high humanism. The notion of human rights entails a set of dogmas about how human persons and groups of human persons may or may not behave towards other human persons or groups of persons. Moreover, these transcendent criteria for behaviour are absolutes. They are non-negotiable. They affirm that there are certain sorts of behaviour which may not be allowed under any circumstance.

The principal strangeness about human rights thought is the disjuncture between its role as an eternal legislative myth for the modern psyche or political consciousness, and its actual history and development; the route by which human rights became human rights. It is one of the oldest and greatest claims made on behalf of human rights is that they are self-evident, yet this could not be further from the case (Langlois 2001: ch 3; Gaete 1993: 149) — particularly when one examines the history of human behaviour over the millennia. Human rights have only ever been self-evident — in any sense — when their history has been forgotten and their existence has been taken for granted. That is, human rights have only been self-evident among the forgetful and uncritical, or among those setting out to make grand political myths on which to found new political orders (Gaete 1993: 19).

The development of human rights is a development within a particular and specific tradition of political thought and practice: the liberal tradition. Human rights did not appear fully formed out of nowhere. Rather, they are the consequence of a gradually developed story of what it means to be human: a story which coalesces into a powerfully persuasive narrative during the European Enlightenment, and of which human rights — then termed 'the rights of man' — play a central role. This narrative went global immediately after the Second World War, an event which has led some analysts to speak of human rights as having worldwide acceptance.

This, I would argue, is an overstatement. Enlightenment liberalism may well have global reach (Brown 1999: 103-27) but it does not have global allegiance. The political and legal institutions associated with human rights do extend globally; but this apparent indicator of universalism in fact belies the many ways in which human rights are received, reinterpreted, grudgingly implemented or rejected around the world.[3] Despite commonalities, there are also radical differences even among those worldviews that arguably embody a high humanism. It is a mistake to assume that

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3   'An emphasis on "local" solutions is important, for while human rights principles are conceived to be universal, the reality of human rights is always local ... Ultimately ...local causes, movements, principles, interests, political visions, and ethical commitments count most' (Lev 1993, xi-xv, xiv).

the liberalism common within the advanced industrial countries is unproblematically universal.

True, by the mid-1990s, almost 130 states had signed up to the International Bill of Human Rights (Van Ness 1999: 8). Whether this should be taken to indicate the existence of a truly cosmopolitan moral order, universal both empirically and normatively, is another matter altogether. This is the view of John Charvet: 'since most states have signed up … it would seem that there already exists a world ethical consensus' (Charvet 1998: 523). However, the most we can point to in the way of consensus is the need to maintain the fiction that there might be one, and that it can be said to be represented by states. Although people who act as agents of states have signed on in their name, the extent to which a bill of rights in Australia, say, would really represent a national ethical consensus is a serious matter for debate. There may be an ethical consensus among the international diplomatic elite, but the extent to which it extends beyond this elite is a matter for the gravest scepticism; as, indeed, the proliferation of alternative bills of rights among dissenting groups illustrates.

The relationship between freedom and religion is an important example. For Charvet, religion and a liberal political outlook can go together. Unfortunately, Charvet seems only to have taken into consideration those forms of religion which exist in and have been accommodated by liberal societies: the sorts of religion which have been privatised, pietised and de-politicised. The inadequacies of his account of religion even within the Western tradition are shown by taking two specific issues: women in religion, and freedom of religion. Charvet doubts 'whether the inferior position of women, any more than compulsion in matters of belief is a fundamental article of religious faith rather than a traditional custom that can and ought to be modified' (Charvet 1998: 537).

To be sure, the new head of the Anglican Communion, the Archbishop of Canterbury Rowan Williams, may agree with this statement. However, Sydney's Anglican archbishop Peter Jenson regrettably holds women's necessary subservience to men in religion and society to be a basic tenet in his theology and church practice. This is certainly the case also for establishment Islam in Malaysia, or the fundamentalist Hinduism of India. As Charvet says, women in religion and freedom of religion are not fundamentally divisive to the liberally religious. However, their less liberal co-believers consistently take a different view; even for liberals, to subvert my own point, these issues will be fundamental in that they will *insist* that they are secondary issues.

