THEORISING HUMAN RIGHTS: FOUNDATIONS AND THEIR INFLUENCE

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ABSTRACT

This thesis explores human rights in a novel and important manner. It does not deal in depth with human rights implementation, the workings of international law, or evaluate compliance with universal norms. Rather, the thesis focuses on the philosophical foundations of human rights, an area normally neglected by mainstream rights theory.

This thesis argues that all theories of human rights rely on *a priori* values, assumptions and worldviews, and that these constitute foundations on which a given theory relies. These foundations are often unacknowledged or under-theorised and yet exert a profound influence on views of human rights. I seek to explain the character of these foundations. Additionally, the thesis argues that these foundations will inherently include metaphysical and ontological stances – a philosophical anthropology – that entail reflection upon the character of human experience and the value of human life.

Building upon the work of Langlois (2005), I argue that these metaphysical assumptions are always present in any justification of human rights. Despite the claims of many theorists that their approaches aim to be universal as they avoid invoking any specific metaphysical doctrine, this thesis argues that eschewing metaphysical concerns only serves to undermine their own claims to universality and pushes concerns for the metaphysical under the surface. Ignoring them or insisting on their irrelevance merely obscures their influence.

This thesis addresses these key issues in relation to seven theoretical positions. These positions are presented in terms of specific theorists who are arguably representative of a particular theoretical tradition. The range of positions examined is broad; they run the gamut from strident anti-foundationalist, to legal positivism, sociology, capabilities theory, to broader philosophical and political theory. Specifically, the thesis analyses the work of Richard Rorty, Radhika Coomaraswamy, Jack Donnelly, Bryan S. Turner, Martha Nussbaum, Charles Taylor and Anthony Langlois.

The analysis outlines the key feature of each theory and then interrogates the assumptions on which they are based. In doing so, I argue that lurking within each theory of human rights is an implicit philosophical anthropology that helps to provide the substance and direction of that theory. Furthermore, I argue that the scholars could augment and buttress their positions by analysing and exploring the metaphysical positions – rather than evading or ignoring them – in order to produce a theory of human rights with great cross-cultural appeal. An additional aspect of this thesis is that it explores what philosophical foundations and theoretical frames are needed for a robust, defensible theory of human rights. I argue that the basis for human rights must be illuminated and defended, that positions must be theorised and justified, not merely asserted. Doing so will assist in fending off attacks from those who do not value human rights.

DECLARATION

I declare that:

- *this thesis presents work carried out by myself and does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university;*
- *to the best of my knowledge it does not contain any materials previously published or written by another person except where due reference is made in the text; and all substantive contributions by others to the work presented, including jointly authored publications, is clearly acknowledged.*

Signed _____

Date _____

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All responsibility for the content that follows is all my own.

INTRODUCTION: THEMES, PROBLEMS AND AIMS

Introduction: a brief history of human rights

In recent years, numerous bloody conflicts and arguably oppressive regimes across the globe have attracted accusations of human rights violations from leaders and activists from predominantly Western nations. Such enmity and bloodshed has placed human rights in the international political spotlight. These abuses take a variety of forms from routine, day-to-day 'cultural' practices, to genocide and 'ethnic cleansing' conducted as part of larger political conflicts. Examples of human rights violations that have been universally condemned include: the Chinese occupation of Tibet; the Tiananmen Square massacre in 1989; the alleged genocide in the former Yugoslavia in the early 1990s authorised by Slobodan Milosevic; the violent, but ultimately unsuccessful suppression of separatist movements in East Timor by the Indonesian Government in the late 1990s; and in Africa, the forced and violent eviction of white farmers in Zimbabwe under Robert Magabe, and recent turmoil in Rwanda and the Darfur region of Sudan.

The concept of rights for individuals and groups has existed in Western culture for many centuries originating initially from the works of ancient Greek philosophers. Subsequently, during the seventeenth century and later as part of the Enlightenment of the eighteenth and nineteenth centuries, several key philosophers developed then groundbreaking theories of rights (Langlois, 2001: 80-83). Rooted in conceptions of 'natural law', philosophers such as Locke, Rousseau, Hobbes, Burke and Paine emerged as pre-eminent thinkers in outlining the rights they thought intrinsic to (certain groups of) human beings (Fields, 2003: 9). This was the philosophical and political environment of the French and American Revolutions and which helped to produce, among other documents, the American Declaration of Independence and the Bill of Rights. However, the rights identified in this period were not

intended to be universal but rather applied to certain groups of people (the rights of slaves, for example, were not recognised).[1]

Arguably, it was not until after the atrocities produced by World War II that the idea of *universal* human rights entered global political discourse (Langlois, 2005; Fields, 2003: 39-42; L. Bell et al., 2001: 3; Donnelly, 1999b: 64; Dunne & Wheeler, 1999: 1). In contrast to the limited political 'Rights of Man'[2] rationalised during the Enlightenment that were essentially only available to propertied men, the concept of universal human rights which has developed since World War II is much more inclusive. According to the 1948 United Nations 'Universal Declaration of Human Rights' (quoted in L .Bell et al., 2001: 384):

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Rights of this order include: the right to life, freedom from slavery and torture, freedom of speech, religion and association and the right to employment (L. Bell et al., 2001: 384-387). These rights are, on the face of it, self-evident and have attracted almost unanimous in-principle agreement from the UN member states (Donnelly, 1999a: 72). However, the development of a more comprehensive, consensual and universally applicable human rights agreement since the 1940s has been relatively sporadic (Donnelly, 1999a: 72-73). Only a limited number of United Nations declarations and agreements emerged over the following decades. This reflected the difficulty of different nations of diverse cultures to agree to universally acceptable values as much as the reluctance to recognise the rights of minorities in practice.

[1] For example, the American Declaration of Independence from 1776 proclaims that: 'We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights…' (see Brinkley, 1993: A-5). This declaration was authored *by* propertied men *for* propertied men and was in no way intended to apply to women and slaves, among others. These marginalised groups were not considered equal or bestowed with the right life, liberty, and the pursuit of happiness claimed in the Declaration of Independence.

[2] See Paine (1969).

While abuses of human rights have attracted condemnation from many people around the world, particularly in the West, who assert that the universality of human rights is self-evident, the assumption of universality is problematic and attracted a large amount of criticism. Criticism of such a view has come two main sources. Firstly, some political leaders, particularly in Asia, argue that 'universal human rights' are a Western construct imposed upon nations as a form of imperialism. Leaders, including former Malaysian Prime Minister Mahathir, argue that human rights talk is more about power politics and the Westernisation of the globe than respecting the peoples of Asian nations (Langlois, 2001: 12-24). Such arguments assert that Asian nations have their own, traditionally based values which emphasise personal dignity and respect, community solidarity and political stability. These values are said to be more effective in achieving prosperity and quality of life than democracy and adherence to human rights. This disagreement is known as the 'Asian values debate' (Langlois, 2001; L. Bell, 2001: 3; Donnelly, 1999b). However, not all people in Asia accept this view, claiming that the 'soft authoritarianism' advocated in the region is no more amenable to economic development than democratic regimes (Langlois, 2001; Yasuaki, 2001; Yung-Myung Kim, 1997).

The second main source of criticism of universal rights is from the widely held view in many Western nations (including Australia) that all values and cultures are equally valid and therefore it is wrong to judge other cultural practices by our own standards.[3] This position is known as 'cultural relativism'[4], a theoretical concept with a long history, and which to a large extent shares many of the same basic tenets as postmodernism. Postmodernism as a theoretical phenomenon has its origins largely in academic circles, yet it has implications that extend beyond into the 'real world'. Some of the questions arising from such an analysis of human rights include: if human rights are said to be based on 'natural law' then for whom are they natural? and 'what is

[3] This perspective also arguably forms the basis of the Asian values approach, although the manifestation differs.

[4] 'Cultural relativism', and 'relativism' in general, are broad concept with many implications and meanings. For some discussion of these, see especially Fopp (2008), but also DeLaet (2006), Polisi (2004), Douzinas (2002: 457), Fettner (2002), Miller (2002), Booth (1999: 50-52), Kirk (1999), Fay (1996), Herskovits (1973), Trigg (1973: 1-26, 119-169).

natural? If human rights are said to be self-evident, then for whom is this so? Which, or whose, values underpin such claims?

The apparent tension between universalist assumptions about the nature and application of human rights on the one hand, and the culturally relativist arguments on the other, presents significant philosophical and practical issues for establishing a workable human rights code across the globe. A vast literature[5] has spawned as a response to the dilemma posed by the two competing ways of understanding rights. A person advocating a universalist view of human rights might maintain that all people are entitled to human rights regardless of nationality, religion, sexuality and so forth. A Western[6] person sees it as axiomatic that countries which systematically deny or violate human rights (such as Burma, Iran, Afghanistan or China) should face international sanction until human rights are obtained and maintained. Certain political views and concepts about the ideal type of human life and social relations (as reflected in liberal doctrines) are assumed in such claims and taken-for-granted. For our hypothetical universalist there is no question about what human rights are, why they should exist, and why they need to be enforced.

Cultural relativism, on the other hand, is allied with (and often conflated with) *epistemological* relativism which is often marshalled in critique of universalist assumptions about rights (Fopp, 2008a: 17-22). Epistemological relativism claims that there is no basis on which to judge the actions of others. This stance is often fused with cultural relativism and is used to mount an attack on universal human rights. There are no universal values, religious or metaphysical outlook from which a cross-culturally appealing notion of human

[5] For but a small sample of the field, see: Erni (2009); Basok & Ilcan (2006); Evans & Ayers (2006); Porter & Offord (2006) Evans (2005; 2001); Bell & Carens (2004); Ishay (2004); Magnarella (2004); Elliot & Turner (2003); Goodhart (2003); Munro (2003); Sweet (2003); Allain & O'Shea (2002); Sellars (2002); Bob (2002); Gilbert (2002); Brems (2001); Nathan, & Peleg (2001); Cowan, Dembour & Wilson (2001); Bell (2000); Bielefeldt (2000); Mwenda (2000); O'Sullivan (2000); Steiner & Alston (2000); Symonides (2000); Bauer & Bell (1999); Brown (1999); Dunne & Wheeler (1999); Parekh (1999); Bell (1996); Robertson & Merrills (1996); Beetham (1995); Lukes (1993); Shute & Hurley (1993); An-Na'im (1992); Walters et al. (1995); Gewirth (1984); Waldron, J. (1984).

[6] Or 'Northern' as Connell (2007) argues is what is really meant by 'Western'.

rights can be derived (Langlois 2001: 144; Booth, 1999: 58-59). To put it another way, this stance assumes that there is no Archimedean position from which to judge, and no meta-ethical position that might legitimise human rights (Langlois, 2005a: 16).[7] On this account, human rights cannot be universal and therefore cannot necessary apply to other cultures with contrasting values. As Bhikhu Parekh (1999: 128) states:

> For the relativist, different societies throw up different systems of moral beliefs depending on such things as their history, traditions, geographical circumstances, and views of the world. We have no means of judging them for there are no objective and universal criteria available for the purpose, and even if there were, we would be too deeply conditioned by our own society to discover them … We cannot judge them on the basis of human nature either, because it does not exist or we are too profoundly shaped by our culture to acquire an unbiased knowledge of it.

Relativism thus states that only the internal, cultural logic of a society is the valid criteria on which to make a judgment about behaviours or values (a concept often referred to as meta-ethical relativism). On the other hand, cultural relativism does little to advance human rights as it runs the risk of withdrawing the theoretical basis and the essential evaluative framework for human rights. If there are no criteria by which to criticise and judge behaviour, then there is equally no basis for over-arching standards and human rights. So neither the stridently universalist nor the relativist approach to human rights is helpful if the aim is to improve the quality of life of others around the world.

Although the two contrasting views described above are at opposite ends of a spectrum and are perhaps stated without possible nuances and subtleties, a valid point remains. It is not just a matter of two mutually exclusive theoretical assertions competing for dominance; there are real world implications which play out in international relations. If human rights are considered universal (and applicable without exception) and their principles taken-for-granted, there is the very real chance that they will be resisted and resented by those with

[7] A trend which Langlois (2004: 260) argues as being an integral dimension of what he terms the ‘post metaphysical era’.

varying and opposing world outlooks (as a cursory view of the Asian values debate suggests).[8] Although many activists and others (particularly in Western nations) insist that human rights are self-evidently universal, many others would disagree.

Attesting to this is a wide variety of examples, ranging from the rejection of international criminal courts by 'war criminals' such as Slobodan Milosevic, to the recent outcry by the Australian government regarding the United Nation's assessment of the treatment of Indigenous peoples in the Northern Territory. On a more fundamental level, the continued fight for human rights highlights that they are *not* universally accepted. If human rights were universal and self-evident, then, arguably, there would be no need for them to be enforced and claimed as people would abide by them automatically.[9] That this is not the case highlights the contested nature of human rights and thus the need for greater thought about what human rights are and why they should be enforced. Thus the apparent tension between universalism and relativism is a real threat to the efficacy of human rights themselves.

