

CAN HUMAN RIGHTS SURVIVE?

LECTURE ONE: THE CRISIS OF AUTHORITY

London School of Economics and Political Science, Thursday 10 November 2005

I start this lecture by paying tribute to our elected representatives yesterday. In their resistance to the demands of the police, relayed to the wider world by the prime minister, these men and women have shown us human rights in action. We do not know the names or the faces of those who would have been arrested and detained for three months. Almost certainly they would not have resembled, in class, in ethnicity, in social standing, the vast majority of the MPs who voted last night. But these nameless, vulnerable people have nevertheless been protected, their liberty, their families and their jobs saved from the trauma of sudden, long-term removal from society. The police have been reminded that an arrest should come towards the end rather than at the start of an investigative process. And their spokesman in number 10 – less prime minister these days than noisy police federation official on the Today programme – is, dare one hope, feeling just a little chastened?

It is a great day too for the human rights gang, many of whom are here this evening I am delighted to see – Shami Chakrabarti, whenever I want to hear from Shami I don't call her I just turn on the news.

My subject this evening – the first of three Hamlyn lectures – is not terrorism, national security or any of those issues that have so preoccupied us in recent days: these come later, in my third lecture, in Belfast. Here I am concerned with something more abstract I am afraid, perhaps trickier to follow, than an attack on our illiberal terror laws or an analysis of this or that case. But it is very important nonetheless, I think, the very roots of our subject: it is about the foundations from which all else flows, the basis for the authority of human rights. I have just been talking about a great human rights victory. But what does it mean to believe in the right to liberty, or in any other human right for that matter?

To work properly, this language of human rights does seem to need to be based on truth, on being right, and on knowing we are right. The very term 'human rights' is a strong one, epistemologically confident, ethically assured, carrying with it a promise to the hearer to cut through the noise of assertion and counter-assertion, of cultural

practices and relativist values, and thereby to deliver truth. To work its moral magic, human rights needs to exude this kind of certainty, this old-fashioned clarity. To say 'I have a right to' is not to suggest something, it is to state it; it is not to ask, it is to demand. Those of us here who are part of the human rights community do come across a bit smug in contrast to the rest of society – we *know* the right answers, we have *special* access to the truth. This is not ordinary politics, we say, this is morality, this is about right and wrong – and we know, even if you mere mortals don't, which is right and which is wrong, not as a matter of policy but as a statement of truth. This is not how most of politics works. Indeed it is not how the world works anymore: *uncertainty* rather than *certainty* is, perhaps more than anything else, the key defining feature of our culture today.

It is this mismatch between the *apparent certainty* of our human rights claims and the *radical uncertainty* of the culture in which they are made that gives rise to my lecture's title, 'The Crisis of Authority'. If the idea of human rights amounts to, as my colleague Francesca Klug has put it, a set of 'values for a Godless age', then their custodians face a tougher task today than perhaps their enthusiasm allows them to realise. Are human rights to be just whatever feels right? Is it enough to assert the importance of equal treatment or equality of respect as the basis of human rights but then avoid discussion of where these ideas come from? Why not hurt our neighbour, grab all we can from the passing stranger, walk past the hungry homeless with unmoved heart? Our various answers to this – 'truth', knowing 'right' from 'wrong', 'moral obligation' and so on – are notions that seem to come from another age, like calling Radio Four the Home Service or the *Guardian* the *Manchester Guardian* – their very deployment seems to date the user. The great utilitarian philosopher Jeremy Bentham famously condemned natural rights as 'nonsense on stilts'. But stilts are at least a support of sorts, a foundation for something albeit a flimsy one. Perhaps a modern day post-modern Bentham would deride our subject as 'nonsense without stilts'?