The more general issue at stake here is the nature and content of justice. All worldviews have some account of justice, but these accounts differ greatly. On some

traditional accounts of justice, no injustice is implied by the claim that one is not permitted to leave one's religion of birth. For many Muslims the very idea that one might legitimately leave Islam would void the religion of meaning. Apostasy is formally punishable by death: Islam means submission, not choice. Or again, for many the killing of the human foetus is an intolerable act of injustice, whereas for others the refusal to allow a woman the choice to so do is an intolerable injustice. There is no universal consensus on these issues despite signatures of state on human rights instrumentalities. Indeed, it is the argument of some analysts that one of the significant developments in the international politics of human rights is the movement away from consensus. Such analysts believe that with globalisation, post-colonialism and the resurgence of ethnic and religious politics, the pluralism which exists below the level of the state is being translated into the realm of international relations (Clark 1997: 187).

Liberal humanism in question

In an international context, whose pluralism is increasingly appreciated, the deontological dogmas which structure received liberal Western thought on human relations, and provide the background for the International Bill of Human Rights, find themselves subject to a high degree of scrutiny both from within and from without the liberal tradition. This contemporary situation poses questions to the liberal theory, which heretofore has been the ideology behind human rights. These are questions about the legitimacy of its claims to universal authority; questions about the applicability of liberal values to all people everywhere.

The belief that being human gives rise to human rights is the basic deontological dogma to which I refer. This dogma holds that it is not by virtue of other aspects of our identity — our religion, our class, our occupation, our disposable income — that we have human rights, only by virtue of our humanity (Donnelly 1989). This dogma is known as the doctrine of subjective right, and is usually linked to its important theorists Thomas Hobbes and Hugo Grotius (Hobbes 1991; Grotius 1925). The period in which they wrote saw the development of the modern concept of rights. This concept arises out of the obsolescence of the previously dominant natural law paradigm in which a derivative relationship held between the natural law, our duties and our rights. The natural law tradition was inextricable from the Christian theology of the time: from, therefore, the idea of there being a divine law giver. In this form, God was the basic conceptual foundation for the organisation of society and politics: pertinently for us, God was the ultimate foundation on which the rights of members of the community rested (Berkman and Cartwright 2001: 43).

Conceptually, these rights are very different from the ones developed by the

subjective rights theorists. One aspect of this difference relates to the way in which the content of rights was determined. Within the natural law tradition, the content of rights depended on the structure of the community which was created out of the tradition of the church, with this content ultimately being sanctioned as authored by God, because it was derivative from the duties God gave through the church and its theological tradition.

By contrast — a contrast which was seen by many to be a good thing — subjective rights theorists were able to elaborate rights without recourse to traditional institutions such as the church, natural law or theological authorities. Rather, they went straight to a new source: our common humanity. It is this move which gives rise to the deontic dogma of human rights. Unfortunately, however, this move is not as simple as it first appears, and its revolutionary simplicity turns out to be the cause of great confusion. Why confusion? The philosophers wanted to establish our human rights without reference to the great traditions of authoritative pronouncement on the human condition which became passé with the Enlightenment. The difficulty is that it is not possible to give human rights content without an appeal to some authority, some reason why this particular right is due and another is not. Thus, it is not clear that it is possible to say anything substantive about human rights without an appeal to a metaphysical tradition about what it means to be human: a problem which bedevils political philosophy to our own time.

The difficulty with the project to establish subjective rights is that unmediated access to something called our humanity is a positivist myth. We cannot merely look at our humanity and read from it our rights and duties. All attempts to read our rights and duties in such a manner are rather deeply steeped in one or another metaphysical tradition about what it means to be human. The central flaw in the deontological approach is the failure to recognise this (Gray 2001: 327). What we see, then, with the establishment of the new subjective rights — the contents of which are in the main very similar to those which prevailed in the old natural law/duty/right scheme — is the unacknowledged transfer of axiological content from one conceptual scheme to another. The problem is that, whereas the older scheme was upfront about its metaphysical credentials, the new scheme was of the view that it did not need such credentials.