According to Langlois (2004: 260) the literature on human rights tends to display 'a tendency to be either triumphalist about one particular metaphysics or to eschew deep metaphysical questions entirely. Neither approach works.' This arguably amounts to a lack of adequate theorisation of human rights and opens up a niche which needs to be explored and on which this thesis is focussed. The niche relates to assessing both the particular and universal aspects of human rights and the requirement to explore and theorise the foundations on which respective theorists are based, particularly those derived from implicitly metaphysical cosmologies. As Langlois (2004: 260) continues:

[8] For a taste of the debates regarding 'Asian values' see for example: Magnarella (2004); Owen (2002); Langlois (2001); Englehart (2000); Bauer. & Bell (1999); Donnelly (1999b); Hood (1998); Yung-Myung Kim (1997); Bell (1996).

[9] As Dunne and Wheeler (1999: 2) observe: 'why are there all these human rights standards but the bodies keep piling up'. Indeed, the persistence of human rights violations suggests that human rights are not self-evident or universal and that there is a great need to clearly theorise them in a manner that appeals across political and cultural boarders.

> The difficulty is that metaphysics cannot be sidestepped, but nor, in our post-metaphysical era, can any particular metaphysical approach legitimately claim the certainty which is engendered by the rhetoric of human rights, and which resides in the background of Enlightenment traditions out of which modern human rights were born.

The above introduces some of the fundamental issues which inform this thesis: the competing forces of universalism and relativism; the contested nature of human rights in a culturally plural world; and lastly – and most importantly for this thesis – the underlying assumptions which help constitute views of human rights. As Langlois' quote above argues, metaphysical assumptions always play a role in understanding human rights and thus cannot be avoided. Furthermore, this point introduces a range of issues regarding implicit assumptions that, as the thesis will show, are often excluded when theorising human rights. These issues are key to this thesis.

Focus of the thesis: tacit assumptions and their influence

This thesis is about human rights. However, it is not about human rights in the way most of the literature addresses the subject. This thesis is neither about the historical development of human rights, nor does it discuss what rights humans have. It is neither about methods of applying rights to those denied them throughout the world, nor the legal processes required to develop and protect human rights. Overall, the main focus of the thesis is neither to outline theories nor compare and contrast them.

This thesis does, however, explore human rights in a fundamentally different manner than the above established genres of literature. The following work is concerned with exploring the underlying assumptions and values, the pre-existing positions and dispositions which inform theories and approaches to rights. It addresses the need to explore theoretical and philosophical underpinnings because they have a profound, though often unacknowledged, impact on theories of human rights. The assumptions that are commonly embedded in human rights are often derived from specific views regarding what it means to be human and the value placed on human life. These views are in turn often of a metaphysical or ontological character and sometimes

ignored, downplayed, or actively avoided as is the case or many human rights theories.

This concern with theory, and particular aspects of it, may surprise. At the beginning of the twenty-first century, the concept of human rights has become self-evident, at least to its protagonists. For many in the West and elsewhere, it is a truism to say that people universally share certain rights by virtue of their existence as humans. Concurrent with this awareness of human rights has been the emergence of advocacy groups. Organisations such as Amnesty International and Human Rights Watch have promoted awareness of human rights among people who, often by accident of birth, are not directly affected by abuses of rights. Despite the rhetoric of human rights as universal and ahistorical in nature, the idea of such rights has emerged from a specific time and place, namely the European Enlightenment of the eighteenth and nineteenth centuries. This specificity of human rights as they are known in contemporary global politics becomes at times glossed-over and subsumed by a general and liberal sense of what is a good and suitable way of treating other people. Further, relativist and 'Asian values' critiques of human rights remain unanswered by activists and nation states and governments who implicitly believe in the superiority of human rights.

So why should we be concerned with focusing on human rights theory, and specific aspects of it at that, rather than its practice and implementation? Surely it is enough, as some commentators argue (such as Rorty, 1994) that we have human rights, that they are a positive force in international and domestic politics. With so much at stake in the prevention of human rights violations, this position might assume too much theorising diverts attention away from the real issues of human rights and their impact on people. However, this thesis takes a different position. If human rights are so important (and I whole-heartedly agree that they are), then there is even greater call for sound reasoning and justification to support and defend human rights. But it is not only sound reasoning about and justification for human rights that it is at issue. Parekh (2008: 121) sums up the situation thus:

> Living as we do in an era when human rights play such a fundamental role in politics, it's easy to ignore questions about the foundation of these rights. Questions about human or legal decisions rarely discuss the philosophical grounds for their position. Yet human rights have not yet reached the status of unquestionable truths, but rather must continually overcome skepticism (such as from cultural relativists, international 'realists,' and others).

Parekh is pointing not only to human rights theories *per se* but to the importance of identifying and examining the 'foundations' or the 'philosophical grounds' of human rights theories. Thus, in brief, this thesis identifies and argues that assumptions – including metaphysical[10] and ontological assumptions – inherently underpin any stance on human rights. Human rights are based upon notions of 'the human' and why humans should be accorded fundamental rights. It is such 'foundations', 'grounds' and 'bases' of human rights theories that are the focus of this thesis which aims to explore the underlying rationale and justification for a selection of prominent human rights theories. Analysing the reasoning and justification for different theories of human rights will, of necessity, entail comparing and contrasting different views. However, this is not the main aim of the thesis. The aim includes investigating how different theories explicitly and coherently articulate their foundations.

There are at least two main dimensions to my claim that it is beneficial – even necessary – that human rights be theorised in the manner I have outlined. Firstly, despite claims that rights are universal, there remains a substantial degree of disagreement and contestation regarding the main issues as the diversity and proliferation of literature on the subject attests (Langlois, 2004: 257). Advocates of cultural relativism and Asian values approach the topic from almost diametrically opposed directions to those who espouse

[10] By 'metaphysical', I mean those values and beliefs which extend beyond the physical which can be (but are not exclusively) derived from religion, theology, politics or ethics, and reflect upon the nature of human experience, what it means to be a human being, and what being human entails in terms of rights, responsibilities and so forth. As will demonstrated throughout the following, this thesis depends on a broad definition of 'the metaphysical' that encompasses anything that is beyond the physical, including musings on the origins of on human nature – what humans are, what they can be, and what they should be allowed to become. This definition is not mutually exclusive with socially constructed outlooks, values and practices that give shape to human traditions.

universalism. Similarly, even among those who agree upon the substance of rights, there is a lack of consensus regarding implementation and the finer points of how rights ought to be realised. In such a context, it is necessary to provide an in-depth exploration of the underlying issues so that a defensible position can be attained. Without strong, plausible justification, human rights can be threatened and undermined by such challenges. And by not knowing precisely where you stand (especially in terms of one's assumptions) it is much harder to defend human rights.

A second, and perhaps crucial, justification for the approach adopted in this thesis is concerned with the manner in which pre-existing values and assumptions (both tacit and acknowledged) are filtered into, and influence a position on human rights. A typical, (popular) view of human rights might simply assert that rights are universal merely by virtue of existence as a human. This position relies upon a number of assumptions which are not always explicitly articulated by those who give it voice. These assumptions include values regarding the worth of humans, what humans can rightfully claim as integral to their life, and preferences for Western-liberal autonomy and individualism which are presumed to be superior to other social forms. What this example of a 'typical' view of human rights attempts to illustrate is that a given position, theory or framework on human rights, usually relies upon certain *a priori* assumptions (or foundations) regarding the subject matter. Furthermore, some of the assumptions are arguably epistemological, metaphysical and ontological in character.

This claim may seem axiomatic or self-evident. However, it is not a position that has been tackled extensively in the literature on human rights. Human rights are generally under-theorised in the sense that the existing approaches dedicate insufficient attention to the taken-for-granted presuppositions of scholars. For human rights to be defensible, there is an increased need to explore all of the undivulged[11] influences and premises which underpin and provide foundations for the variety of theories of rights. All positions rely upon

[11] I do not infer that these influences are *deliberately* withheld for political or rhetorical purposes, but rather that they are taken-for-granted and assumed.

such foundations, including (even especially) those which deny their existence or usefulness.[12] I do not argue, however, that foundations necessarily imply that human rights rely upon a singular, external source (such as God or other similar theistic symbol). Rather, foundations are the *a priori* suppositions upon which any position relies.

My argument that it is illuminating to explore the underlying assumptions of different views of human rights builds upon the work of Anthony Langlois. Langlois (2005, 2004) makes the crucial and innovative point (at least as far as human rights literature is concerned) that all claims, statements and acts regarding human rights are informed, implicitly or explicitly, by specific underlying or prior ideas. Answers to questions such as, where do rights come from? What does it mean to have a human right? Why *human* rights?, and what is it about humans that entitles them to rights denied to other forms of life?. Such questions in turn raise another set which include, to what extent are human rights based on what it means to be human being? That is, on a specific anthropology? How are values defended? What epistemologies are used to defend different value positions? Regarding the issues relating to the human condition and what humans are in essence such that rights should be accorded them, Langlois (2005) argues that ontology is an intrinsic aspect of human rights no matter how much theorists and activists may like to wish them away. He (2005: 8) notes that:

> when people who are engaged in the work of advocacy or diplomacy assert a right, they are making very real claims about the existence in one form or another of a human right, and as part of their assertion they will go on themselves to engage with ontological grounds for that belief.

Langlois' general claim is that *all* perspectives on human rights will be better realised and understood if these tacit ontological and metaphysical assumptions are fleshed out and made apparent. In particular he argues that once this is done, many theories can be shown to be philosophically weak and lacking the necessary justification. For Langlois (2004: 260), it is

[12] Notable anti-foundationalist scholars who have written on human rights include, for example, Rorty (1993) and Ignatieff (2001a, 2001b).

paramount that visions of human rights explore ontology, metaphysics and what he terms a 'high philosophical anthropology'. To this list I would add the epistemological assumptions about what we can know and how we can defend certain value positions.[13] By making clearer our own positions, values and assumptions, we are better placed to argue the case for human rights not only for ourselves, but to buttress ourselves from the ardent criticism of others who question the authority and legitimacy of those rights.[14]

Assumptions and foundations: definition, role, influence

Before going any further, it is necessary to explain some of the concepts which will be used through this thesis. The previous sections noted that assumptions play a significant role in the development of a particular human rights theory.[15] Pre-existing values and preferences are often embedded in theory without overt acknowledgment. Additionally, theorists rely upon broader frameworks developed in relation to their specific concerns and interests. My point, in agreement with Langlois, is that exploring the tacit arguments on which a theory of human rights rests can be very helpful in analysing such theories. This is the rationale and aim of this thesis.

For example, the work of Bryan S. Turner (addressed in chapter 4 of this thesis) elucidates a vision of human rights centred on human frailty and social precariousness. Underpinning his theory is his broader work in the sociology of the body which conceives of human bodies as both physical and social. For Turner, bodies are vulnerable from both the effects of disease and age, and social structures that fail to act in the best interests of human beings. Turner's claim that humans are physically frail and socially precarious forms the basis for his theory of human rights. The impetus for this connection between vulnerable corporeal bodies and human rights is a tacit normative

[13] As I shall show, the issue for epistemology is as important for an avowed anti-foundationalist in epistemological matters as Richard Rorty, and an avowed anti-relativist such as Charles Taylor. As I shall also show, despite Rorty's relativism, he adopts a partisan pro-American liberal democracy position.

[14] See Fopp (2008: 158) and Flynn (1972: 30-52).

[15] This is inevitable and I am not necessarily suggesting anything untoward or tendentious here if and when such assumptions are undisclosed. For example, when presenting a theory it might not be necessary to defend every proposition at every level in the argument.

assessment that humans *ought* to be protected via human rights. But what to Turner is apparently axiomatic and, thus does not need to be explicated, constitutes a lacuna in his argument. As such it begs questions which might justify Turner's normative position. For example, what is it about human beings that that they should be protected from precariousness? I agree that human beings should be protected from precarious situations, but why? What is it about human beings, the human condition, what it means to be human that should afford us such a privileged position? It is the latter questions that I shall argue Turner does not ask; it is the latter questions, and related questions, that are asked of all the theorists selected for analysis; it is the latter that forms the focus of this thesis.

To reiterate, assumptions and *a priori* concerns such as those identified as absent in Turner's normative position are central to the evolution of his theory of human rights in particular, and to other scholars more generally. However, it is my claim that such assumptions and broader interests are, in effect, the *foundations* upon which such positions rests. That is, they are the base, basis and bottom – they mark the root of a theory and often reveal the origin of a theory. Foundations are also constituted by *a priori* and pre-cursor assumptions about the preferred organisation of society and the values attributable to human life – in Turner's case, the normative view that human life should be protected and enhanced through human rights.

Fopp (2008a: 234-238) views this notion of foundations as a metaphor with significant implications. Firstly, he (2008a: 239) identifies their character: '… whenever values are justified they will be based on some sort of foundation, that is, they will have premises, and reasons on which they depend and rest'. According to Fopp, different types of theorists will rely upon different foundations which reflect their values and preoccupations. Various theorists will depend upon diverse foundations of varying character to defend their position. For example, a religious defence of human rights (or other similar values) will be built upon a foundation which emphasises the divine and transcendent. A completely secular account will obviously not rely upon such

suppositions but upon a different range of beliefs and values (Fopp, 2008a: 238):

> … the difference between the religious natural law theorist and the social constructivist is the base (rock bottom) or source of the justification for their position. For the natural law theorist the ultimate source or base of their position is a god, or a divine transcendent being, who is the author of such political values. For the conventionalist or the constructivist the source of the justification is the culture, society or the group which enshrined the principles in law or norms of some kind (written or verbal). However, while the foundations might differ, they remain.