Contrast the situation of the human rights activist with that of a similar kind of person, the religious believer. Jurgen Habermas has remarked of religious beliefs that they require 'striking cognitive dissonances' since, as he puts, it 'the complex life circumstances in modern pluralistic societies are normatively compatible only with a *strict* universalism in which the same respect is demanded for everybody – be they Catholic, Protestant, Muslim, Jewish, Hindu, or Buddhist, believers or non-believers'.¹ So their various 'truths' are self-evidently in difficulty. But in comparison with believers in human rights, religious followers have it easy. Often they are not from

¹ G Borradori, *Philosophy in a Time of Terror. Dialogues with Jürgen Habermas and Jacques Derrida* The University of Chicago Press. Chicago and London 2004

‘modern pluralistic societies’ at all and so can feel quite at home without a shadow of Habermas-inspired doubt finding its way into their epistemic consciousness. Even if they live in a pluralist culture, they have many bulwarks against crisis available to them – the confidence of a way of life that has been around for centuries; the support of a community of believers; the leadership of decisive figures, perhaps even a structure of authority that protects the mind from external challenge; above all confidence in some kind of God or spirit that speaks directly to the situation of his or her followers, both individually and collectively. For some exceptionally lucky believers there is even the bonus of eternal life at some point in the post-future.

Now think about the human rights believers. They are lonely and vulnerable in comparison. They seek Heaven on earth and for all not just (or even mainly) for themselves or the chosen few. It is firmly within ‘the complex life circumstances in modern pluralistic societies’ that they must ply their trade. They cannot thrive outside pluralism: to the extent that human rights instincts are to be found in the world of certainty where the religious believers are still at home then it is as a benign branch of whatever the prevailing religion happens to be. So human rights needs pluralist societies but pluralism’s shelter for human rights leaks with doubt: in a place where everything is true, nothing can be *really* true. Human rights people are stuck, required without the support of many symbols to practise their beliefs in exactly those places – developed modern societies – where belief in anything as being true is hard enough and belief in something moral, apparently rooted in human nature, is hardest of all. They are the disciples of an idea rather than a holy text or even a holy (much less a divine) person and the closest they get to congregational worship is the occasional drinks party after an event like this. (They are usually too polite for the solidarity that comes from public protest.)

But still despite it all this ‘nonsense without stilts’ seems to bloom. Like some kind of mysterious plant that can thrive only when not rooted firmly in the soil, human rights as an idea defies its apparent shallowness and goes from strength to strength. The plethora of international, regional and legal instruments that embed the term in various codes of law has been one of the most remarkable features of legal development over the past sixty years. Almost nowhere is now without its human rights charter and its set of guarantees of fundamental freedoms. Away from the law, much contemporary political activity is suffused with the language of rights: it is as though not to assert a right to what one desires is to make a fatal admission as to its unimportance. With the end of the Cold War and the consequent failure of socialism to maintain (for the time being at least) an ideological challenge to capitalism, ‘human rights’ has stepped into the breach. It has sought, with some success, to hold back the tide of the market and of unmediated self-interest, despite these forces being driven forward by the strong winds of globalisation. At times, it has seemed that it has

only been this barely-rooted plant that has lain between us and capitalist anarchy. Or, as we saw last night, a prime ministerial police state.

If human rights have never had it so good, why ask – as these three Hamlyn lectures do – whether they can survive? Would it not be better to question less and act more, not reflect on abstract ideas like philosophical foundations and the like but continue to use the term to do good things in a world in which goodness is in short supply – and where it is a waste of time and effort to spend a lot of time trying to explain what goodness actually means? There is a lot to be said for this argument: human rights scholarship is above all activist scholarship and human rights advocates are impressively practical in their approach to the world. But these attributes carry risks. At the moment, the term ‘human rights’ has ethical cache. It enjoys moral power. As a shorthand description of how we want to improve the world it works very well. But it is not guaranteed to do this all the time.

