

Editors' foreword

Human rights are often seen to be the domain of international lawyers and yet they are an integral part of much academic work in the humanities and social sciences. In this symposium we have the opportunity to participate in the debate about the philosophical underpinnings of the human rights framework, in particular as it relates to refugees and displaced persons. The papers are part of an ongoing discussion, which will continue in the next edition of the journal. Ian Hunt, Associate Professor of Philosophy at Flinders University, is the guest editor of this symposium and introduces us to a range of opinion which demonstrate the depth of concern with issues of human rights in various disciplines, including contributions from philosophical and political thought.

Peter Kriesler, Christine Forster, Steven Freeland and Eileen Pittaway

Symposium: 'The rights of strangers'

*Ian Hunt**

I am delighted to have the opportunity to introduce this symposium on the rights of strangers which will occupy two successive issues of *The Australian Journal of Human Rights*. Nearly all of the papers included were originally presented to 'The Rights of Strangers' Conference organised by the Flinders University Centre for Applied Philosophy, which was held at Flinders University on 14-15 February, 2003. In this introduction, I outline the main issues they address, while providing a brief account of the themes pursued by each symposium paper included in this issue of the journal. I shall leave an overview of the papers to be published in the second symposium to a briefer introduction accompanying them in the forthcoming winter issue of this journal.

The 'Rights of Strangers' conference addressed the issue of what we owe to people

* Flinders University of South Australia. The author would like to acknowledge the valuable insights into issues surrounding claims on Australia for asylum or aid of strangers that he gained from all the contributors to the Centre for Applied Philosophy Conference on 'The Rights of Strangers' held at Flinders University on 14-15 February 2003 and also the invaluable help provided by Samantha Helsham in organising the Conference and by Catherine Abell in preparing papers for publication in these symposia.

other than our own citizens, covering at least the following questions: Does our current policy of mandatory detention violate the rights of asylum seekers? Does our present overseas aid policy meet the claims of those in dire need as a result of avoidable poverty or human rights abuses? These issues are connected because they both raise the question of what claims strangers or non-citizens have on Australian citizens. Everyone concedes that strangers have a claim that we not commit some form of aggression against them, such as murder or destruction of property. More contested is the issue — the principal concern of the ‘Rights of Strangers’ conference — of the claims that non-citizens might have on us for either asylum or aid. Such claims are connected inasmuch as they are both ‘Good Samaritan’ claims and, as is the point of the biblical parable, all too readily denied.

They are also connected, as Julie Wells points out in her piece published in this symposium, because war, oppression and hunger drive refugee flows, so that one consequence of failing to meet claims for aid may be additional claims for asylum from increased numbers of refugees fleeing disastrous conditions. The Howard Government has stemmed ‘unauthorised’ refugee flows into Australia by the introduction of punitive legislation removing any hope among such refugees that they might make a permanent change for the better. Papers included in these symposia challenge the morality of this approach.

One concern expressed in many of the papers about the morality of a ‘don’t make your problem mine’ response to poverty and human rights abuses is that this has struck a popular chord in the Australian public. While some Australians feel shame at what has been done to refugees by the government in our name, many others feel self-righteous in applauding government policies that they feel protect them from outside threats.

Our society has made moral progress over the last two centuries or so by gradually forming majorities that recognise the wrongs of slavery and discrimination along lines of race, gender or religious belief. But we seem not to have made similar progress with the issue of our moral obligations to rescue people other than our own citizens from danger, which includes our obligation to offer asylum. Faced with needs for asylum, we would, it seems, rather cavil over whether this country is a refugee’s first port of call. More disquieting is the possibility that our indifference to claims for aid cloaks and provides comfort for a reversion within part of the Australian public to denial of the wrongs of racism and discrimination on the grounds of religion, a worry expressed recently and forcefully by Ghassan Hage (2003).¹

1 Haage G (2003) ‘The anatomy of anti-arab racism’ *The Australian Financial Review* Review 9, 15 August.

The biblical parable of the Good Samaritan therefore raises issues of the force of claims to aid or to shelter strangers that seem as pointed today as ever. Surely, is it not time that we started to make some real progress on this issue, now that globalisation increasingly entangles our lives with those of strangers? Our hope is that discussion prompted by the symposium papers will be one step forward in this process.