So the depth and defining character of the sources are important. Donnelly (2003: 18) elaborates on the manner in which foundations shape and limit the terms of reference for a given topic or debate:

> 'Foundational' arguments operate within (social, political, moral, religious) communities that are defined in part by their acceptance of, or at least openness to, particular foundational arguments. For example, all the major parties in the English Civil War took for granted that God was a central source of rights and that the Bible provided authoritative evidence for resolving political disputes. Their disagreements, violent as they ultimately became, were 'internal' disputes over who spoke for Him, when, and how, and what He desired.

Yet, the importance of the above notwithstanding, detecting and educing these assumptions can be a challenging task for several reasons, not least of which is that this work involves unpacking and making visible what are often the most basic and fundamental, yet unstated, assumptions of a theory. Dimensions of theories may appear to their authors to be commonsense or axiomatic and thus questioned by neither reader nor writer. The assumptions are so present and pervasive that they are rendered invisible and free from critical analysis. As Bernard Crick (1983: ix) wrote in the forward to Beiner's *Political Judgement*:

> The obvious is so often ignored. Basic assumptions are the most difficult to identify and criticize. The familiar is notoriously hard to characterize and simplicity of exposition is far more difficult to achieve than conventional sophistication. I have often thought that any fool can give a seminar or write a monograph but that it takes a

> very special kind of person to give a first year lecture or write an introductory book.

In a similar fashion, identifying and amplifying the basic tenets of human rights theory is difficult because, in my view, so much is assumed and taken-for-granted. And because it deals with the apparently obvious, it is a field which requires new research and insights. In short, there is need for greater and clearer theorisation of both theories of rights, and of the meta-theory of rights (that is, the underlying theory about the theory).

Identifying foundations is also crucially important if human rights are to remain resilient against skepticism and other criticism. Charles Taylor (1992: 516) has asserted that 'High standards need strong sources'. The implication is that if human rights are to achieve the high moral standards implicit in their rhetoric then there needs to be strong, clear and deep foundations. But as Donnelly (2003: 18-20) maintains, arguments made within a given foundational domain are unlikely to convince others who ascribe to differing underlying, foundational claims. There is therefore a need to not only shed light on dominant foundations and assumptions, but also to engage with the arguments of others who may have divergent justifications for human rights. In this sense, greater exploration of the foundations of human rights theory is essential for more effective cross-cultural communication.

In addition to the above argument, Freeman (1994: 501) asserts there is a need for the foundations of human rights to be meta-ethical in nature in order to fend off relativist critiques. That is, foundations need to appeal to standards and criteria outside of themselves in order to be persuasive. Freeman (1994: 501) writes that:

> The problem for human rights theory is that it needs what some of its philosophical friends claim is impossible – a meta-ethical foundation which can 'trump' cultural relativism. The task for human rights theory is to inquire whether it has more solid foundations than the theories [of anti-foundationalists].

From the preceding discussion a set of crucial research questions emerge: of the existing traditions of human rights theory, what are the foundations on which they depend? How well theorised are they? Are they adequately explored or rendered visible to analysis? Are these foundations up to the task of providing a tenable, resilient and defensible theory of human rights? What should characterise the foundations of a satisfactory account of human rights? To what do they appeal? How well theorised ought they to be? Answers to these questions are often buried deep within theory and can only be disclosed through careful unpacking.

Argument and approach

I noted above that Langlois (2005) recognises the need to explicate the metaphysical and ontological assumptions implicit in claims about human rights. His work makes this general claim and applies these standards to one particular scholar in depth, namely Thomas Pogge (2002; see Langlois 2005). This thesis will make use of Langlois' critique of Pogge's unwillingness to explore his own foundations and apply it to a range of other theorists in a systematic manner. In this thesis I will analyse the (metaphysical) assumptions made by a variety of authors who represent different long-standing traditions in the literature. The following chapters will detect the underlying positions and foundations which shape a view on human rights, and address their influence and impact on the resultant theory of human rights. Furthermore, the thesis will assess the extent to which the underlying foundations and principles are appropriately disclosed and articulated for a defensible theory of human rights. Are such foundations clearly articulated and theorised? Are they sufficient to support the high moral tenets of human rights, particularly in the face of criticism? The argument is that the more clearly articulated the foundations, and the more they address philosophical anthropology, the more coherent the theory.

The argument in this thesis will consist of the following dimensions. Firstly, I will argue that all of the positions selected rely upon foundations which are explicit and tacit to varying degrees. This depends somewhat on the second dimension in which I will demonstrate the influence of foundations by teasing

out the underlying views of seven different perspectives of human rights; the third element to my argument is that these foundations have a significant influence on the character of such perspectives. An additional, fourth, dimension to my thesis concerns the evaluation of each human rights theory presented. My overall argument is that the foundations for human rights need to be clear and explicitly addressed, and that claims that human rights need not have foundations or that they need only be based in international law are insufficient and ultimately unsustainable. This argument is fleshed out in the first three chapters (1-3), while an exploration of foundations that are more closely allied to the elaboration of a philosophical anthropology is contained in the following four (4-7). In a nutshell, the argument developed throughout is that human rights theories must address crucial metaphysical, epistemological and ontological questions to be persuasive and tenable. The more theories tackle crucial metaphysical and ontological questions about the nature of what it means to be human the more tenable, robust and persuasive they are in the face of ardent criticism.

Chapter outline

The bulk of the thesis consists of seven chapters, each dealing with a particular perspective on human rights as epitomised by typical scholars in each area. The first of these chapters focuses on the pragmatist/anti-foundationalist approach employing the works of the late Richard Rorty. The chapter will emphasise the foundations on which his position is built (despite Rorty's claims that foundations do not exist and are unnecessary – see Rorty, 1993). This chapter will ultimately argue that such grounds are insufficient for supporting human rights. The second chapter will build upon the first by exploring an international law/jurisprudence position, focussing on Radhika Coomaraswamy. Her position has an advantage over the pragmatist outlook in that it appeals to a concrete, tangible foundation in defence of human rights: international legal structures. My argument is that while reliance on a legal framework is necessary and arguably more theoretically persuasive than a pragmatist perspective, international law alone is insufficient grounding for human rights.

The third chapter (chapter 3) builds upon the weakness of the legal framework position by evaluating a similar perspective but which has more clearly theorised and more explicit foundations. The political realist theory (represented here by the work of Jack Donnelly) begins its vision of human rights with 'the way we use human rights now' (Langlois, 2004: 256), namely the existence of human rights and their associated supporting legal declarations and covenants. While this outlook bears some resemblance to that addressed in chapter 2, Donnelly's work adds additional dimensions by reference to the moral 'nature' of humans, which Parekh (2008: 122, 125) identifies as an 'essentialist' position. What this foundation does implicitly acknowledge is the need for human rights theory to incorporate notions of what it means to be human – in other words, a high philosophical anthropology. However, my argument in chapter 3 is that Donnelly's notion of human nature – along side his conception of the universal nature of human rights – contains flaws. The argument is that although Donnelly views a moral human nature as universal, his perspective implicitly endorses and privileges one perspective, namely, Western, liberal values.

Chapter 4, then, represents a distinct break from the previous chapters. Rather than building a framework of rights on existing legal and political structures, (and a rather weak conception of the human), the chapter takes a different approach. It fleshes out the implication detected in chapter 3 that some aspect of 'human nature' should be enmeshed in rights theory. It does so by deploying the 'human frailty' approach, used by sociologist Bryan S. Turner, a theory which asserts that human *bodies* have both physical and social dimensions which in turn pose threats to the longevity and quality of those bodies. Although Turner's theory of human rights is based upon foundations that are arguably more commensurate with the requirements of human rights theory than the positions previously explored in the thesis, some critical questions remain unanswered. For example, although Turner wishes to minimise the negative effects of human frailty and social precariousness through human rights, there remains the question: Why is it that humans should be protected from the physical tendency towards illness and decay and the threats from modern society? There is an implicit primacy placed on

the value of human life and the quality of that life which is not full explored or articulated. In other words, there is an implicit philosophical anthropology which lurks within the human frailty approach, but is neither acknowledged nor explored.

Chapter 5 responds to this concern by including a theoretical approach to human rights which is founded on a more considered and developed sense of what humans are and what they can be, and hence why they should have human rights. The 'capabilities approach' developed by Martha Nussbaum is founded upon a theory of human potential, what humans should be able to do and be given the opportunity. Nussbaum's work explicitly builds upon Aristotelian philosophy which theorises on human nature. Part of the chapter's argument is that the capabilities approach explores facets of philosophical anthropology when setting out the capabilities which humans should possess. That is, the framework addresses (implicitly) questions regarding what it means to be human and why humans should have human rights. Turner and Nussbaum arguably endorse a view of human being (and thus human rights) that inheres in each individual and exist 'independently of any laws or practices of a state' (Parekh, 2008: 122).

Chapter 6 of the thesis builds upon and augments the deep foundations and philosophical anthropology of the capabilities approach by considering an approach that more overtly explores the metaphysical. As such, this chapter represents another distinct break from the preceding two. The work of Charles Taylor is used here to illustrate an outlook with roots based on an explicit desire for expanding understanding and self-knowledge. This chapter takes Taylor's view of an 'unforced consensus' on human rights as a starting point for a deeper dissection of Taylor's foundational principles (Taylor, 1996). Taylor's position is built upon a complex and interwoven set of ideas of cross-cultural understanding, recognition of the 'other' and role and origin of the inter-subjective self in contemporary society. Similarly, he embrace domains of study that are usually considered off limits by others, including the authentic self, and what it means to live in a modern, secular society. Yet, despite this engagement in metaphysical issues, I argue that Taylor's approach does not

make the explicit methodological claim for engaging with the metaphysical aspects of human experience.

The final position considered is that of Anthony Langlois. Langlois' work has the advantage of being among the most recent and therefore able to respond to the issues, controversies, and dilemmas which have emerged from decades of human rights theory. As such, his work explicitly argues that the metaphysical and the ontological must be addressed, and that a high philosophical anthropology needs to inform theory. The chapter also argues that Langlois' own human rights perspective relies upon existing assumptions and philosophical frameworks. Langlois' work provides a framework that both accounts for the need to engage with metaphysical and ontological issues *and* applies them to human rights in theory and practice. While it is not as broad in scope as Taylor's overall oeuvre, Langlois is able to forge the direct link between engaging with metaphysical aspects of life and human rights.

The two remaining chapters (8 and 9) will attempt to tie together the diverse perspectives explored thorough the thesis. Chapter 8 will address the works of the first five theoretical positions explored in this thesis. It will do this by firstly employing the over-arching argument that each position on human rights is informed, shaped and heavily influenced by pre-existing values and assumptions. These values and assumptions, in turn, constitute foundations on which a given theory is built. So chapter 8 will gather together the specific links between foundations and theories of human rights. This will raise critical questions about the nature and extent of the foundations used.

Chapter 9 will address Taylor's and Langlois' positions, the rationale being that these two theorists contribute greater theoretical understanding of the issues in a way absent (or at least in a minimal form) from the theoretical positions previously discussed. While the conclusions reached in chapter 9 do not claim to be comprehensive and exhaustive, they do contribute significant insight into some necessary dimensions – even prerequisites – of human rights theories which benefit from exploring the issues which are all too often taken-for-granted, ignored or dismissed as irrelevant.

The choice of theorists

Each of the theorists addressed in this thesis were chosen because they represent a specific strand of thought on human rights. The work of Richard Rorty, for example, represents a popular and appealing pragmatic and anti-foundationalist theory. Similarly, Radhika Coomaraswamy is arguably representative of views proposed by United Nations Conventions and the variety of human rights that are justified in terms of international law. Other theorists such as Bryan Turner and Martha Nussbaum demonstrate distinct approaches that attempt to find relatively uncontentious universal bases for human rights that do not rely on particularistic, political or metaphysical doctrines. Both Turner's human frailty framework and Nussbaum's capabilities theory are examples that attempt to justify human rights in terms of what they see as universal human ontology.

Additionally, the choice of theorists serves also as a way of developing my overall argument. I demonstrate throughout the thesis that each theoretical position relies on a number of unacknowledged and under-theorised foundations. By exploring these foundations and the hidden assumptions that accompany them, this thesis illustrates how those foundations are, by themselves, not sufficient to support a theory of human rights. This enables me to explore the question: what other foundations might better give rise to human rights? Thus, after highlighting how Rorty's anti-foundationalist approach is inadequate, the analysis turns to an obvious and commonly used basis for human rights, namely international law.

Similarly, my analysis of Turner and Nussbaum in chapters 4 and 5 represent an attempt to work through foundations for rights that move away from the relatively simple notions of law and politics explored through Coomaraswamy and Donnelly to the seemingly more universal justifications of human ontology. However, as I argue, these approaches are fraught with similar embedded metaphysical assumptions as those they seek to avoid and therefore require more thorough theorisation and reflexivity. This diagnosis of the inadequacies of Turner and Nussbaum thus point to the works of Charles

Taylor and Anthony Langlois. The argument that I develop in the following chapters will further help to explain these links and the choice of theorists.