We are trading on the force that was put into the term by past generations, first those who saw it as a branch of religion and then those (in the modern era) who gave it its secular, rationalist twist. Residues of commitment to both these visions of the world remain in pluralist society. Because of this, the idea of ‘human rights’, half pre-modern/half modern, continues to enjoy a warm reception. But as post-modern uncertainty embeds itself more deeply in our culture, and as our memory of religious and Enlightenment times fades, so our commitment to this benign relic of both can be expected to begin to recede. Without a reworking of what the term means today, designed to give it contemporary intellectual confidence, some theoretical zest, then the time might come when firing the human rights argument will be greeted neither with warmth nor dismay but rather with blank indifference. Or (which is worse) mute incomprehension: whatever can that term mean? Is it not of merely historical interest these days, part of what we used to be rather than what we have become? Or worse still, the term might be known but have taken a different shape: ‘oh human rights are fine but of course they are not for everybody, just us’. ‘Oh why beating that guy up in that way is *compatible* with his human rights, I have the judicial warrant to prove it.’

There are signs afoot that something like this is already underway. The crystallisation in law of the idea of human rights is without doubt a sure sign of success – all ideas aspire to grow up to be part of a legal code, enforced by judges and police – but without a confident understanding of what the term ‘human rights’ means, the dangerous side-effects of this victory can outweigh the benefits: the triumph of legal form over substance; the subjugation of the emancipatory potential of human rights to the demands and interests of the already powerful; the strengthening of anti-democratic elements in society to the detriment of the public interest. This ‘crisis of legalism’ is the subject of my second lecture, in Durham on Tuesday next week. In

my third Hamlyn lecture, in Belfast on the following Thursday, I look at how the lack of clarity of understanding in the term 'human rights' has weakened its resistance to abuse by national power, how it has been turned into a tool of foreign policy, sanctioning – legitimising even – exactly those kinds of abuses of rights (torture, illegal neo-colonial militarism) that, if the subject means anything at all, it should surely, obviously, have opposed. I have called this lecture 'The Crisis of Scarce Resources' because I see the current war on terror as a dismal harbinger of an even greater war over natural resources that the West looks as though it is getting ready to fight, but which it will want to do without losing its label as a human-rights-respecting culture.

These points are for future lectures. Today's task is to see whether we can resolve the crisis of authority I have just identified, whether we can construct foundations for human rights that are not nonsensical, support systems that can defend the phrase not by the simple invocation of past glories but in terms that ring true today, that run with rather than against the grain of contemporary assumptions about what it means to be right and wrong, that allow us to name abuses of human rights when we see them, even those done in the name of human rights.

This task is made tougher by the unpalatable realisation that it is very hard to pin down exactly when it was that the supposed golden age of human rights actually existed. The subject has never been lucky in its intellectual apologists; its heroes are not good at transcending their particular moment and speaking clearly to us today. The Greeks knew all about justice, natural justice, fairness and the like but they did not have the words to describe the notion of a subjective right, of a set of entitlements invested in a person on simple account of their humanity. The Roman Church embraced the concept of natural law with enthusiasm and saw in it a variety of propositions that could be taken to be indelibly true, but in its initial form and for centuries afterwards this notion of objective right did not stray into subjective territory: a right was in the air not in the bodies walking the earth beneath. With its emphasis on individuality, the Protestant reformation introduced this subjective into the process. When these kinds of individual rights did emerge, their manifestly Christian basis had made them an uncertain ally when our contemporary, very secular culture began to take shape. Other faiths and religious systems that were established or flourished around the same time as Christianity had many ideas of duty, fellowship, solidarity and so on, but it would be stretching things too far to say that they had any kind of refined concept of a set of what we understood today to be individually-based human rights.

All this large-scale missing of the human-rights-mark by classical and medieval thinkers meant that the field was clear for three fantasists of human nature to seize