The difficulty which then emerges is that the doctrine of subjective right is a formal doctrine and, as such, is empty. It claims that we have human rights because we are human; but does not deign to answer the question 'What is it to be human?'. This is a question which contemporary philosophy has often shunned because the modernity of contemporary philosophy's premises leads to the conclusion that the question is unanswerable. The doctrine of subjective right, then, cannot give us

axiological content for human rights. For this, we need an appeal to a concrete tradition about the nature and value of humanity. It is in the denial of this need, and in the refusal to admit the necessary particularity of traditions which are required to answer this need, that many of the contemporary problems in human rights theory have their provenance.

The difficulty for liberalism is its disavowal of such traditions and its confidence that, with this disavowal, it can dismiss the question of metaphysics. Rather than engaging with the age old debate about what it means to be human, liberalism prefers to trade on its recent intellectual dominance — in the West at any rate — and pretend that it need not attend to the obvious questions of where equality and human worth come from. While it trades on received answers to these questions, it has little interest in defending those answers. This lack of defence is itself defended in the name of liberal neutrality, that is, in the name of an unwillingness to take sides on metaphysical questions in order to let people believe as they will. However, this position itself presupposes a specific set of metaphysical beliefs, which are more often than not elided, including a secularism and form of scepticism about truth. As Duncan Forrester puts it:

> Both Ackerman and Dworkin, and indeed most liberal thinkers, support to some considerable extent the idea that the liberal state has to be neutral on matters of values and morality. Both are also anxious that the state should express and support some egalitarian form of 'liberal values', and that these should command the passionate allegiance of citizens. But characteristically they have little to say about the grounding of the 'liberal values' they advocate. They operate within the 'givenness' of liberalism, just as Christian dogmatics in theology operates within the structure of Christian belief. There is no way of commending their conclusions outside of an acceptance of liberalism. They reflect the contemporary collapse of confidence in the possibility of a rational and universal base for a common morality in a plural and global society. And, again reflecting common views, they are particularly suspicious of the possibility that religion might have something positive to offer to the debate about social values and their grounding (Forrester 2001, 58).

Leaving these philosophical issues aside for the moment, I wish to turn to two more political issues which seem to me to make the philosophical questions about the metaphysical malaise of human rights — including the rights of strangers — more acute.

Compounding the crisis

Grant's argument about 'English speaking justice' was partially that the great nation of shopkeepers was able to maintain its common sense appreciation that it knew

what justice was and how to practice it because of the perceived benign nature of its history over the years. Little happened to shake the assumptions upon which societal justice was built; the knowledge of justice was taken for granted (Grant 1985). This state of affairs is the antithesis of what we find today in our global world. Globalisation confronts each of us with a plurality of accounts of justice, and a litany of contemporaneous events which constantly challenge our understandings of justice (Coady and O'Keef 2002). The dramatic centre-staging of terrorism in September 2001 and the more insidious reshaping of the international economy along neo-liberal lines over recent decades are but two examples of events which challenge notions of justice and point toward the need for an unabashed, and necessarily metaphysical, account of the veracity of liberal humanism.

Terrorism

The terrorist attacks of recent years, and particularly those of 11 September 2001 and 12 October 2002, have graphically brought home to the Western populations born after the Second World War — who by and large enjoy a stable, secure and comfortable existence — the kinds of barbarity and evil of which humans are capable. The fact that Westerners are often seemingly unaware that people in other parts of the world routinely live with this kind of terror does not in any way minimise the evil and tragedy perpetrated upon the victims in these cases.