It is also worth mentioning that the inclusion of these particular theorists by necessity excludes others. I acknowledge that several prominent human rights theorists are excluded from this thesis. For example, John Rawls (1971) and Ronald Dworkin (1978) are arguably suitable candidates for the type of scrutiny I subject to others. Rawls (1985) in particular contends that concepts of justice are 'political not metaphysical', an argument that is in tension with my own and begs to be unpacked. Similarly, Dworkin has written extensively on rights generally.

But despite the similar terrain covered by these two scholars, their relevance to this thesis is peripheral as they analyse rights generally (especially the legal and political variety), as well as issues pertaining to justice and democracy, but do not deal explicitly with *human* rights, which is my focus. Although these broader conceptions of rights clearly overlap with and feed into human rights debates, my concern in this thesis is with human rights as they are articulated in the United Nations' Universal Declaration of Human Rights and the discussions that extend from this general conception. All of the theorists addressed in this thesis talk about human rights in this stricter sense. The inclusion of some theoretical perspectives at the expense of others is a necessary aspect of a thesis. The analysis cannot be exhaustive; but rather it enables the possibility of adopting a similar critical stance towards those whose works fall outside the scope of the thesis. Arguably, my choice of theorists represents a novel approach to the theorisation of human rights.

The thesis now begins by considering a popular and influential view of human rights that is based on the view that foundations are irrelevant and have no useful role to play in pragmatist theory. This anti-foundationalist (or pragmatist) framework is represented here by the work of the late Richard Rorty and, as I argue, is a product of Rorty's more general philosophy which rejects the long-established idea that humans' knowledge of the world is an accurate reflection of an independent, external reality. Rorty's theoretical

approach is an instructive starting point for this thesis as the analysis that follows tackles head-on the claim that human rights do not, cannot and should not rely on any claim external to itself. I challenge this anti-foundationalist outlook as a point of departure for my overall argument that human rights do indeed inherently rely on underpinning values, claims and assumptions, and that these are arguably metaphysical and ontological in character.

CHAPTER 1
PRAGMATISM AND HUMAN RIGHTS: RICHARD RORTY

'The language of human rights is no more or less characteristic of our species than languages which insist on racial or religious purity'
(Richard Rorty, 1999: 86).

Introduction

As will become evident, this thesis will demonstrate that some theories of human rights rely on some special aspect or attribute of what it means to be human. The argument advanced by many theorists[1] is that it is precisely because humans intrinsically possess traits or qualities (often called 'human nature') that there is an imperative to establish a universal minimum set of circumstances which guarantee conditions conducive to realising (if not optimising) this nature. In addition to needs (such the need for food and shelter), there is also the minimisation of pain and suffering and treating people with dignity. According to this view of human rights, the very fact that people are 'human' demands at least the minimal circumstances commensurate for human beings.[2]

But what happens to theorising human rights when the traditional basis of human rights is challenged? Is it possible to defend human rights without their traditional bases or foundations? If, for example, the idea of 'human nature' is challenged, if metaphysical positions are abjured, if relativism and pragmatism have trumped absolute and normative values, if such foundations have been undermined, and if the traditional edifice which justifies human rights have been dismantled or deemed irrelevant, is it still possible to defend human rights?

[1] Such as Etzioni (2010) and Donnelly (2003).
[2] Different aspects of this example are represented by other theorists analysed in this thesis. For example, Donnelly (2003: 7) argues that human rights are the 'rights that one has because one is human'; Turner's view of social precariousness underpins his assertion that pain and suffering ought to be attenuated through human rights; and Nussbaum makes the explicit claims that governments and nation states should provide constitutional guarantees that basic minimum standards be met.

One philosopher who rebuffed much of traditional foundations for human rights (including human nature) and yet who marshalled a defence of human rights, is Richard Rorty.[3] However, this chapter will focus on the work of American philosopher Richard Rorty (1931-2007). Rorty epitomises the anti-foundational[4] approach and his writings have been popular, influential and controversial.

Rorty has attracted a readership beyond traditional academia and has achieved his goal of contributing to the broader debate (Guignon & Hiley, 2003: 2-3). He wrote on a range of inter-related subjects including the role and methods of philosophy (*Philosophy and the Mirror of Nature*), contrasted scientific and other forms of knowledge ('Science as Solidarity' in *Objectivism, Relativism, and Truth*, 1991), and Western liberal democracy, particularly that in the United States, as the epitome of civilization (for example, *Philosophy and Social Hope*, 1999).

He did not, however, write extensively on human rights; his only dedicated piece on the topic is his 1993 chapter 'Human Rights, Rationality, and Sentimentality' (Rorty, 1993). He also insisted that there are no foundations for human rights as normally understood. This might make Rorty seem a curious choice for a thesis on human rights. Yet he is included because of his formidable influence on philosophy, cultural studies and postmodern theory generally. His work has influenced thought on human rights, liberalism, and importantly, he addressed issues which lay at the heart of debates about human rights and theory. These issues stem from Rorty's rejection of 'truth' as correspondence to, or mirror of, nature. This controversial claim relates to other assertions about the lack of intrinsic nature of *anything* including human nature and human rights. By invoking the ideas of twentieth century pragmatist philosophers such as John Dewey, Rorty developed a powerful philosophy which is compelling in both its critique of traditional philosophy and

[3] There are several theorists who adopt such a position, including Michael Ignatieff (2001); see also Schaefer (2005).
[4] See Fopp (2008: 235-248) for an accessible account of anti-/non-foundationalism and its implications for relativism and cross-cultural dialogue.

in its elegance of prose. This is not to say, however, that the apparent appeal of his work is above critique.

Not surprisingly, Rorty has attracted his share both of defenders who share his post-modern and anti-foundationalist outlook, and detractors who dismiss him for similar reasons.[5] Such critics have variously described Rorty as 'relativist', 'ethnocentric' a 'liberal absolutist', and 'one of the most astute deconstructive critics of our time' (Bernstein, 1983: 197; Linker, 2000; Taylor, 2003b: 158).[6] Critics have attacked him for his reluctance to justify his values and his seemingly paradoxical (if not inconsistent) belief in the superiority of liberal American values (Linker, 2000; Chandhoke, 1998). Nonetheless, in the eyes of both his detractors and supporters, Rorty has had a significant impact on philosophy generally and human rights in particular, as he has been able to raise a number of crucial issues in both areas.

In keeping with the objectives of this thesis, this chapter will aim to examine the prior assumptions and arguments which shape Rorty's perspective on human rights. This will be done by, firstly, analysing Rorty's explicit views on human rights as articulated, primarily, in his 1993 piece 'Human Rights, Rationality, and Sentimentality'. These views are typically provocative and contrary to many of the taken-for-granted assumptions of the public human rights discourse, and, at some levels, appear to be anathema to human rights themselves. However, Rorty's concept of human rights is deeply rooted in 'pragmatic' philosophy which actively and unashamedly promotes Western style democracy, including human rights.

The second part of this chapter will delineate how Rorty's assertions about human rights are situated within a broader philosophical context that covers a range of subject matters that are not directly related to human rights. However, the explication of such philosophy will demonstrate how certain prior presuppositions (including epistemological assumptions) inform debate on a

[5] For recent critiques of Rorty's anti-foundationalism, see Seery (2010) and Schaefer (2005).
[6] For more comments on the influence of Rorty both within philosophy and without, see Guignon & Hiley (2003: 1), Brandom (2000: ix) and Gutting (1999: 7), among others.

given point. Rorty's conception of human rights is inherently based upon these foundations regarding the nature of the world, and how it is perceived by humans; the one cannot be totally divorced from the other.

In this chapter, I will argue that despite his seemingly relativistic stance, Rorty paradoxically argued[7] in favour of Western-style human rights and for the expansion of related institutions such as democracy and liberalism. His rationale for this was based on the view that there is not any intrinsic character (especially no metaphysical character) in either human beings or human rights as he insisted should be advocated by the West. Rather, Rorty's support of human rights is based on his belief in their inherent superiority to other ways of treating people; simply put, Rorty based his preference for human rights on the assertion that they 'work' better than the alternatives. Furthermore, I argue that Rorty's particular views on human rights are informed by, and integrated with, his broader philosophy regarding the nature of the world and how we, as humans, derive meaning from it.

Rorty on Human Rights

The aim of this section of the chapter is to illustrate Rorty's provocative stance on human rights. Without introducing too much of Rorty's broader philosophy at this point, the following intends to reveal his position on human rights, what he believed them to be and how they should work in practice as well as some of his rationale for his position. While some of his arguments may appear to be at odds with the dominant concept of human rights as currently understood in contemporary world politics, Rorty did advocate Western-style human rights (Dunne & Wheeler, 1999: 9). Rorty accepted the dominant view that human beings should be granted the rights stated in various United Nations charters and declarations, and advocated the spread of Western-style human rights around the world.

[7] Given that Rorty passed away in 2007, this chapter refers to his achievements and assertions in the past tense. However, as his work and the debate surrounding his ideas remains, these aspects will be referred to in the present tense.

The central and perhaps most controversial aspect of Rorty's notion of human rights concerns the *character* of rights themselves. From the beginning, Rorty distinguishes his position from traditional 'foundationalism' or the view that human rights have *a priori* foundations which inhere in an essential 'human nature'. When he (1993: 116) made the provocative statement that 'human rights foundationalism is *outmoded*', Rorty positioned himself in opposition to the dominant view on human rights. In doing so, Rorty raised serious doubts about philosophical 'claims to knowledge about the nature of human beings' which defend and support moral claims such as human rights (1993: 116; 117). As will be discussed below argues that Rorty's claim that there is '*no* theoretical foundation for human rights' is supported by his deeper insistence that there is 'no theoretical *foundation* for any belief' (Freeman, 2002: 56).

Rorty justified this claim by asserting that the historical and philosophical quest of foundationalism (as followed by Plato and Kant among many others) has been a failure. This supposedly fruitless enterprise sought to discover the 'special added ingredient' which puts humans 'in a different ontological category than the brutes' and which might act as a foundation for human rights (1993: 115, 117). The inability of philosophers, asserts Rorty (1993: 114, 115), to explain what is 'essential to being human' has lead:

> to the conclusion that there is probably no knowledge of the sort Plato envisaged [of an essential human nature]. Since no useful work seems to be done on insisting on a purportedly ahistorical human nature, there is probably no such nature, or at least nothing in that nature that is relevant to our moral choices.

This rejection of a metaphysical basis for moral choices, and thus human rights, directly challenges, the prevailing idea that:

> membership in our biological species carries with it certain 'rights', a notion which does not seem to make sense unless the biological similarities entail the possession of something, non-biological, something which links our species to a nonhuman reality and thus gives the species moral dignity. This picture of rights as biologically transmitted is so basic to the political discourse of the Western democracies that we are troubled by any suggestion that 'human nature' is not a useful moral concept (Rorty, 1991: 31).

Rorty's stance here seemingly contradicts the popular view (espoused by Donnelly[8] among others) that human rights exist because humans universally possess a special quality which justifies being treated in a special way, or in accordance with minimally accepted standards.

It is not that Rorty refuted the existence of human rights in themselves or of their virtue and usefulness in global politics; as he (1993: 116) says, '…the question whether human beings really have the rights enumerated in the Helsinki Declaration is not worth raising'. Humans do have such rights. Rather, Rorty denied the existence of any underlying principles or metaphysical sources that should give justification to human rights. In short, Rorty insisted that human rights have no foundations. Rorty made this contentious and controversial point on numerous occasions, as for example: 'to say that certain people have certain rights is merely to say that we should treat them in certain ways. It is not to give a *reason* for treating them in those ways' (1985: 114). However, I argue that embedded within talk about human rights, there are *always* reasons and justifications for treating people in certain ways, even if these reasons are implicit, tacit or taken-for-granted.

Elsewhere, Rorty (1993: 116) asserted that the 'human rights culture … is morally superior, but I do not think this superiority counts in favour of the existence of a universal human nature'. Rorty's anti-foundational claims regarding human rights are thus framed in terms of epistemology – how and what we know – and ontology – concerning the perceived nature of the reality in question. That is, Rorty seems to emphasise that human rights are shaped by knowledge claims about the character of human being (epistemology), the values placed on human life or human nature, and from where this value is presumed to be derived (ontology). For Rorty, such knowledge either does not exist or is too obscure to be useful; furthermore, Rorty insists that there is no external reality that we can know.

[8] See for example, Donnelly (1999a: 80).

Human rights as a historical fact

Stemming from Rorty's rejection of a universal human nature is his assertion that human rights are the result of the 'extraordinary malleability' of humans (1993: 115). Rorty argued that, rather than being the expression of a supposedly metaphysically derived human essence, human rights as we know them today are a product of history which has shaped human civilisation in numerous ways. 'One of the shapes we have recently assumed', Rorty (1993: 115) asserted, 'is that of a human rights culture'. The realisation of human rights as historically *contingent*[9] is informed by developments in philosophical thought over the past century which, for Rorty, has included:

> a growing willingness to neglect the question 'What is our nature?' and to substitute the question 'What can we make of ourselves?' We are much less inclined than our ancestors were to take 'theories of human nature' seriously, much less inclined to take ontology or history as a guide to life. We have come to see that the only lesson either of history or anthropology is our extraordinary malleability (Rorty, 1993: 115).