One theme addressed by some papers is whether the Australian Government's policies of mandatory detention of any asylum seekers who unlawfully enter Australia, and denial of permanent residency for them, comply with Australia's obligations under the UN Convention of Refugees. This issue is addressed, in part, as an issue of the adequacy of Australia's interpretation of its obligations, and partly as an issue of whether the moral rights of asylum seekers are violated under current policy, even when Australia may be considered to have acted within the letter of its commitments under international law.

One issue, addressed by Susan Kneebone's paper in the next symposium, is whether Australia has too narrowly confined its commitments to mere provision of physical security for asylum seekers, while ignoring its obligation to make good in full the loss of nationality they have suffered due to persecution. Indefinite imprisonment in isolated areas can be seen as continuing the deprivation that people subject to human rights abuses have suffered as a consequence of losing their former nationality. Given that persecution has deprived them of a future in their own homeland, Australia and other countries may continue that loss with their get-tough policies by denying them a future in the country where they seek asylum. This might well have the effect of enhancing the intimidation that human rights abusers can exercise, as alternatives to submission become more daunting.

A paper by Jackie King, included in this symposium, also addresses this issue by comparing the Australian Government's response to the plight of Kosovar refugees with that of the Canadian Government. She urges us to understand the basis upon which each state justifies its response to and treatment of refugees, since this provides a crucial test of the principles of justice followed by the state, given the weight that the vulnerable position of refugees lends to their claims.

Australia's response to the Kosovo humanitarian crisis was to provide the basic entitlement of state protection required by its position in the global state system. King argues that this narrow response is characteristic although, since the Second World War, Australia has distinguished between economic migrants and refugees and drawn on both humanitarian and protection arguments to support its policies on refugees and asylum seekers. King contrasts Australia's position with Canada's, where a similar program of taking refugees in addition to economic migrants has

been motivated more strongly by humanitarian concern, as reflected in Canada's response to the plight of Kosovar refugees, where Canada, but not Australia, offered them the possibility of permanent residency. The Australian response reveals not only a lack of humanitarian concern for the difficulties that refugees must encounter in returning to their former lives, when the foundations of these have been seriously and deliberately disrupted, but also may be seen, in the light of Kneebone's argument, as an at best perfunctory compliance with the demands of justice and its commitments under international law.

This raises the issue of the justification of Australia's denial of permanent residency status, not only to Kosovar refugees thrown up by an immediate humanitarian crisis, but also to all refugees who attempt unlawful entry to Australia in order to apply for refugee status. Unlawful entry itself cannot detract from the claims of asylum seekers, since escape from persecution largely involves unauthorised movements between countries. However, Australia distinguishes between 'good' asylum seekers who make unauthorised entry into other countries and apply for asylum there, and 'bad' refugees who make unauthorised entry into Australia itself to apply for asylum. While successful application by the former can lead to resettlement in Australia, the latter have been denied that possibility by recent legislation which provides them only 'temporary protection visas'. Australia thus downgrades its obligations to these asylum seekers to the mere provision of physical security.

The ground for such discrimination is the Australian Government's claim that 'bad' asylum seekers have engaged in so-called 'secondary movement' under the terms of the UN Convention. However, in taking this position, Australia has replaced one clear criterion of 'secondary movement', which is that the refugees have already made application for asylum elsewhere, with the more vague and doubtful criterion that they *could* have made application elsewhere, since they generally have passed through other countries where asylum is available in transit to Australia. Australia has therefore refused to acknowledge that refugees can still be subject to persecution after they have fled their country of origin, or that their conditions in a country of immediate refuge can be so precarious that they have every reason to continue their flight until they can feasibly start a new life in a new land.