The terrorist attacks do, however, pose some interesting questions for the way in which we morally appraise the situation. Many commentators have used the language of human rights as one expression of such appraisal, with the terrorist attacks being a maximally abusive form of human rights violation (see for example Silvers and Epstein 2002). Such an appraisal will be neither here nor there to fundamentalist terrorists, particularly to Islamists who identify the secular ideology of human rights as part of the Western edifice — the great Satan — to the overthrow of which they are committed.

Rather, the metaphysical malaise of human rights has consequences for the way in which Western populations handle this crisis, and for the role that human rights will be given to play. It is clear that in a crisis, people turn to those deeply revered moral sources which undergird their sense of self, community and identity. In order for human rights to be a candidate for such a moral source, it must be able to show its moral authority. Indeed, this is highly desirable, for there are many other sources for self and communal identity which could only dubiously be termed moral. And this is one danger that we face — indeed, in an encounter with which we are already thickly involved — namely, that human rights principles will not inform the sorts of

responses made by the various Western states as they struggle to form an appropriate foreign policy (Maley et al 2002).

And here, too, at this practical, pragmatic, foreign policy level, things are as complex and disturbing as at the philosophical level for human rights. This is because foreign policy formulated in the name of human rights has often been of dubious credentials, serving as a tool for the pursuit of national interests and giving grist to the mill of those who argue that ethics and international politics do not meet (Odysseos 2002). Nonetheless, discussion of human rights is complicated by the fact that terrorism and human rights policy — AKA the national interest — can share a similar failing: namely, a utilitarian willingness to sacrifice some people for the perceived higher cause.

It is this unwillingness on the part of liberalism to identify every human person as anything less than inviolable — 'sacred', in an older language — which is the backbone of all human rights language. The difficulty is that, in replacing sacredness with inviolability, we have apparently lost a key reason, if not the *raison d'être*, for the existence of that inviolability (Perry 1998). And so, both in our defence of ourselves, and in our activities toward others, key prohibitions on certain forms of behaviour resonate less than perhaps they might, with attendant lapses in, or absences of, what we might call 'liberal moral judgement'. This can be seen clearly in the activities of the present Australian Government, noted ably by others.

Neo-liberalism

The threat to human rights posed by terrorism is not hard to overlook, even those aspects of the threat which emerge out of the behaviour of those seeking to prevent terrorism. Of the many threats to human rights in international politics — which might include nationalism, religious strife and ethnic tension — perhaps the most pervasive is also one of the most subtle, one which may also be interpreted as a bastardisation of a number of the liberal principles which are embedded in human rights thought.

Here I refer to the neo-liberalism which has become the premier economic ideology for today's globalising world. James L Richardson comments:

> In endorsing globalisation the neoliberal elites seek to shape developments in a particular direction. They focus on the economic dimension: the transnational organisation of production, the global mobility of capital, and the removal of all barriers to the construction of a world market. Neoliberalism seeks to accelerate these developments, at the same time claiming they are necessitated by globalization … In a world of

hypercompetitive economies the needs of the bottom third of the world's people become invisible and unmentionable, and the same pressures make for worldwide cultural homogenisation and impoverishment. All that remains of the liberal vision are the abstractions of economics (Richardson, 2001: 94-5).

The broader liberal vision is a capacious vision in which the wellbeing of individuals is interpreted in such a way that whole persons and the communities in which they exist are placed on a footing of wellbeing. By contrast, neo-liberalism, in a caricature of the human rights with which it shares an intellectual heritage, reduces people to a one-dimensional statistical evaluation of the marketability of their private property rights (Self 2000; Simons 1995).

What is of concern here is that the free market is neither liberal (in anything other than a narrow economic sense) nor humanist. The value set which drives the market can be summarised in the word *efficiency*. Many of the political, social, group and welfare values articulated through human rights are not economically efficient; and these manifestly include rights that we might wish to assign to asylum seekers and refugees.[4]

The new global market, and the neo-liberal elites whose interests it serves, however, are with us at least for the foreseeable future. Given the predilection of this economic system towards the abuse of human rights — particularly, as Richardson notes, through the complete neglect of the interests of those whose private property rights display insufficient capital to get them into the global economic system — it is vitally important that those who see the moral imperative of human rights have the confidence to speak out on behalf of those who suffer in their absence.