In Rorty's view, the justification for human rights does not lie in 'human nature' but rather in treating people in a manner that can improve their lives through respect and dignity. Put differently, human rights should be considered good because they are a 'fact of the world' which has had positive effects on many people; no further justification is required: 'It is enough for us to know that we live in an age in which human beings can make things much better for ourselves'. For Rorty, we do not need to dig behind this 'historical fact to nonhistorical facts about what we really are' (1993: 121).[10]

Sentimental stories

As Rorty denied the existence of a universal human nature, he therefore argued that there could be no recourse to this shared human essence to justify human rights. Instead, he contended that the most effective way to

[9] The historical contingency of human rights is a central point acknowledged by most, if not all theorists, including Jack Donnelly and Charles Taylor.

[10] Rorty's words here reveal underlying assumptions of at least two varieties. Firstly, that he believed that the apparent benefits of human rights is sufficient rationalisation is itself a justification of rights based on normative claims about those perceived benefits. Secondly, it appears that Rorty was implicitly invoking a philosophical anthropology of the sort that he outwardly eschewed. I will address this second point later in the chapter.

persuade violators of human rights to see the error of their ways is through sympathy and telling sentimental stories (Rorty, 1993: 112; Freeman, 2002: 56). There are several dimensions to this aspect of Rorty's work. Firstly, using the example of Serbian genocide of Muslims in Bosnia in the early 1990s, Rorty illustrates how abusers of human rights conceive of those they harm. In this view, Serbs did not think of themselves as violating human rights as they 'were not doing these things to fellow human beings, but to *Muslims*' (1993: 112). For Serbs, the rape, torture and murder of Muslims were acts which discriminated 'between the true humans and pseudohumans' and they saw themselves as 'acting in the interests of true humanity by purifying the world of pseudohumanity' (Rorty, 1993: 112; Booth, 1999: 63).[11]

For Rorty (1993: 125) it is not possible to 'get whites to be nicer to Blacks, males to females, Serbs to Muslims, or straights to gays' by exclaiming 'notice that what you have in common, your humanity, is more important than these trivial differences'. This is because on Rorty's view a common humanity is *not* evident to those committing human rights violations.[12] Rather, according to Rorty, they would be morally offended by the suggestion that those they regard as sub-human and unequal should be regarded as human and equal. Moreover, Rorty posited that most people do not identify themselves primarily as 'human' *per se* but rather as 'a certain *good* sort of human being' (1993: 126) who is *not* another sort of human. Thus, in Rorty's view, emphasising that every person shares a common humanity would do little to achieve compliance with human rights norms among those who refute the 'human' status of others.

Following on from this point is a second dimension to Rorty's work. Given his rejection of a transcultural human nature, Rorty asserted that human rights violations may be stopped through the telling of sentimental stories. For Rorty

[11] The argument can be applied to other human rights violations around the world, For example, some human rights abuses, such as 'female genital mutilation' (see Dembour, 2001) of young African girls could be said to act to make the victims more complete or true humans by that society's standards rather than to rid the world of pseudohumanity. See chapter 2 for amplification of this dichotomy.

[12] This view is different from Rorty's thesis that there is no common humanity whatsoever. In the other instance, humanity exists but is only possessed by certain people and not by others.

it is not that people who are alleged to have violated others' human rights act irrationally and are 'deprived of truth, or moral knowledge' (Rorty, 1993: 128; see also, Brown, 1999: 119-120). They are falsely presumed to be ignorant of the underlying humanity which all humans have in common and the moral claim that certain rights are universal. Rather, Rorty made the contrasting claim that that 'the human rights culture seems to owe nothing to increased moral knowledge, and everything to hearing *sad and sentimental stories'* (1993: 118-119, emphasis added).[13] Put differently, Rorty argued that the emergence of human rights does not stem from knowledge of an essential human nature, but rather the spread of stories and narratives which attempt to evoke sentiment and sympathy for victims of human rights abuses.

In contrast to the universalism espoused by advocates of an intrinsic humanity, Rorty (1993: 133) suggested that we continue to tell sad, sentimental stories which might begin with 'Because this is what it is like to be in her situation – to be far from home, among strangers', or 'Because she might become your daughter-in-law', or 'Because her mother would grieve for her'. Such stories perform two functions in Rorty's scheme of human rights: Firstly, historically, the telling of such stories has widened the scope of 'permissible human variation' by fostering tolerance and understanding of the powerless and marginalised and among the powerful, rich and safe (1993: 133-134).

Secondly, Rorty viewed these sentimental stories as part of what he termed 'sentimental education' to entice violators of human rights to respect their victims and cease their harmful practices. The 'sentimental' part of the equation has been outlined above, but the 'education' element arises from the way Rorty conceived of 'bad people' (violators of human rights). He contrasts these 'bad people' with those from the relatively safe, rich, democratic West. The latter group, Rorty asserted, have been socialised in the tradition of respecting other-ness and diversity in the manner described in the previous paragraph. However, the problem with 'bad people's is that they were not so

[13] Which of course begs the question, what is meant by 'sad and sentimental'? Sad for who? Whose sentiment?

lucky in the circumstances of their upbringing as we [from the West] were. Instead of treating them as irrational … we should treat them as *deprived'* (1993: 128, emphasis added).[14] That is, in Rorty's view, they should be seen as deprived of both the experience of living in the West, and a sentimental (or sympathetic) view point. Invoking sympathy does not conceive 'others' as offensive or not sharing a universal human nature, but as people with whom we might identify, people whose feelings, experiences and relationships are not so very different from our own. In Rorty's (1993: 129) words, these:

> relevant similarities are not a matter of sharing a true deep self which instantiates true humanity, but are such little, superficial, similarities as cherishing our parents and children – similarities that do not interestingly distinguish us from many nonhuman animals.[15]

So for Rorty, human rights are experiential and practical rather than being derived from metaphysics, theology or a universal human ontology. Yet embedded in Rorty's view here is a belief that human rights should be endorsed and shared throughout the world. My point here begins to illustrate that although Rorty proclaims to be 'anti-foundationalist', he did indeed rely upon foundations which, although not openly disclosed, reside in his human rights stance. For example the quote cited here relies upon an intuitive, commonsense, and thus taken-for-granted, notion of the human condition, which is arguably metaphysical in character.

Rather than attempting to persuade the 'bad people' to see a common humanity in those whose human rights they abuse, Rorty (1993: 122-123) asserts that it is 'more efficient' to:

> concentrate our energies on manipulating sentiments, on sentimental education. This sort of education sufficiently acquaints people of different kinds with one another so that they are less tempted to think of those different from themselves as only quasi-

[14] Here Rorty's framework positions those with varying cultural norms in terms of a deficit. That is, they are represented as lacking the desired and normative moral stance endorsed by Rorty. This point also begins to flag that Rorty's position does indeed rely upon a vision of what it means to be human rather than being purely pragmatic or utilitarian.

[15] However, in identifying these 'relevant similarities', Rorty arguably asserted a human commonality, which, although not derived from metaphysical beliefs, nonetheless forms a part of his arguments.

> human. The goal of this *manipulation of sentiment* is to expand the reference of the terms 'our kind of people' and 'people like us' [emphasis added].

Rorty argued (1993: 134) that it has 'become much easier for us to be moved to action by sad and sentimental stories' rather than through increased understanding, rationality and morality. Further, he (Rorty 1993: 117) saw it as more desirable to spread the human rights culture as it is known – by making it more self-conscious and powerful – rather than 'demonstrating its superiority to other cultures by an appeal to something transcultural'. However, Rorty's goal of manipulating sentiment can, arguably, be used to advance other less edifying ways of treating people (such as in a manner which might be regarded as violating human rights). As Langlois (2004: 258) has noted:

> The history of the 20th century suggests that many people have found the blood and glory stories of fascism and nationalism (for example) more alluring than the pastoral tale of a human rights culture. Rorty's approach offers us no resources with which we might condemn that tale, other than casting around for a more theatrical recital.

I take up criticism of Rorty's sentimental stories later in this chapter. The irony is that, notwithstanding his criticism of universal and foundational values which might be used to defend human rights, Rorty did invoke particular cultural and political values – as well as an apparent philosophical anthropology – to defend his preferred notion of human rights and use them to undermine and marginalise other values and perspectives. Rorty's approach to sentimental stories begs many questions, including how might the stories appeal to people if not through some sense of what constitutes a shared humanity? If sad, sentimental stories are told to defend a humane way of treating others (and ultimately to ease suffering), is there the normative assumption that humans should not have to suffer? But on what grounds would Rorty criticise suffering? Why should it be avoided? In other words, there is an unstated philosophical anthropology (that in turn has a metaphysical base) that lies behind telling stories. Telling sentimental stories appeals implicitly to a preferred way of living and to a respect for other human

beings. Yet these underpinning values are elided by Rorty. There is more to his approach here than merely saying that 'we should treat [people] in certain ways' (1985: 114). Underlying it and notwithstanding his demurral, Rorty does seem to argue that there exist deeply-held, taken-for-granted values that do indeed suggest, contrary to his own arguments, that humans are in 'possession of something, non-biological … and thus gives the species moral dignity' (Rorty, 1985: 13).

The chapter thus far has been dedicated to illustrating Rorty's view on human rights. Although complex, several main elements can be drawn from his arguments: firstly, and perhaps most idiosyncratically, human rights are not considered to be grounded in a universal human nature; particularly they do not have foundations in the metaphysical. Secondly, following from the first point, for Rorty human rights exist only as an 'historical fact'. That is to say, the human rights culture as understood in Western countries today has emerged from a series of political and historical occurrences. These rights, according to Rorty (1993: 134), are a 'fact of the world' – indicative of his 'pragmatic' moniker – one of many which define contemporary times. Thirdly, the way in which 'we' in the West should persuade others of the virtues of human rights is not though appeals to 'human nature', but rather through 'sentimental education'. Fourth, such education will result in the widening of the 'we' by bringing specific values – and their underlying assumptions – to other parts of the world. Rorty's intentions here deserve credit as one of his driving aims is to improve the lives of people through the world via democracy and human rights. However, it is Rorty's implicit attempt to foist Western liberal views on others in the process which undermines his approach.

Rorty's philosophy and foundations

Having illustrated Rorty's view on human rights, it is timely to turn towards the underlying values and foundations which inform such a view. In my analysis, it is necessary to a) identify Rorty's prior assumptions (including epistemological assumptions) and b) also ask if such assumptions provide a foundation for his outlook on human rights. Undoubtedly, Rorty's assertion that there is no intrinsic human nature from which to derive human rights is an

epistemological and ontological claim that parallels his broader philosophical outlook. This link has several threads to it which are separated in the following sections.

The same observations could be made of other aspects of Rorty's view of human rights, such as the preference for telling sentimental stories. The various facets of the Rortian human rights perspective can be said to have corresponding foundations which give the controversial aspects of the view more coherence and explanatory power. The following attempts to link the different strands of Rorty's human rights thesis to aspects of his general philosophy. While this approach runs the risk of repetition, it is necessary to provide both context for Rorty's claims and to illustrate the influence of his foundations on his theory of human rights.

Rejecting the 'truth as correspondence to reality' theory

One of the key aspects of Rorty's work has been the rejection of a central tenant of philosophy and social theory, namely the idea that philosophy can accurately reflect reality.[16] Here we see an epistemological dimension to Rorty's work that also has implications for ontology. In *Philosophy and the Mirror of Nature* (1978: 3) Rorty stated that traditional philosophy's:

> central concern is to be a general theory of representation, a theory which will divide culture up into the areas which represent reality well, those which represent it less well, and those which do not represent it at all (despite their pretense of doing so).

Rorty (for example, 1985: 5) labels this the 'truth as correspondence to reality' theory. The idea that philosophers should aim to develop theories which accurately reflect an external, objective and independent 'nature' has dominated thinking since the time of the ancient Greeks, particularly Plato who attempted to 'get behind appearance to the intrinsic nature of reality' (Rorty, 1999: 49). The purpose of such an approach is to accurately 'mirror' what is 'out there' in a fashion which is relatively unmediated by social norms, values or language in order to achieve a universal 'truth' or at least to become

[16] See also Baert (2004: 356).

closer to the 'intrinsic nature of things'. According to Guignon and Hiley (2003: 7), this approach amounts to a 'traditional epistemology' of 'representationalism', the view that the task of philosophers is 'to make sure [their] beliefs represent reality as it is in itself.' This framework has dominated the epistemology of most disciplines ranging from the physical sciences to philosophy. Guignon and Hiley continue:

> Epistemology-centred philosophy assumes that our primary goal as philosophers is to find a set of representations that are known in such a way as to be beyond the pale of doubt (2003: 8).