Australia's adoption of such a mean spirited policy, as documented by the papers of King and Kneebone, toward those refugees who make unauthorised entry into Australia, reflects a contradiction at the heart of government policy. While it is supposed to meet our obligations, it is also intended to deter not only on 'people smugglers' but also those refugees who might seek unlawful entry to Australia. It is hard to see how Australia can significantly deter such asylum seekers and simultaneously treat them well, as its adherence to the UN Convention on Refugees requires.

Two symposium papers document the hypocrisy and abuse that must arise from such a policy. Klaus Neumann, in his paper 'Providing a "home for the oppressed"? Historical perspectives on Australian responses to refugees', addresses the hypocrisies of our policy by raising the important issue of how the development of a 'tough border protection' policy can be reconciled with the history of apparently more generous responses to past claims for asylum and resettlement of refugees. He shows that current policy is continuous with an apparently more generous past in that previous policy also rested on an underlying rejection of claims for inclusion in the Australian community from groups not thought to be easily assimilated in a society with British or, more generally, European origins. Where possible, Australia has tried to ignore or cover up claims for asylum from 'the wrong sort of refugees', as attested in the case of Australia's treatment of refugees from West New Guinea, when they fled from persecution under Indonesian rule across the border into Australian mandated territory in the 1960s.

Gordon Barrett's paper attests in detail to the increased likelihood of abuse of the rights of refugees under mandatory detention derived from the progressive confinement of the role of the Australian legal system under successive legislative changes. Refugee claims are no longer as proof against arbitrary administrative action as they once were. Where administrative action is subject to appeal, claimants may suffer prolonged imprisonment while the courts deal with their cases, which the Australian Government appears willing to oppose regardless of the legal merits of the case.

Papers in the symposia raise real questions as to the adequacy of Australia's treatment of asylum seekers in the light of its commitments. Unfortunately, however inadequate that response may have been in law, it has not been possible to make the Australian Government politically accountable because a majority of voters morally condone or approve of what the Government has done.

This raises two important questions about the force of human rights claims on which claims to asylum and aid rest. To take these claims as issues of *human* rights suggests that national boundaries should not importantly influence government action to meet its obligation to respect and protect those rights. Applause for Australian government action to protect Australia at the expense of refugee claims raises two challenges: does our moral culture simply not lend sufficient weight to human rights claims? Or are there other considerations that justify special responsibilities of governments for their own citizens, which might justify mandatory detention and refusal of anything but temporary protection to refugees when they have not entered Australia on terms acceptable to the Australian government? Is a cosmopolitan policy that does not differentiate between citizens

and strangers called for or is there a legitimate role for preferential treatment by governments of their own citizens?

One theme pursued in the symposium papers is that current liberal conceptions of human rights are not sufficiently robust to counter attitudes of fear and exclusion of those who do not belong. Anthony Langlois' paper examines the Western conception of human rights, arguing that liberal commitments to human rights have been compromised by a refusal to ground them in conceptions of what is good for human life, given human nature. He claims that liberal demands for liberty of conscience, which seem to require that the state remain neutral in any conflict between moral beliefs, have the effect of undermining general belief in the objectivity of human rights. According to Langlois, rights claims are not sufficiently robust to limit claims of self-interest, being weakened by the scepticism incited by our liberal culture, with the result that the claims of strangers are all too liable to be neglected or violated. He urges a rediscovery of the objective grounds of human rights in an understanding of human nature, in order to strengthen our capacity to respect the rights thus grounded.