This, however, makes the question of the metaphysical malaise of human rights all the more acute. The economic and social systems of the world are being colonised with values which speak of the pre-eminence of profit and the subservience of everything else, including the welfare, livelihood and lives of individual people and communities (Richardson 2001). Is there an alternative values system which has the moral vitality to meet, challenge and bring down neo-liberalism? If it is to be, in part or more extensively, the capacious liberalism expressed through human rights, then this will need a sure footing in order to meet the challenge.

Taylor, as noted, argues that high standards need deep and strong sources (Taylor

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4   It should be noted that the denial of these rights may also not be economically efficient, as the Howard Government's budget papers attest.

1989). The risk which seems apparent to many at the present time is that, at least in the West where the majority culture is so colonised by the neoliberal culture of consumption, the articulations of our moral identities which we do have are failing us. They do not appear to have the necessary traction within the prevailing environment to awaken within the population at large those moral sentiments which could give rise to pressure on governments and other elites for policy approaches based on a strong anthropology, a high humanism (see Boyle 1998).

The inadequacy of liberal proceduralism

The modern democratic liberalism with which we are all familiar has its roots in religious and philosophical traditions. These narrate for us a variety of stories which in turn grant the individual of the human species the central place in the cosmos (Gray 1995). The veracity of these narratives has been challenged by the rise of the modern world view, and in particular the affirmation by many who hold this worldview that the cosmos is nothing more than a material closed system. A principle consequence of this view is that the metaphysical narratives which hitherto gave human persons their place in the world are defunct: all values are merely contingent and, in particular, there is nothing about the material closed system which gives human persons any intrinsic values as such (Gray 1995). Belief in such values is mere wish fulfilment — even though we may find at the subjective level that these wishes are important to us and that, when fulfilled, they lead to lives which we enjoy more. Because we have no intrinsic value, however, there is no compelling reason why it should be thought necessary for us to enjoy our lives more.

Much contemporary liberalism tries to have its cake and eat it too when it comes to the force of this argument. The stock Rawlsian liberalism of the last 30 years has accepted the critique of metaphysics which is a consequence of the modern world view. This is what is at the root of Rawlsian arguments about the right being prior to the good; about the priority of proceduralism over substantive constructions of what it means to be human, of where our value lies and of how we should consequently live (Rawls 1971, 1993, 1999). The familiar critique of Rawlsian proceduralism is that it too presupposes a metaphysics, an axiology, which cannot be generated on the basis of the modern anti-metaphysical world view alone. This critique holds that, in fact — to re-apply a phrase of Gray's — Rawlsian liberalism is premised upon the 'emaciated shadow of the immortal soul of the Christian traditions' (Gray 1986). Or as Grant puts it, 'Justice as equality and fairness is that bit of Christian instinct which survives the death of God' (Grant 1985: 77).[5] The big theoretical challenge for a resolutely secular, anti-metaphysical liberalism is to find out why — in the absence

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5   The reference in Grant's words is to Rawls (1971).

of an affirmation of the Christian traditions — these values should matter.

Rawlsian proceduralism is one of many forms of proceduralism. Another, about which we are much concerned, is Ruddock[6]-esque proceduralism. Given the choice between the two, I would plump for Rawls — but on what basis is such a decision to be made? Here the point that behind every proceduralism there lies metaphysics is most salient. Clearly, I prefer the liberal cosmopolitanism of a Rawls to the parochial, 'realist' (in the specific international relations sense), utilitarian communitarianism of a Ruddock. Both these metaphysics tell a different story of what it means to be human. The Rawlsian story harkens back — if illegitimately, given its anti-metaphysical premises — to St Paul's notion that all humans are equal, and that hospitality should be extended to all, *including* the stranger and even the enemy. Ruddock's story, by contrast, is one where the stranger is grist for the mill of self-promotion and protection, where those who are not one of 'us' are available to be exploited for our utility. Despite Ruddock's occasional appeal to his Christian heritage, the story he lives is manifestly that of the secular realist state whose only moral obligation is self-survival, for it exists in a godforsaken world and can look to no other for protection. This is as far away as one can get from the politics of Jesus (Yoder 1972; Berkman and Cartwright 2001; Katongole 2000).