Rorty not only questioned this correspondence theory but rejected it altogether (see Guignon & Hiley, 2003: 2). In doing so, he raised fundamental questions about the nature of 'truth' as understood by 'foundationalists' and Western epistemology more generally. Rorty asserted that the 'truth as correspondence' approach to philosophy is undesirable and outdated. Philosophy does not mirror nature, he argued. There is no such nature to mirror. The statement that person X knows fact Y should be taken to tell more about X than the relationship between X and Y, to say more about the relationship 'between subject and object, between nature and its mirror' (Rorty, 1978: 175).[17]

Instead of truth being a reflection of the universe, Rorty posited an alternative theory. He (1982: xiii) made the somewhat perverse statement that the pragmatist theory of truth 'says that truth is not the sort of thing one should expect to have a philosophically interesting theory about'. In such a view, 'truth' is 'just the name of a property which all true statements share'. Beyond this characteristic, no common feature may be attributed to true statements. Similarly, 'morally praiseworthy acts' do not have anything in common. According to Rorty (1982: xiii), pragmatists:

> see certain acts as good ones to perform, under the circumstances, but doubt that there is anything general and useful to say about what makes them good. The assertion of a given sentence – or the

[17] Hilary Putnam (2000: 81) notes that Rorty did not deny the existence of an external reality or of the possibility of unmediated access to that reality. Rather, he rejected the notion that the vocabularies of language and science 'mirror' nature. See also Plant (2001: 96).

> adoption of a disposition to assert the sentence, the conscious acquisition of a belief – is a justifiable, praiseworthy act in certain circumstances. But, *a fortiori*, it is not likely that there is something general and useful to be said about what makes such actions good – about the common feature of all the sentences one should acquire a disposition to assert.

It follows for Rorty, therefore, that universal truths and truth claims are neither desirable nor possible and are, thus, epistemologically invalid.

As argued above about human rights, Rorty (1982: xiv) regarded the 'history of attempts to isolate the True or the Good, or to define the word "true" or "good"' as supporting the pragmatist 'suspicion that there is no interesting work to be done in this area'. Rather than continue to answer such Platonic issues in new terms, Rorty (1982: xiv) asserts that philosophy should not ask such questions anymore. By this he meant that pragmatists do not:

> invoke a theory about the nature of reality or knowledge or man which says that 'there is no such thing' as Truth or Goodness. Nor do they have a 'relativistic' or 'subjectivist' theory of Truth or Goodness. They would simply like to change the subject (1982: xiv).[18]

Thus for Rorty, investigating the intrinsic nature of things is not only futile but beside the point. The only relevant feature of 'true' sentences or 'good' acts is how the truth or goodness functions within the context within which it is used.

In the Rortian scheme, the 'truth' human rights or otherwise of human rights is irrelevant; there is no intrinsic value of human rights. What matters is that human rights are 'good' and lead to treating people ways that can be described as 'good'. Of course, what is 'good' can vary widely depending on one's perspective; it might be 'good' to subjugate women, or to kill those of a certain ethic origin. For Rorty, what is 'good' aligns with American liberal values, and they can be labelled as such by comparing them in *relation* to the

[18] Rorty's words here reflect Williams' (2003: 62) claim that Rorty positioned himself as 'the sort of philosopher who thinks that our canonical "problems of philosophy" are to be set aside rather than solved theoretically'.

alternatives. Yet Rorty's sense of 'good' remains uninterrogated and is not defended by his own theory.

Pan-relationalism

As noted above, Rorty's disinterest in addressing 'truth' or 'reality' led him to ask rather different questions of the world around us. One aspect of this is Rorty's concern with (1999) the concept he labelled 'pan-relationalism'. Put simply, this concept asserts that nothing, be it a chair, a number, or human rights, has any intrinsic nature, but can only be defined in *relation* to other things. Rorty (1999: 50) argued the distinction between the *intrinsic* and *extrinsic* nature of things, 'between the inner core of X and a peripheral area of X which is constituted by the fact that X stands in certain relations to other items which make up the universe'. Rorty's argument is that we can only *ever know* the extrinsic or relational nature of X:

> For pragmatists, there is no such thing as a nonrelational feature of X, any more than there is such a thing as the intrinsic nature, the essence, of X. So there can be no such thing as a description which matches the way X really is, apart from its relation to human needs or consciousness or language. Once the distinction between intrinsic and extrinsic goes, so does the distinction between reality and appearance, and so do worries about whether there are barriers between us and the world (1999: 50).

Numbers are ideal to demonstrate this point, (Rorty, 1999: 52) because, 'it is very hard to think of them as having intrinsic natures'. The number 17 for example (or any other number) has no essence other than its relationship with other numbers (such as 'the sum of 6 and 11, the square root of 289, the square of 4.123105'; Rorty, 1999: 53). These relations fail to get at the essence of the number 17, 'the unique feature which makes it the very number that it is' (Rorty, 1999: 53). For Rorty, this 'unique feature' cannot be found as it does not exist.

Rorty (1999: 53) extended this argument by applying it to other 'things' in the universe: to 'tables, stars, electrons, human beings, academic disciplines, social institutions'. Indeed:

> there is nothing to be known about them except an initially large, and forever expandable, web of relations to other objects. Everything that can serve as the term of a relation can be dissolved into another set of relations, and so on for ever. There are, so to speak, relations all the way down, all the way up, and all the way out in every direction: you never reach something which is not just one more nexus of relations (1999: 53-54).

On Rorty's account, it follows that there is no true nature of anything, only what can be said of it in language about its relationship with other things: 'There is nothing to be known about an object except what sentences are true of it' (1999: 55).[19] Language does not distort and mediate our understanding of 'reality'. Rather asserts Rorty (1999: 50), language 'is an exchange of marks and noises, carried out in order to achieve certain purposes. It cannot fail', he continues, 'to represent accurately, for it never represents at all'. The implication of Rorty's assertion here is that there cannot be any foundations upon which any concept or standard can rest because concepts and standards are merely relational. Once again, the ontological and epistemological qualities of Rorty's stance are evident. Claims such as those detailed above make bold declarations about the nature of reality and humans' ability to know it; they are rife in Rortian philosophy and are key to the resultant theory of human rights – a theory which is built on the argument that there is no universal human nature on which it could be based. Without such external nature with which they can correspond, human rights should, in Rorty's view, only be considered in relation to other, alternative ways of treating people.

Utility

The preceding discussion now presents this question: if nothing has an identifiable essence, if we only know objects through the language used to describe it in relation to other things, how do we arbitrate between competing descriptions of a given 'thing'? That is, how do we decide which descriptions are valid and which to discount? For Rorty, the notion of a description as

[19] This is an ambiguous and inconsistent claim; if there is no such thing as truth (or no external corresponding truth), then how can there be sentences that 'are true of it', as Rorty insisted? Could it be that what Rorty considered to be 'true' of a given thing corresponded with his own political and cultural values?

accurately representing the object to which it refers, or its 'truth' is irrelevant. Rorty's answer to the above question is that *utility* is the yardstick by which we measure competing explanations, theories or descriptions. The value of a description, that which makes it 'better' than its competitors, is its use as a tool to 'accomplish some human purpose' (1999: 54). This applies equally to common everyday objects such as chairs and tables as it does to highly detailed scientific theories and democracy and human rights. Such methods of understanding should be assessed by their ability to provide 'tools for coping' with the world. Rorty (1999: 65) argued that the:

> relation of tools to what they manipulate is simply a matter of utility for a particular purpose, not of 'correspondence'. A stomach pump is no closer to human nature than a stethoscope, and a voltage tester is no closer to the essence of an electrical device than a screw driver.

Similarly, Rorty argued that branches of science which may appear to be solely concerned with the intrinsic nature of the world – such as particle physics – should *only* be assessed on the utility of the knowledge they provide rather than any absolute truth that might ensue from scientific activity:

> Descriptions of objects in terms of elementary particles are useful in many ways – as many ways as particle physics can contribute to either technological advances or imaginative, astrophysical, redescriptions of the universe as a whole. But that sort of utility is their *only* virtue (Rorty, 1999: 59).

Any other generalisable notion of 'truth' which particle physics attempts to provide 'is an example of a kind of truth which pragmatism does not recognise' (Rorty, 1999: 59).

The utility principle applies equally to human rights. It is enough for Rorty to know that the development and spread of the human rights culture in recent decades has arguably protected the vulnerable from the powerful and improved the lives of many. It is not necessary, according to Rorty, to dig beneath this historical fact to unveil a universal, trans-cultural human nature. In a nut shell, the human rights culture is seen as a desirable political framework that works in practice. Rorty was *pragmatic* in that human rights

are ‘here, now’ and are able to improve the lives of many. The Rortian thesis contends that human rights have utility as they are a useful mechanism for coping with the world; no further explanation is required or desirable. However, this is an argument that warrants greater amplification by way of more direct reference to Rorty’s work on human rights and democracy.

The next section will elaborate further on the points made above to demonstrate how Rorty’s general philosophy – with its implicit epistemological, ontological and metaphysical assumptions – forms the basis, or foundation of his theory of human rights. The following also begins to provide greater analysis of Rorty’s position as it calls into question the ends that are pursued with these tools. If the only measure of worth of tools is their utility, then does it matter what the broader purposes of the tools are? Weapons are very effective in killing people and are useful to for attaining military objectives; does this make missiles and machine guns as useful and valuable as human rights? Rorty would deny this; but by asking this question Rorty’s political commitments and values start to become apparent and indicate that he did apply criteria other than utility to human rights. These points will become apparent later in this chapter.

Pragmatism, democracy and human rights

The concept of *utility* as a yardstick for explanations of the world extends to Rorty’s belief in human rights, democracy and similar institutions. As illustrated above, Rorty argues that human rights are a ‘fact of the world’ made possible by the ‘malleability of humans’ rather than through any metaphysical human essence. There are at least two elements at work in this assertion. Firstly, there is Rorty’s view (1991: 213) that ‘our species has…been making up a nature for itself’. It has not followed any pre-ordained path, *telos*; nor has it moved towards a goal which might be the expression of an essential, inherent or innate true humanity. Humanity, in Rorty’s view, writes its own stories through historical accidents which have lead to present

circumstances.[20] To reiterate, there is no human nature that is guided by a universal human essence; there is no external metaphysical source that makes humans what they are.

The second facet to Rorty's argument is that the process of humans making their own nature has resulted in the current set of values and institutions in the West which Rorty considers superior to other views. He writes (1991: 213) that '[l]ately our species has been making a particularly good nature for itself – that produced by the institutions of the liberal West'. Such institutions are a 'fact of the world' to be assessed on their utility. For Rorty these 'facts' are worthy because they are better than the alternatives. His (1991: 211) endorsement of 'parliamentary democracy and the welfare state' is defended:

> only on the basis of invidious comparisons with suggested concrete alternatives, not on the basis of claims that these institutions are truer to human nature, or more rational, or in better accord with the universal moral law, than feudalism or totalitarianism.

Again, the virtue of these institutions is based on their effectiveness in providing wealth, prosperity and dignity to the lives of many, rather than through any connection to what Rorty regards as a metaphysical view of what it means to be human. Put differently, they are 'shining historical examples not because they reflect rays from a higher source, but because of contrast-effects – comparisons with other, worse communities' (Rorty, 1991: 200).[21] As Raymond Plant (2001: 224) has noted, for Rorty, 'societies are based upon common self-understandings and a lively sense of their own ethos, not upon some abstract universal principles'.

Further, the nature of the liberal West is not defined for Rorty in terms of an expression (or otherwise) of true humanity but by its *relation* to other political

[20] Of course there have been many other, less savoury 'accidents' of history such as the Nazi's treatment of the Jews, Soviet Russia's gulags and the Tiananmen square massacre. It is unlikely that Rorty endorsed these events; however his praise of the 'accident' of human rights points to his underlying values and preferences (namely American liberal democracy) rather than justifies his argument that rights ought to be supported because they have evolved out of human history and experience.

[21] Despite the intuitive logic to Rorty's claims here, his ideas beg important questions: what standards could be used for comparison (and inevitably evaluation)? How might the view that some communities are 'worse' than others be defended?

norms and institutions. The above quote emphasises 'comparisons with concrete alternatives' as a basis for deciding the superiority of the West. In terms of Rorty's pan-relationalism, liberal democracy, human rights and the like are not good in and of themselves; they do not have any intrinsic nature which categorically asserts them as good or as a true reflection of an essential human nature. Rather, for Rorty, the liberal West has virtue *in relation* to alternative political forms such as totalitarianism, communism or anarchy.[22] Such alternatives have, generally, less value in terms of their *utility* and in their ability to cope with the world. More specifically, they are, in Rorty's eyes, less able to produce the conditions for human flourishing (tolerance of difference, respect for others). However, the question of *why* they are deemed to have greater or lesser utility is not clearly addressed by Rorty. Arguably, his judgements on the abilities of different tools to cope with the world depend upon *a priori* belief in Western (read: American) liberal values that attribute value to certain tools (including human rights) but not to others.