Two other papers, to appear in the next issue, also address the problem of understanding why indifference to the claims of others can be displayed without shame by so many. They consider how we should interpret the widespread negative reaction within the Australian public to the claims of asylum seekers, and argue that this is founded in a culture of suspicion and insecurity. One paper points out that xenophobia, despite the Greek origin of the word, is not the typical response of Greek culture to outsiders. It proposes the alternative response of xenophilia, as demonstrated in Greek culture, while allowing that cultivation of such an attitude cannot be forced. The other paper proposes a strengthening of democratic power to counter the vulnerability felt by refugees and citizens alike toward government power. The paper suggests that this vulnerability in turn gives rise to a need among citizens for consoling affirmations of the state's responsibility for its own citizens through denial of anything but a barely human status to asylum seekers.

While Langlois raises the issue of whether liberal tolerance of different views of the point and value of human life has given rise to a kind of liberal scepticism which undermines commitment to human rights, other papers raise the issue of whether the universal values to which any legitimate sovereign liberal state must be committed are consistent with its taking responsibility first and foremost for the rights of its own citizens.

One paper, to be published in the next issue, raises the important question of whether the state can give preference to the claims of its own citizens without undermining the values that lend authority to the claims for popular sovereignty

that seem to justify this preference. Another raises the possibility that the state's preferential treatment of its own citizens can be justified by special rights deriving from membership of a particular community, which are parallel to and, indeed, include rights such as those of inheritance. Both raise the issue of whether the moral foundation of rights claims is compatible only with non-discrimination between citizens and strangers or, at least, imposes serious limits on what kind of discrimination is morally acceptable.

As noted already, the claims of strangers are not only for asylum but also for aid to address the poverty and deprivation they experience in social and economic conditions much less favourable to leading a good life than Australia provides. Two papers in this symposium raise philosophical issues that address this issue, taking as their focus the philosophical basis of our obligation to provide aid to those in need beyond our shores. These papers illuminate the tension in our moral beliefs between acknowledgement of a moral requirement to provide aid to those in need wherever they are and the widespread belief that this acknowledgement must not in turn lead to unreasonable demands on what we ourselves require to live good lives of our own. They display a diversity of views, which reflects the place on the frontiers of moral thought of the issues involved, on how to ground claims for aid by strangers and on how to limit the scope of such claims.

One paper, by Garrett Cullity, takes the view that aid to strangers is morally required but argues that it is required as a properly moral response to the fact of need rather than as a matter of right. Cullity uses this answer to a question about the justification of requirements to give aid to derive conclusions about the scope of those requirements. He uses his distinction between what we are required to do as a matter of right and as a response to need to argue that, while our compatriots can make claims on us as a matter of right that non-compatriots cannot, we are still required to do much more collectively and individually for strangers than we currently do.

The other paper, which I have written, compares our response to distant claims for aid with our response to immediate claims for rescue and asks why we consider aid to strangers morally admirable but not, it seems, morally required. I reject a number of attempts to show that aid is not morally required, while arguing that it is in fact required as a matter of right. However, I argue that the right claim in the case of distant strangers must fall on us collectively: in the first instance, it is our nation and the global community who are obliged to provide aid to those in need. Given that our nation and the global community do not live up to these obligations at all well, the question remains of what we as individuals are required to do when nations and other individuals are not doing their part. I argue that, apart from contributing to aid agencies at least as much as individuals as we would if others also did their bit, we

are required to contribute to the ongoing organisation of the collective effort required for an adequate program of aid.

A number of the symposium papers thus explore the bases of public reaction to asylum seekers and suggest alternatives, though in very different terms and from very different standpoints. The symposium thus reflects the degree to which our understanding of the claims of strangers and their integration with accepted morality is still a work in progress. In the past, relatively isolated communities could ignore the claims of strangers, or deal with them as exceptional events. However, in an increasingly globalised world, these issues have become so pressing that we now urgently need to discover the basis and limits of the claims of strangers upon our lives. One challenge for Australians is to seek political outcomes that will come closer to meeting our obligations to strangers in need. If the symposium papers further the debate on what policies are required to address the suffering of others with whom we share this world, they will have served their purpose well. ●