Ironically, however, if Rawls is right in affirming proceduralism over substantive goods, then I am out of place in appealing to the Christian story with its high humanism as a place from which to stand in critique of the Australian Government's policies towards asylum seekers.[7] For those who are secularists, that is well and good, except that we do need to find a high humanism somewhere by which to judge the Ruddock-esque proceduralism. Proceduralisms themselves need to be judged worthy of our respect. Such judgements will be inescapably metaphysical: they will always depend on a substantive articulation of why it is that humans matter.

Strange narratives for stranger rights

So why is it that humans matter? What is it about the fate of a handful of people on the *Tampa* or the SIEV X that should agitate not just the well meaning and generous of spirit, but should be of concern to all people everywhere? It is customary to answer these questions by the appeal to human rights. This is not sufficient,

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6   Former Australian Minister for Immigration.

7   On this issue see the debates between Richard Rorty and Nicholas Wolterstorff, and Stanley Fish and Richard John Neuhaus (Wolterstorff 2003; Rorty 2003; Fish 1996a and b; Neuhaus 1996; Berkman and Cartwright 2001).

however, for as we have seen, the concept of human rights is but a shorthand; the assertion that we have human rights is the *conclusion* of a political philosophy (Gray 2001: 327), which in turn is a narrative that we tell about ourselves and our societies (Hauerwas 1981: 149), *not* a self-evident and incorrigible truth.

The difficulty with the concept of human rights is that it has been cast adrift (Kothari 1991). The concept of human rights — as noted above — is the product of a particular historical tradition, one intimately connected with Christianity and the rise of secular liberalism. One of the developments within the tradition which gives rise to the concept of human rights, however, is the eschewing of tradition, authority, religion and narrative rationality. This is the familiar characterisation of Enlightenment reason noted above: a universal and abstract critical reason which trusts only its own authority. Thus, the tradition of which human rights is a part spurns its own provenance.

The metaphysical malaise of human rights is that the conviction that there are human rights is a conclusion which has forgotten the premises upon which it is based; forgotten why they are important and how to defend them. My contention is that if we are to continue to create an international human rights culture into the new millennium, we are going to need to find these premises once again. We are going to have to find new narratives concerning what is high and worthy about human beings which resonate: moral sources which connect deeply within individuals and communities.[8]

To many, however, this suggestion stands as a philosophical smokescreen for the way in which the concept of human rights really functions. The protection of human rights, it is argued, does not depend upon philosophical foundations, narratives of human worth and being or the like. This is to reduce the *politics* of human rights to an episode in the history of ideas. The protection of human rights, it is argued, will not be enhanced by a philosophical defence of the notion of human dignity — be it grounded in Christianity, liberal secularism or some form of socialism. Rather, human rights will be enhanced by strengthening existing political and legal institutions. It is to this task that we should devote our time and energy, not to the arcane intellectual game of attempting apologia for this or that notion of humanity.[9] Marina Svensson explores the argument with the following case:

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8   Of interest here is the ongoing work of Charles Taylor and Michael Walzer who are both writing more
     of their respective Catholic and Jewish religious traditions.