an initiative which has never been quite surrendered ever since: Locke, Hobbes and Rousseau. But the foundations they put down are not of the kind that we can recover and put to effective support work today. The English tradition epitomised by Hobbes and Locke sees the individual as the bearer of pre-political rights with government a necessary but unpleasant antidote to anarchy. Rousseau saw things exactly the other way round: freedom needed to be achieved rather than surrendered – it flowed out of rather than preceded the authority of the general will of the people, expressed through law. Each of these versions of human nature went on to underpin violent revolution, in England in 1688 and in France and what became the United States a century later, and there is nothing like a successful revolution to embed an idea in the collective mind of a culture. But the ‘human rights’ bit of Locke soon lost out to its power-to-government corollary (what today we call the sovereignty of parliament), albeit laced with a liberal individualism that is grumpy about official power and still nostalgic for its mythical, pre-political golden age. For its part, the French Declaration of the Rights of Man and of the Citizen was to go down in a hail of fire not only at Waterloo but also (speaking metaphorically) before the scorching critique of that triad of intellectual giants, Bentham, Burke and Marx. Rousseau’s unfortunate ramble about forcing people to be free was dubious even when it was written and has not been improved by the horrors that have since been done in the name of compulsory freedom. As for America, the less said the better: it may have kept more of Locke than Britain did but its sweeping declaration of independence quickly plummeted via a much narrower constitutional bill of rights into a provincial legalism from which the culture has yet to emerge. I will talk a little about this disastrous legalisation of American rights in my second lecture.

So we can see that, even at the hey-day of its supposed influence, the human rights idea did not deliver leadership that would appeal today. The religious speak in a way we don’t now generally recognise as persuasive and the Hobbes/Locke/Rousseau ideas about states of nature, noble savages and the like just seem contrived and old-fashioned, arguing for a truth that even at its pinnacle was never more than hypothetical. Not surprisingly, the subject of human rights went into a sharp decline in the 19th Century and though its legal form was salvaged and given international form after the Second World War, its philosophical underpinnings have never quite recovered to the same extent. If it was a combination of big ideas (democracy, socialism and nationalism) and big thinkers like Bentham, Burke and Marx that weakened the human rights fighter in the ring in the 19th Century, it was Charles Darwin who delivered the devastating knock-out blow. His was the attack that has made a philosophical recovery to match the legal renaissance of the last sixty years so difficult to bring about.

Darwin may seem an eccentric figure upon whom to alight: he was hardly a human rights philosopher, and his fame does not obviously fit our narrative. But human rights needs to confront the challenge of Darwin and what has followed from Darwin; in its buckling before his model of the world lie the seeds of the idea's second coming. First the buckling; later the second coming.

Let's reflect for a moment on what the idea of human rights entails. The very way we express this, the *idea* of human rights, suggests that logically-speaking human rights as a subject depends, above all else, on thought. It is not something that emerges from our bodies as a feeling or an emotion, something like love, hate, anger, or even a sense of unfairness, do: the concept of human rights needs brain power to drive it, to explain what it involves and to tell us what, as a result, we *ought* to do. It has more work to do in this regard even than ideas like justice and fairness which come more readily from our gut. Its fertile breeding ground is the mind not the heart.

Human rights have thrived in the modern era initiated by Descartes because of the sharp distinction that has been drawn between the mind on the one hand and the body on the other, with a strong emphasis on the overarching importance of the former. Immanuel Kant is the patron saint of these secular celebrators of brain power, and it is no surprise to find that he is also very much the modern Godfather of human rights. But it was Blaise Pascal who perhaps best summed up this perspective when he famously claimed that 'Thought constitutes the greatest of humanity' and went on: 'The human being is just a reed, the weakest thing in nature but it is a thinking reed ... So our whole dignity consists in thought. That is what we should rely on ... So let us work at thinking well: that is the basis of morality'. Note the reference to human dignity here – the notion believed by many to be what human rights is all about. And on this world view it is through careful thinking that we work out what to do to foster dignity, and when we have done that human rights are merely a fairly straightforward next step in the argument: the entitlements enjoyed by other persons that flow from what our mind tells us is our moral obligation towards them.