Utopian fantasy, ethnocentrism and the extension of the 'we'

As part of his pursuit of liberal ideals, Rorty espoused a form of *ethnocentrism.* Given Rorty's anti-foundationalism, this term might seem an odd stance to take. Rorty used the term 'anti-anti-ethnocentrism' to refer to an intolerance of certain values, actions and political systems which he regards as illiberal, undemocratic and inimical to human rights. Such a view is contrasted with 'wet' liberal thinking – or relativism – which implicitly places equal value on all things. For Rorty (1991: 203), this perspective suggests that 'Western liberal democracy is somehow "on a par" with that of the Vandals'. The effect is that 'we [bourgeois liberals] lose any capacity for moral indignation' at non-liberal values because 'we have become so open-minded that our brains fall out' (Rorty, 1991: 203). By contrast, Rorty's suggestion is normative: we in the liberal West should feel pride in the achievements of liberal democracy and its institutions and defend them in the face of intolerance and ethnocentrism.

[22] I address some of the problematics of this contention more directly later in the chapter.

Further, Rorty argues that it is the responsibility of the liberal democratic state to constantly enlarge its capacity for inclusion, tolerance and liberty – to 'add more windows' and enlarge its sympathies. This is the essence of Rorty's conception of the expansion of the 'we' – 'we' should spread liberal values so that there can be more people like 'us' who value diversity, liberal democracy and the like, and who can benefit from the advantages of Western societies (such as advances in medical science and telecommunications as well as institutions such as the welfare state). This is done on two levels: firstly to include the excluded and marginalised in Western societies (including but not limited to racial minorities); and secondly, to export liberal ideals to other nations whose lack of respect for human equality has lead to abuses of human rights.

Specifically, it is terms 'connoisseurs of tolerance' and 'agents of love' who are 'expected and empowered to extend the range of society's imagination, thereby opening the doors of procedural justice to people on whom they had been closed' (Rorty, 1991: 206). These connoisseurs include 'historians, novelists, ethnographers, and muckraking journalists' (Rorty, 1991: 207) who are able to tell stories about the marginalised and gradually include them into the 'we'. Such stories – or edifying narratives (Rorty, 1991: 212) – do not aim to produce general rules for resolving issues, but to deal in particularity, on a case-by-case basis. That is, by telling stories which deal in the specificity of cultural conflict and diversity, we in the liberal West are able to 'expand our moral imagination' to include the previously excluded (Rorty, 1991: 207). He writes (1991: 207) that the:

> formulation of general moral principles has been less useful to the development of liberal institutions than has the gradual expansion of the imagination of those in power, their gradual willingness to use the term 'we' to include more and more different sorts of people.

This approach has obvious implications for the conception of human rights. Rather than by formulating a set of general rules by which to treat others – rules which have origins in a notion of universal human nature, and which may

be considered a 'meta-narrative' – Rorty asserts that we should include others on a case by case basis. Such a method includes hearing the particular and specific narratives of marginalised or violated peoples. In terms more particular to Rorty's conception of human rights, it is through sentimental stories that we learn of such people and gradually include them in the 'we'. But this argument says nothing about *why* we should include them; whether sentimental stories work as a basis for colonising the world with Rorty's view of human rights; whether the West's view of human rights are better (consider the plight of Indigenous nations all over the world); or whether Rorty's views are no more than assertions or posits of his subjective preferences which he then has the temerity to claim are better and should be invoked elsewhere. This begs the question: How is this different from a dictator who insists the world should conform to their ideals? Arguably Rorty's stance *is* different to that of a dictator, but not because of how he justified himself. Rather, the (latent) values that inhere in Rorty's work define him as an advocate of democracy, liberalism and human rights.

The underlying claims that inform Rorty's view of human rights

In the context of the above analysis of Rorty's views, the task now is to explore the links made between the various strands of his human rights thesis and his more general philosophy. The aim of this section, then, is to explicitly forge the links between Rorty's human rights theory and the foundational claims which inform it.

The most obvious connection between foundations and human rights theory is Rorty's rejection of the 'truth as correspondence' theory. This claim has several dimensions and is the starting point for Rorty's view of human rights. The first issue is that, for Rorty, there is no metaphysical foundation or justification for any of the phenomena we humans experience and understand. There is nothing outside of our own experience, nothing transcendental, universal or non-human which gives either meaning or purpose to the world, including what Rorty (1993: 114) called 'a purportedly ahistorical human nature'. Rorty believed that philosophical attempts to access any such nature (or indeed any knowledge of 'reality') have yielded

either no such knowledge or at least nothing relevant 'to our moral choices' (Rorty, 1993: 115). The effect of Rorty's theory of human rights is that he denied the existence of a human nature to provide a moral justification of those rights. In other words, human rights are not the expression or protection of an essential humanness which we all share. Rather, human rights are seen as merely a human invention, or tool, that has improved the lot of many but which requires no further justification.

A second element is what Rorty has called 'panrelationalism'. This term refers to the 'antiessentialist' idea that there is no knowable intrinsic nature of things. We can only ever know what a given object (or theory or idea) is in relation to other objects (or theories or ideas). As I illustrated earlier, Rorty argued this point by showing that numbers only have meaning in relation to other numbers and do not, in themselves, possess an intrinsic character distinguishable from that of other numbers. From this point, Rorty (1999: 52) insisted that it 'does not pay to be an essentialist about numbers…or anything else'. This corresponds to Rorty's view that human rights do not possess an essential nature which expresses true humanity.

Rather, for Rorty, the human rights culture is a social construction, a fortuitous accident of history which is one of many forms contemporary humans have recently assumed. We can only know and value human rights by its extrinsic characteristics: for Rorty these include the 1) ability of human rights to improve the lives of thousands regardless of ethnicity or origin, and 2) the obvious virtues of human rights (and their associated institutions such as liberal democracy) in relation and in contrast to the alternatives. For Rorty (1999: 86), '[t]he language of human rights is no more or less characteristic of our species than languages which insist on racial or religious purity' yet it is valued 'on the basis of invidious comparisons with suggested concrete alternatives' (Rorty, 1991: 211).

This leads into a third basis of Rorty's work, which is related to *utility*. Rorty made it clear that he did not believe that theories about the world can ever represent reality. He argued that these theories (such as those derived from

particle physics) should not be evaluated in terms of their correspondence with reality, but in terms of their ability to cope with and manipulate the world. In other words, *utility* becomes the sole criterion by which to measure a view about the world. Technological developments, for example, which make life easier (such as medical treatments, lifestyle products like home entertainment systems) are not more in touch with reality, but are useful tools to cope with the world. They are not compared with other, less successful (or older) technologies on grounds that they are closer to the essential workings of the universe, or a more true expression of humanity, but rather on their ability to improve the lives of people.

This general point was applied by Rorty to a more specific political enterprise (namely Western-style liberal democracy) which includes a stated preference for human rights. Liberalism and human rights are not, on Rorty's account, closer to the true essence of the human spirit, as no such spirit exists. Rather, they are preferred methods of dealing with people because they are more adept at fostering tolerance, equality and prosperity, particularly when compared with alternative political systems (such as totalitarianism). Put differently, in the Rortian pragmatist view, treating people in certain ways – as specified by the human rights culture – is a more useful method for coping with diversity than the alternatives. It is not, to repeat the point, a justification of human rights in terms of the metaphysical. But again, Rorty does not say why tolerance and its related values are preferable to their alternatives.

Another underlying dimension of Rorty's work relates to the language and vocabularies used to describe human rights. In keeping with his postmodernist rejection of 'truth', Rorty argues that we should avoid using metanarratives to describe the world. That is, we should abandon language which purports to be universal and general to articulate social phenomena. In their place, Rorty argued that we should use 'edifying first order narratives' which are particular and self-consciously contingent upon their social and historical contexts. This broader claim about the nature of language influences Rorty's view on how human rights should be spread. As illustrated earlier in this chapter, Rorty argued that it is not only futile, but philosophically

uninteresting to try to appeal to a shared human nature when persuading violators of human rights to change their ways.

Such an appeal to universalism counts as a metanarrative which attempts to encompass a transcultural view of humanity. Rather, it is through the telling of *sentimental stories* that Rorty hopes to spread the human rights culture. Such stories can be classed as 'edifying first order narratives' which Rorty advocates. Without the prior view which refutes the relevance of metanarratives and valorises the efficacy of local, specific and contingent stories, Rorty's notion of sentimental education would not be as it is. It is from this postmodernist rejection of universalism and preference for specificity that Rorty's unorthodox method of expanding the human rights culture originates. The *a priori* and more general foundational claim about the nature of discourse leads into the particular methodology for enlarging the scope of human rights (sentimental education).

On a more general level, Rorty's preference for a human rights culture rather than the alternatives originates in his own deeply held political views. Many critics argue (see Chandhoke, 1998) that Rorty is unwilling or unable to defend his preference for American-style liberal democracy. Indeed, throughout Rorty's works the superiority of such a political system is either implicitly or explicitly assumed. But far from denying this influence, Rorty labels himself ethnocentric (or 'anti-anti-ethnocentric') in his intolerance of people and cultures which perpetuate intolerance, inequality and related characteristics. The extent of Rorty's preference for his own country's political system has lead critics to label him a 'liberal absolutist' (Linker, 2000).

Such prior assumptions about the superiority of Western liberalism and human rights led to Rorty's view that the rest of the world should be included in it. Furthermore, in invoking the concept of sentimental education, Rorty makes pejorative assumptions about the non-West. For example, he (1993: 128) argued that 'we' in the West should treat the 'bad people' as 'deprived' of the advantages of liberal democracy such as tolerance, sympathy and non-violent resolutions to conflicts. This has led Chandhoke (1998: 39) to angrily

decry Rorty as implying that 'the rest of us poor "third worlders" are fundamentalists at the best, and ethnic cleansers at the worst'.

Yet for Rorty, it is necessary to use the United States, liberalism, democracy and human rights as reference points by which to evaluate the rest of the world, so that the world can continue to improve.[23] On this account, a form of ethnocentrism or value judgement is required to raise the bar of human civilisation and not tolerate human rights violations, brutal dictatorships or glaring poverty throughout the world. Without the assumption of Western superiority, Rorty's concept of the expansion of the 'we' and sentimental education would not be as they are. This degree of arrogance is required to achieve a more humane world. While Rorty clearly endorsed this approach, it is not clear that acting in such a way will ultimately aid the human rights cause. It is also arguably indicative of the kinds of controversies that characterise human rights discourse.

Far from overcoming the cross-cultural divide, the Rortian thesis has the potential to achieve the opposite. As the above paragraphs imply, Rorty's views, can be seen as one more example of the powerful West imposing its view of human rights on the rest of the world merely on the basis of its assumed superiority. Despite Rorty's attempts to remove the metaphysical element of the nature of human rights, he reveals the cultural bias of both the human rights culture and his own values. Rather than resolving the issue of formulating a human rights standard which might be acceptable across cultures, Rorty's approach actually problematises the issue by asserting the dominance of a certain view of rights (the Western, liberal democratic view). In contrast, those who do not have such a view are derided as 'deprived' of the values of the West. The effect is to create greater divisions between those in the human rights culture and those who are not and contribute to cross-cultural *misunderstanding* on human rights. The dissection of Rorty's views illustrates how crucial issues surrounding human rights (particularly how

[23] Yet, the existence of Guantánamo Bay, the fact that the US has a high rate of capital punishment and is one of the most unequal nations in the Western world (Wilkinson & Pickett, 2009) undermines the claim that the world is improving and that Rorty's beloved America should be a shining example to the rest of the world.

an agreement on how such rights should be implemented throughout the world) are conceived and contribute to the broader discourse.

The basis of an 'anti-foundationalist' theory

The bulk of this chapter has been dedicated to illustrating both Rorty's general philosophical position, and to forging the link between this philosophy and his stance on human rights. I have argued that the latter is not only an extension of his broader perspective, but necessarily relies upon the more generalised theorising on the nature of the world. One important implication which flows from this must be stressed: although Rorty denied the relevance and necessity of foundations when discussing human rights, his position is indeed founded upon a specific (pragmatic, liberal) vision of the universe. His view that there is no need to worry about the existence or otherwise of a universal human nature not only stems from his notion of pan-relationalism, but in turn shapes Rorty's vision of human rights (including how they should be spread). It is my argument, therefore, that anti-foundational positions (such as Rorty's) are in fact built upon foundations. The foundations themselves may stem from a distinctly anti-metaphysical or anti-meta-ethical view of the world; they may not 'attempt to plumb the depths of the divine or the transcendent' (Fopp, 2008a: 239). However, the foundations are present and play a significant, even profound, role in shaping Rorty's avowed anti-foundationalist human rights stance. As Fopp (2008a: 239) puts it:

> strictly speaking, non-foundationalists are nothing of the sort. They may reject traditional, religious, modernist foundations (such as those of natural law) but their positions also have a starting point on which the remainder is constructed.

Rorty presented his views in an almost matter-of-fact, axiomatic manner which may be construed as arrogant, ethnocentric or absolutist. In advocating a pragmatic view of human rights, Rorty clearly and unapologetically emphasised specifically Western, North American values. These values are inserted into human rights theory in a casual manner which implies an apparent superiority over other non-Western views. As Fopp (2008a: 238) has noted, the type of approach epitomised by Rorty has emerged as a

'political justification for certain political values'. Pre-existing (liberal, American) values are emphasised and privileged over others, justified on the precept that they are more beneficial and create greater wellbeing than other values. Yet Rorty denied the use or relevance of foundations despite his own being evident and undefended under close examination. But ignoring foundations merely pushes them out of sight, allowing them to emerge unacknowledged in different formats.