9   Rorty's arguments are the paradigm case here. See my response in Langlois (1998).

The Italian political theorist Norberto Bobbio agrees that the attempts to discover an absolute principle, or foundation, of human rights have proven fruitless. ... According to Bobbio, the lack of a foundation does not present a problem since human rights today are laid down in various international conventions and have obtained the status of positive law. The consensus on human rights serves to prove their universal validity. Bobbio also brings attention to the fact that opposition to human rights in the real world, that is, by authoritarian regimes, has never focussed so much on their lack of philosophical foundation as on their assumed infeasibility in a particular society and on perceived problems of implementation. ... Our focus should therefore be shifted from the futile philosophical quest for the origin and basis of rights to the more pressing political task of implementing the human rights already acknowledged (Svensson 2002, 30).[10]

Having looked at the most common metaphysical answers to the question 'what are human rights?' and found them wanting in their capacity to answer the question with any certitude, one may be forgiven for a sense of relief when turning to arguments such as the above. Human rights are here engaged, not on the basis of political theory or philosophical anthropology, but on the basis of agreements that have been made between states. The correct academic disciplines to use in the study of human rights are not philosophy, theology or political theory, but international law, public policy and international relations. To ask the question, 'What are human rights?' is to expect an answer denominated in state-centric terms: treaties, conventions, declarations, international laws, diplomacy.

Here an ontology of human rights is articulated through the permissions and activities of individual states and state systems. Quite often in contemporary international relations discourse, the reach of morality is confined to the borders of a state or, more generously, to a society of like-minded states. Thus, human rights are not *protected by* the legal structures of a state or group of like-minded states, but are *reduced to* such legal structures. Human rights become nothing more than the constraints or obligations imposed by positive law and policed by the state. Human rights, on this account, come into existence with the creation of a domestic legal regime or several working in concert: they change when that regime changes, and they go out of existence when the regime ceases to be enforced or is struck off the books. Beyond this, there are no human rights. The world beyond is a state of nature in which the only limit in the struggle for survival by the exertion of power is the recognition of a stronger power.[11]

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10   I have argued elsewhere that the so-called consensus on human rights is not worthy of the name. See Langlois (2002).

On this account, to the extent that human rights are anything at all, they are the creations of states. Both within and between states, the 'what' of human rights is positive law, legal convention and political consensus. At first glance, this may appear to provide relief from the apparently endless metaphysical problems turned up by accounts of the ontology of human rights. Rather than saying that laws, declarations, conventions and so on protect or observe human rights — and then having the arduous philosophical task of trying to identify what exactly is being protected or observed (natural law; the transcendental self; common moral knowledge; needs or flourishing requirements?) — the reduction of human rights to positive law, convention and consensus seems to eliminate an endless theoretical grasping at straws in the wind.

Once again, however, an apparent route to certainty about the nature of human rights, a route the positivism of which at first glance seems a sure bet for eliminating philosophical speculation, turns out to be merely a slightly longer path to the murky trough of theoretical difficulty. (Positivism, it should be noted, in whatever form, is always a cover for a great many speculative, indeterminate assumptions: its unreflective non-hermeneutic character elides the vast and contentious theoretical ground which must be traversed before its assertions can meaningfully be entertained (see Smith et al: 1996).)

The principal problem with a positivistic ontology for human rights is that turning human rights into an instrument of state power and cutting them off from any of the traditional metaphysical groundings for human rights, takes from the doctrine that capacity with which it has always traditionally been identified: the capacity to act as a form of moral criticism against state power. This form of moral criticism is effective and persuasive precisely because it appeals to something above and beyond the self-claimed prerogatives of the state, a prerogative to which human rights are assimilated under the positivist approach. The belief that, in some sense, human rights exist beyond positive law has been an essential mainstay and motivation for the critique of inadequate positive law protections of freedoms and privileges considered due to the human person. Without this — crucially — humans are reduced to being the subjects of positivistic reductionisms and relative state power.

A positivistic account of human rights can only serve the traditional function of the human rights doctrine for as long as the state or states in question are ruled by benign governments. These — such as some liberal democratic governments — may

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11   For a critique of this division of the world see Walker (1993) and Shapcott (2001).

indeed be prepared to put their modes and methods of governance under the scrutiny and redress of strong human rights instruments. For less benign governments, however, human rights instruments will be ignored, manipulated, reinterpreted and worn as an ornament to the impunity of state power. In their case, the influence of human rights may not go any further than this behaviour — all of which may be construed by the state to be legal (as in Singapore, for example: Rodan 2001).