This prioritisation of the mind, so essential to the construction of the idea of human rights, had the handy consequence of affirming the uniqueness of humankind, something that these great thinkers were very keen to do, and which feeds into the specie-ism that is central to human rights. This special-ness had not gone unchallenged in the past: David Hume for example had called reason 'the slave of the emotions'. But it was Darwin whose breakthroughs on evolution rendered the mind/body distinction impossible to maintain and made the position of human rights so precarious as a result. He 'made it plausible to treat human mental capacities as evolved functions of natural organisms, arising from simpler forms of animal

behaviour as a result of their survival promoting tendencies.² Darwin took our minds out of some unique spiritual ether and put them firmly in our bodies, for how could 'a ghostly mind be linked to the material mind through the bodily machine that it somehow haunts?'³

After Darwin it became clear that we are just part of our habitat, 'clever animals' as Nietzsche said, differing from the rest only in our greater capacity to redescribe and therefore recreate ourselves.⁴ Truth could no longer be found by examining the contents of our unique, ethereal minds and reporting back our discoveries like some intrepid internal explorer. There was nothing to report because there was nothing to find and there was nothing to find because there was nothing there, nothing that is apart from the bits and pieces of the organism, all material, into which we had over multiples of generations slowly but surely evolved. 'Truth' like God a generation earlier was 'dead'. Nor did the way we used words save the day. Language was not a medium taking a message from the body out or the world in; it was not an errand-boy from some truth-king lurking eerily in the heavens, in nature or the soul. It was a subset of communication, a highly specialised form it was true, but a subset nevertheless of something that all animals did, at some basic level or other. Thoughts were no longer things-beyond-words reported to us by words but were rather indelibly tied up with, made real by, the words themselves.

Where does human rights fit in all this? After Darwin and the philosophers who have built on his work, thought has become a part of language, which is in turn a part of communication. What matters now is not what is said but what is understood. Thinking has taken a practical turn. As Oliver Wendell Holmes Junior put it, 'Philosophy as a fellow once said to me is only thinking. Thinking is an instrument of adjustment to the conditions of life...'⁵ What matters is what happens. To Charles Sanders Pierce, thinking 'was no longer to be conceived as something distinct from practice but rather it simply *was* practice, or activity, in its deliberative or reflective aspect'.⁶ As Holmes put it with characteristic succinctness: 'Every idea is an incitement. It offers itself for belief and if believed it is acted on'.⁷

Now let's recall our earlier insight that human rights depends on thinking. We can now see that thinking to be action needs talk, or at least communication, and that this in turn requires agreement on meaning. To say that an organism is a language user

² T C Grey, 'Holmes and Legal Pragmatism' (1988-89) 41 *Stanford Law Review* 787, at 796.

³ Grey 797

⁴ R Rorty, *Philosophy and Social Hope* (Penguin Books, 1999) (PSH) pp 74-75

⁵ Grey p 863

⁶ Grey 803

⁷ *Gitlow v New York* 268 US 652 (1925) at p 673 (Holmes J).

'is just to say that pairing off the marks and noises it makes with those we make will prove a useful tactic in predicting and controlling its future behaviour'.⁸ To work in this way, speaker and listener need to converge on passing theories from utterance to utterance.⁹ But if the only truth we can know for sure (a tautology I know) is our contingent agreement on what certain sounds we call words mean, this would seem greatly to diminish the apparent promise of our two words 'human rights' to tie themselves firmly to a better – because stronger – kind of truth?

Modern attempts at foundationalist thinking in human rights – at saying why human rights are in fact true – have taken on a strong rhetorical colour in recent years, and this is entirely to be expected: under pressure of the intellectual progress I have been describing they have become exercises in persuasion rather than in revelation: 'you have got to believe this' rather than 'here are my findings'.¹⁰ This explains the theory of human rights as reflecting an overlapping consensus across the world about right behaviour, popularised by John Rawls and (in the human rights field particularly) Jack Donnelly – it must be right because so many people say it. The originality of Amartya Sen's recent effort to establish the 'Elements of a Theory of Human Rights'¹¹ hinges on discussion and on influencing people rather than on revealing truth to them. Even the work of that doyen of human rights foundationalists Professor Ronald Dworkin has taken a rhetorical turn in recent years, in the direction of persuasion about the rightness of our values and away from the communication of human rights truth. We are all reacting to the contingency of language even if we believe that we are immune from its relativising effects. The name of today's philosophical game is talk not truth.