Consequently, those who believe that the state is not a law unto itself and should not be allowed to act with impunity will have to turn immediately to one of the more traditional grounds of moral critique — natural law, religious tradition or philosophical conceptions of humanity (liberalism, socialism and so on). In short, the positivistic political account of human rights denudes the doctrine of any claim to moral universalism, making it a slave to the relativism of contemporary theoretical articulations of realism and communitarianism. These are ideologies which in turn enable states to justify their intransigent moral irresponsibility and maintain their impunity (Hutchings 1999: part two and following).

The capacity of human rights to serve as a challenge to state irresponsibility requires the view that human rights have dimensions beyond those of positive law. While this is not the place to provide an exhaustive catalogue, there are a great many reasons to suppose that human sociability and moral regard extend beyond the mere recognition of subservience in the face of a greater power. These reasons serve as the fundamental ontological dimensions of human rights. What is curious about all of them is that they require faith, hope and trust in the face of indeterminacy (Gaita 1999: 14).

These virtues suggest, however, that there are constraints on how we might live if we are to uphold human rights in our society. It is not sufficient merely to assert that in a liberal society individuals have the freedom to choose what they believe. It is this kind of freedom which leads to the nihilism we see displayed in the contemporary debate in Australia, where the incarceration, psychological, sexual and physical abuse and — ultimately — death of persons is apparently treated with indifferent disregard by the bulk of our population, content to trust in their political leaders. This is liberalism *reductio ad absurdum* — and yet it is not so much absurd as the predictable consequence of holding that one can stand sceptically at arm's length from metaphysical commitment and not damage one's moral character.[12]

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12   See the discussions in Gaita (1999) and generally, the writings of Hauerwas.

The concept of human rights needs to be supported by a narrative rationality which is not afraid to engage with the big metaphysical questions (See also Langlois 2003). Indeed, human rights are predicated upon answers to the big metaphysical questions which more recent forms of liberalism have been reluctant to endorse. They have been reluctant to endorse them precisely because this would render them non-neutral (a status which, as we have seen, was always already moot: Crowder 2002: chapter 2; Yan 2000; Sher 1997).

Conclusion

The rights of strangers turn out to be the strangest rights because they push us to confront the sources and limits of our humanism. The central questions here are the standing we give to the individualism of the rights tradition, and the means by which this individualism is supported and for which it is persuasively argued. In the context of contemporary debates over asylum seekers and refugees, the sanctity of individual lives has been egregiously compromised on countless occasions by the policies of the Howard Government. Unfortunately, it seems that this Government has given impetus to the further exacerbation of the generally inhospitable international climate towards asylum seekers, refugees and internally displaced peoples.

Terrorism and neo-liberalism have also contributed to this international climate, as both deny the sanctity of individual lives. Terrorists are quite plain about their utilitarian approach to the death of countless people who have the misfortune of being in the wrong place at the wrong time. The terror unleashed by neo-liberalism is more subtle, and is so mediated by respectable international organisations — governmental, non-governmental and corporate — that it is often completely overlooked. Nonetheless, the same issue is at stake: the compromise of the sanctity and rights of individuals in some parts of the world for the utility of those in other parts.

The place and importance of individualism, and the high humanism from which it is derived, need a clear defence and a persuasive rejoinder to the anti-humane politics of utility bred by terrorism, neo-liberalism and the vilification and criminalisation of asylum seekers. In the present political environment, the rights of strangers are indeed strange rights. Their effective intellectual defence, however, requires us to affirm that there are metaphysical grounds which give rise to a high humanism. A commitment to the rights of strangers, which rights are the paradigm case of the high humanism articulated through the international human rights instrumentalities, requires of the liberal tradition that it muster the self confidence to go beyond the eventually nihilistic scepticism of the modern world view. It must return, in a way

that recognises the gains of modernity, to the historical narratives and moral sources which are its provenance in order to affirm a confidently liberal vision of the human good. ●

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