Where does this leave the term 'human rights'? The easy answer would be to confine it exclusively to the legal sphere, to say that human rights can only mean the values encapsulated in documentary form in international, regional and national legal agreements, as interpreted by decision-makers and, at a later remove where there has been dispute, the courts. But this is a very narrow approach that fails to capture what many people, perhaps most, mean today when they refer to 'human rights'. The words can be made to do more work, to reach a wider shared meaning beyond what has been reduced to legal form. On this account we could say that human rights are a manifestation in law and language of the values that are embedded in a culture – they are an outward sign of 'Values [in our] Sceptical Age' (to quote Francesca Klug

⁸ Rorty *Contingency Irony and Solidarity* (CIS) p 15.

⁹ Davidson, quote is in Rorty, CIS p 14

¹⁰ Where this is not the case the theory seems old-fashioned and entirely beside the point: see the criticisms of the work of Alan Gewirth in A MacIntyre, *After Virtue. A Study in Moral Theory* 2nd edn. London, Duckworth 1985, pp 66-68.

¹¹ (2004) 32 *Philosophy and Public Affairs* 315.

again). Human rights flow from our values; they are not identical to those values and as Klug notes they do not dictate what our values should be from some perch on a celestial cloud of certainty. And with values the focal point is rightly debate and discussion, not declamation. Values fit with our times in a way that the apparent but (we can now see) misleading absolutism of human rights does not.

But which values should drive the language of human rights, and how can we avoid the criticism that they are purely Western and therefore entirely non-universalistic? So far all this talk of values should rightly put us on our guard: is human rights just a way of imposing western life styles on the world under cover of some babble about truth? It is time to return to Darwin, not for refutation this time but for a kind of secular salvation. For there is some universalism out there that we can put into words, that reaches further and wider than the liberal communities of the West. What are the special features that this 'clever animal' the human has, over and above the other animals with which it shares the world? Three in particular come to mind: first, this animal is self-conscious, capable of critical reflection of itself and where it fits in the environment in which it finds itself. Secondly, it is aware of death, both generally and specifically with regard to its own individual self. Third, this animal is capable of a set of contradictory impulses the import of which, because it is a self-conscious being, it understands: on the one hand there is the capacity for acts of compassion, hospitality and kindness, on the other for cruelty, humiliation and callousness.

Looked at from the victim's point of view, the consequence of the latter is indeed shared with the animals; the ability to feel pain is not linguistic in a narrow sense of the term: it requires no words to make it the case. Searching in an uncharacteristic way for essentials, the celebrated philosopher Richard Rorty has written that 'there is something within human beings which deserves respect and protection quite independently of the language they speak. It suggests a non-linguistic ability, the ability to feel pain, is what is important, and that differences in vocabulary are much less important'.¹² This is true, but does it follow that because pain is non-linguistic it can have no language? Rorty certainly thinks so: 'victims of cruelty, people who are suffering, do not have much in the way of a language. There is no such thing as the "voice of the oppressed" or the language of the victims".'¹³

Here I disagree. There is such a language, the language of human rights, a language that speaks for people and that manages, by forcing people to be visible to everyone, to allow them eventually to speak for themselves as well. It is a language that is genuinely universal: cruelty is as real in Harare as it is in Hampstead. This is a

¹² CIS p 88

¹³ CIS p 94.

language that goes beyond simply finding words for suffering. It is richer and deeper than this, making real by putting into words ideas of hospitality and of kindness, but above all of compassion. Here is a word – compassion – that best captures the kind of active concern for others that the term ‘human rights’ has come to signify. As Professor Oliver Davies has pointed out in his Aquinas Lecture,¹⁴ compassion is neither love nor mercy; it has as Martha Nussbaum has put it a cognitive element (understanding the other), an affective element (feeling for the other) and a voluntarist element (doing something about the other).¹⁵ Davies observes that there ‘is something subversive, indiscriminate and boundary-crossing about compassion’ and he is right about this – it is through the rallying power of compassion that we can use human rights to frame and mobilize responses to suffering and to atrocities. Compassion is a universalistic disposition from which virtue flows and the linguistic medium through which it expresses itself is the language of human rights, the Esperanto of the virtuous.

The ‘unconditional hospitality’¹⁶ (Derrida’s phrase) that flows from compassion is wider, richer and more enabling than mere tolerance, it is about enjoying and enabling the other to thrive rather than simply bearing with him or her. There is more here than mere forbearance from cruelty and humiliation, important though such conscious restraint is. This human rights language asserts that we are all equal in view of our humanity and that our dignity, rooted in wonder at the brute fact of our achievement, demands that we each of us be given the chance to do the best we can, to thrive, to flourish, to do something with ourselves. This applies across the world, is a way of describing what we all are, not an offshoot of the brain power of a few white, male, dead intellectuals. Just as we all of us want to avoid cruelty wherever we are from, so also each of us wants to do the best with our lives. Human rights is the term we use when we try to make a truth out of this insight by sharing it with others. Remembering Darwin we must note that this is not necessarily a religious perspective at all: ‘the emergence of the human being even as a matter of chance in a blind cosmos is a genuine cause for wonder; and the product of the human species in the course of evolution is something to be wondered at with something approaching awe, or natural reverence.’¹⁷

Democracy is part of the human rights story because it is the best way we have yet found of reflecting our inherent equality in the political arena. Moral progress is measured by how seriously we work through the insight that we are all equal, how much of a chance we give to each of us to grow as we choose, even where the

¹⁴ 2003

¹⁵ Cited in Davies

¹⁶ Derrida in *Philosophy in a time of terror*, p 129

¹⁷ Mahoney, *Human Rights* forthcoming p 163

growing is not of the sort we would choose to do. Freedom and respect for human rights involve at bottom a recognition of the contingency that is inherent in all our efforts to tie down words and ways of living, a rejection of right answers in search of the chance to develop as best we can. Schumpeter was right when he said that 'to realise the relative validity of one's convictions and yet stand for them unflinchingly' was what 'distinguishes a civilised man from a barbarian.'¹⁸ (There are limits of course, but these are for my third lecture, in Belfast.) But once all this is realised pluralism's shelter is much less leaky than we first imagined.

Do we need the language of human rights for all this? Theoretically no: With the liberal ironists we might say that 'recognition of a common susceptibility to humiliation is the *only* social bond that is needed'¹⁹ and that our 'sense of human solidarity is based on a sense of common danger, not a common possession or a shared power'.²⁰ On this view the individual 'thinks that what unites [him or] her with the rest of the species is not a common language but *just* susceptibility to pain and in particular to that special sort of pain which the brutes do not share with the humans – humiliation.'²¹ The 'notion of "inalienable human rights" is no better and no worse a slogan than that of "obedience to the will of God."²² To the doyen of the liberal ironists Richard Rorty, 'human rights are superstitions – contrivances put forward by the weak to protect themselves against the strong.'²³

Let us pause to reflect on this idea of human rights as 'a superstition'. The phrase hinges on equality of respect which is in turn as we have seen the lynchpin of democracy: 'A liberal society is one whose ideals can be fulfilled by persuasion rather than force, by reform rather than revolution, by the free and open encounters of present linguistic and other practices with suggestions for new practices.'²⁴ It is clear that this kind of liberal society cannot be taken for granted in the present age: it is under attack from various enemies, economic power, fundamentalist religion, national exclusivity among them. The other positive side to liberalism, the commitment to compassion over cruelty and to personal flourishing over public prejudice, is also more exposed than it has been since the pluralist view of the world first grabbed our imagination and persuaded us of its truth. Our democratic and legal processes are already in severe danger of being captured by the rich, while our public culture is increasingly filled with the noise of demonising rabble rousers. With what can liberal society fight back? Religious words don't work anymore, socialist-

¹⁸ CIS p 46

¹⁹ CIS p 91.

²⁰ CIS 91

²¹ CIS 92

²² PSH 83

²³ PSH 84

²⁴ CIS 61

talk is almost as jaded, and arguments about rationally based moral obligation seem also beside the point. And the liberal ironist wants us also to change the subject when 'human rights' come up? I think this is going too far: post-modern decency needs to grab help where it can find it, without being too picky about origins.

In this current age of doubt, with cruelty abundant in the gaps left in our culture by the abandonment of all our truths, and with the retreat of our soldiers of certainty swelling into a panicked stampede, we have reached the point where we should now admit that human kind simply cannot cope with too much unreality. We need truths even if we have to make them up. It is not enough to leave everything to sentiment – our better selves need more help than a few recommended readings, a movie or two and a deft capacity to dodge unpleasant conversations. Our culture is simply not up to jettisoning so much of the past while holding out such intangible and unsupported hope for the future. And if the good guys give up on the language of human rights, then others – less principled; differently motivated – will fill the words with a bleaker kind of meaning, ridiculing their preposterous breadth perhaps, putting the words at the service of the rich, or using the term to justify killing foreigners with differently coloured skins. The phrase 'human rights' will not disappear if over-scrupulous liberals refuse to have anything to do with it: the words exist, they can be made to do good work: the true pragmatist would embrace the phrase and make it work, not wander from the battlefield of meaning with intellectual purity intact but honour in shreds.

Alastair MacIntyre may have been right when he said that '[n]atural or human rights ...are fictions'²⁵ Much of the power of modern philosophical work has lain in the exposure of fictions. As MacIntyre put it '*Unmasking* the unacknowledged motives of arbitrary will and desire which sustain the moral masks of modernity is itself one of the most characteristically modern of activities'.²⁶ I think the time has come for some strategic remasking. I think MacIntyre was wrong to hanker after a now impossible Aristotlean virtue but he was right that something needs to be done. Remembering and updating Voltaire's remark that 'if God did not exist it would be necessary to invent him', I think that the something that needs to be done is the construction of a remasked self, someone who knows the contingency of language and the limitations it imposes on the search for truth, knows the uncertainty of all claims to knowledge, knows that there is no core self but rather layers of accidentally-accrued identity, but who nevertheless embraces goodness and dignity and right and wrong as words that – despite everything – work to make the world a better place. And it is the whole world that we have in mind, not just the over-developed Western bits of it.

²⁵ After Virtue p 70

²⁶ After Virtue p 72

The term 'human rights' is the phrase we use when we are trying to describe decency in our post-philosophical world. It provides a link with the better parts of our past while guiding us towards the finer features of our future. To paraphrase Oliver Wendell Holmes, this is a kind of thinking that works – it gives pithy expression to our feeling that there should be less cruelty and is a handy way of saying what many of us feel, that everybody should be given a chance to do the best they can in life – no matter where they live or what their version of a successful life would entail. And if we can agree on this meaning, then we can spot bad-faith, the guy who wants to kill a community so as to secure its human rights; the professor who feels a lit bit of roughing up is necessary to protect human rights.

I end by returning to Richard Rorty's word 'superstition'. This is not the same as a fiction. Of course 'human rights' are a superstition, they can be nothing else in the world of language that the term is forced to inhabit. But a superstition is not necessarily a myth and it is certainly not bound to be a lie. A mask can hide a face but it may be an exact resemblance to what is underneath. We just don't know – all we can be sure of is that just because we have made something up it does not necessarily follow that – out there beyond words – it is not true. I end with what I think of as a great human rights poem, by Les Murray the Australian poet

THE MEANING OF EXISTENCE

Everything except language
knows the meaning of existence.
Trees, planets, rivers, time
know nothing else. they express it
moment by moment as the universe.

Even this fool of a body
lives it in part, and would
have full dignity within it
but for the ignorant freedom
of my talking mind.