Although Rorty argued that utility should be the only measure of worth of human rights, the fact that he valued human rights and their outcomes reveals a great deal about the values that underpin Rorty's approach. For him, human rights have utility because they help to achieve certain ends (the spread of democracy and liberal institutions among them); but these ends only have significance within a political framework that views them as just and worthwhile. In a dictatorship, human rights do not have utility; they do not assist in achieving desirable political goals. But in Rorty's United States, the desirable goals are different and so human rights are useful in this scheme. But it is prior political preferences and commitments that give human rights their importance (or render them irrelevant in for a dictator); the utility of human rights is not self-evidently without this political foundation.

Fopp (2008a: 238-239) argues that these values ('what is happening in practice', what is currently experienced) form the starting point for pragmatist theory. That is, pragmatists (including Rorty) are 'likely to begin their task by considering what is experienced in order to draw conclusions about what should be normative' (Fopp, 2008a: 238). Fopp's argument implies that Rorty's belief in Western, liberal values (including the human rights regime) created a normative foundation upon which his human rights theory is built. So my argument is that not only does Rorty's allegedly anti-foundational framework rest upon foundations, but these foundations stem from a preference for North American liberal values and a desire to entrench them

around the world.[24] Far from being a relativist and anti-foundationalist, Rorty was an absolutist in his foundations.

Furthermore, many of Rorty's claims reveal additional underlying assumptions that undermine his own claim of the irrelevance of metaphysical issues. For example, take Rorty's statement (1993: 115) that humans have demonstrated a 'growing willingness to neglect the question "What is our nature?" and to substitute the question "What can we make of ourselves?"' These words suggest an implicit conception of humanness lurking beneath Rorty's pragmatist façade. That is, Rorty saw humans as disinterested in contemplating their inherent essence in favour of making the world a better place. Ironically, in stating this, Rorty was himself theorising human nature – albeit in a minimal fashion – and in doing so undermined his own arguments against the importance of both foundations and the metaphysical. Even humans are not concerned, as Rorty insisted, with defining human nature but are more interested in exploring what they can become, there is still and implicit philosophical anthropology at work. Pondering what 'we make of ourselves' part and parcel of reflecting on human nature, that is, what humans are, what they should be, and what ought to be done to achieve these ends.

To reiterate, pragmatists are reluctant to explore the philosophical anthropology that informs their own positions. Although Rorty used utility as the primary criterion of value, there lurks behind his pragmatist façade a vision of what he believed humans should be and how they should relate to one another. This is evident in his appeals for sentimental stories. Rorty's claim that sentimental stories are the best way of spreading human rights can also be seen as viewed as a location where his *a priori* foundational assumptions trickled into his theory. While the potential power of sentimental persuasion is unquestionable, it is the uses to which it can be put (and Rorty's under-theorisation of it) that suggests that it is not a suitable tool for supporting

[24] Rorty's endorsement of American ideals is evident throughout his work, including when talking of American education, he (1999: 121) wrote about: '…wanting the children to come to think of themselves as proud and loyal citizens of a country that, slowly and painfully, threw off a foreign yoke, freed its slaves, enfranchised its women, restrained its robber barons and licensed its trade unions, liberalized its religious practices, broadened its religious and moral tolerance, and built colleges in which 50 per cent of its population could enroll…'.

human rights – at least not in the form presented by Rorty. Rorty's presumption that liberal democracy is inherently better – and of greater utility – than other forms of government once again undermines his own position. Totalitarianism could be argued to be of great utility *from the perspective of a dictator*. Similarly, while liberalism and human rights may serve a 'good' for Western societies such as the United States, their utility and benefit to other, more marginal nations is arguably less clear. The power relations between dominant states such as the US and governments of the majority world are shrouded by the claim that human rights are inherently more utilitarian and provide greater scope for coping with the world.

In chapter 7 I discuss the work of Anthony Langlois and his reconceptualisation of a number of issues central to human rights debate. One of these is his assertion that human rights should take account of narrative and of 'telling out local stories to a larger audience' (Langlois, 2001: 165). Although this approach appears similar to Rorty's sentimental education, it arguably challenges the pragmatist version on several grounds.

The first of these is that Langlois argues that non-dominant and marginalised voices should be heard and allowed to contribute to the human rights discourse. Rorty contended that the dominant North American, liberal and Western view of human rights should be spread to the rest of the world. He not only assumed but openly stated that the dominant view is superior and that everyone else should share in its apparent benefits. This bias is thrown into even sharper relief when compared with Langlois' approach (2005a; 2005b; 2001) which seeks to challenge and unsettle the dominant conception of human rights by allowing space for other voices to speak back to the discourse.

The second challenge to sentimental education that is thrown up by Langlois centres on relativism. Although Rorty (1998c: 351) denies being a relativist,

there is evidence to the contrary.[25] In endorsing telling sentimental stories, Rorty does not pay sufficient heed to a rationale for saying why some stories should be told and not others. Put differently, he claims that the stories told will be in the service of human rights, but he gives no reasoning for why this is so, or how it might be done. Langlois (2001: 165-166) asks:

> How do we judge whether the behaviours advocated in one narrative and critiqued by another should become values enshrined in the human rights discourse? Does not the critique of objectivity, neutral values and universalism undermine our capacity to say with confidence that there are certain things which simply should not be done?

So without justifying some criteria by which to evaluate, and by rejecting any non-relational concept of truth, Rorty failed to provide any defensible rationale for his own view of human rights. He not only challenged the traditionally accepted basis for truth claims, but in the process he also eroded the grounds for his own arguments. For Freeman (2002: 56), clear reasons for human rights are required because 'opponents of human rights can support their opposition with reason. We must understand whether our reasons are superior, and, if so, why'.

Herein lies a crucial shortcoming of Rorty's approach as it does not supply any grounds or standards to say one sentimental story should hold sway over another that is in tension with liberal values. Rorty's unwillingness to provide reasons why (other than that of utility) human rights should be supported effectively undermines human rights themselves. A possible resolution to this dilemma will be addressed in chapter 7; but for the moment it is sufficient to highlight that Rorty invokes his own specific political values and assumptions to implicitly judge the worthiness of a sentimental story, and that these constitute a foundation on which his judgements rest. This is despite his claims that foundational theory is outmoded and ineffective.

[25] On this point, Rorty (1998c: 341) writes: '"Relativism" is the view that every belief on a certain topic, or perhaps about *any* topic, is as good as every other. No one holds this view. Except for the occasional cooperative freshman, one cannot find anybody who says that two incompatible opinions on an important topic are equally good.'

The telling of sentimental stories also exhibits fundamental philosophical anthropology embedded in Rorty's philosophy. These sentimental stories are, according to Rorty, based upon an expansion of the 'we' which in turn is central to Rorty's view of liberal democracy generally and human rights more specifically. Freeman (2002: 56) argues that Rorty's preference for sentiment and sympathy as a rationale for human rights 'confuses *motivation* and *justification*'. Freeman's view is that actions taken on the basis of emotions (such as sympathy or sentiment) depend upon the reason or justification for our actions. In other words, emotion alone is not a sufficient rationale for human rights if reasons and justifications are omitted, nor does it explain why rape and torture should be rejected. But this reliance on emotion in Rorty's account of sentimental stories amounts to an appeal in what he saw as universal among humans (and arguably is not present among non-human animals).

More to the point, Rorty appealed to a particular sort of emotion, one that would resonate among people who already endorse American liberalism and human rights. In other words, there is a normative stance which forms part of the rationale and informs the emotional aspect of our actions. According to Schaefer (2005: 37-38):

> It is difficult to see how we could justify a progress of moral sentiments without making an appeal to facts about human beings, facts that would appeal to the very sort of human nature whose existence Rorty denies. This it might be that we should have sympathy for those very different from us because, for example, each individual has an innate dignity or self-worth.

Telling sentimental stories only matters inasmuch as we desire those stories to enhance and broaden the influence of human rights. This desire may be underpinned by a tacit or open philosophical anthropology (ideas of what it means to be human and why humans should have rights) which may stem from metaphysical beliefs. However, as I have illustrated above, Rorty sought to eliminate such dimensions from his philosophy, yet they are there, lurking behind his anti-foundationalist framework. Rorty tacitly privileges some sentiments over others with the implicit aim of fostering certain values and

ways of living. When he characterised sentimental stories in terms of phrases like 'Because her mother would grieve for her' (1993: 133), there is an assumed philosophical anthropology that informs his outlook. And it is here that Rorty's otherwise undisclosed foundations come to the fore.

An implication of this is that without illuminating or being open about the foundations and assumptions that inform a theoretical perspective, the theory is less resilient to critique and ultimately less effective in justifying human rights. In other words, without clearly articulating a rationale (or reason) for human rights, then rights themselves stand on shaky ground. As the above quote highlights, those who oppose human rights can provide reasons for their objections.[26] It is therefore imperative that advocates do the same in clear and explicit terms which can be defended and reasoned. Rorty's underlying rationale for human rights is obscured through his anti-foundationalist approach and preference for sentimental stories. To reiterate, behind this preference is a reason for spreading human rights, and this reason implicitly and inherently expresses views about the nature of human beings and why they should be protected by human rights.

As Fopp intimated in a quote above, pragmatists use insufficient foundations to defend their position in that they are unwilling to go beyond a certain level of abstraction to justify their position. It is clear that Rorty and others of his ilk not only refuse to move into the realm of the transcendent to defend human rights or what they consider right and wrong. On the surface, Rorty's defence of human rights lacks what Freeman (1994: 501) views as a necessary meta-ethical basis or foundation, some criteria beyond human rights by which behaviour can be assessed and human rights themselves justified. However, as I have illustrated, the evaluative standards that justify human rights (based on an implicit philosophical anthropology than in term derives from metaphysical sources) are present in Rorty's work in latent form.

[26] For example, maybe they want their victim's mother to grieve, to reappropriate Rorty's words. Preventing grief is only a worthy activity if grief is considered undesirable. For some, making others grieve may be acceptable or even preferable.

Conclusion: Rorty's inadequate defence of Western human rights

This chapter has explored the stance on human rights of a popular and seemingly persuasive theorist. The pragmatist position seeks to avoid many of the controversies of human rights by eschewing any reference to the metaphysical or human essentialism. By emphasising 'what works' and relying on justifications for human rights at the practical, pragmatic level, Rorty's approach may seem to have cross-cultural appeal. However, despite the popularity and apparent persuasiveness of Rorty's work, inadequacies appear when his broader perspective is applied to human rights. Rorty's epistemological (and ontological) premise that there is no intrinsic meaning or value to anything might seem appealing in uncertain, 'post-modern' times or in the context of academic trends, however, in my view, it is neither a defensible nor sustainable basis for human rights.

This chapter provided two points of critique regarding the Rortian thesis: firstly, that despite claiming a lack of foundations, Rorty did indeed rely upon specific assumptions regarding the nature of society and human beings. These are inherently bound up with his pre-existing preference for American-style human rights and liberalism, and with his preferred strategy for telling sentimental stories to persuade others of the virtues of human rights. This first critique, although crucial to this thesis, can be held in abeyance for the time being[27] in deference to the second critique, namely that Rorty's reluctance to disclose or address his underlying foundations leave his human rights framework weak and vulnerable to attack.

Rorty's claim that there is no intrinsic nature to things gives rise to his additional assertion that there is no ahistorical, common human nature on which to base human rights. However, despite the apparent virtues of this argument, his assertion also fails to provide any tenable criteria to which we can appeal when advocating rights. That is, there are no grounds on which to justify a preference for human rights over mob violence, for example. The

[27] My argument that Rorty did implicitly rely upon a metaphysical philosophical anthropology should not be understated at this point. However, the argument here is more concerned with the need for more concrete and tangible foundations than Rorty was willing to supply.

lack of concrete foundations on which to rest a theory of human rights apparent in Rorty's work effectively makes his approach untenable. As Freeman (1994: 501) notes:

> The problem with anti-foundationalist arguments for human rights is that their meta-ethical theory, which approximates cultural relativism, is the same as that of the opponents of human rights. The problem for human rights theory is that it needs what some of its philosophical friends claim is impossible – a meta-ethical foundation which can 'trump' cultural relativism. The task for human rights theory is to inquire whether it has more solid foundations than the theories [of anti-foundationalists].

So, as both the preceding critique of a pragmatist view of human rights and Freeman's point above imply, a satisfactory account of human rights requires that we include two elements: firstly, a meta-ethical, or external criteria to which we can appeal when defending human rights; and secondly, correspondingly concrete foundations which can anchor the lofty ideals of human rights more securely.[28] A pragmatist/anti-foundational approach is insufficient in this regard; however an outlook which 'claims a foundation for beliefs' is more likely to 'search for, and claim, foundations that are deeper, more certain, secure and trustworthy' (Fopp, 2008a: 237). The question is then pertinent: what foundations are there which meet these demands? One response would be that an international law/jurisprudence approach provides more concrete foundations. This approach is taken up in the next chapter, focussing specifically on the work of Radhika Coomaraswamy.

[28] Both of these criteria entail acknowledging that defence of human rights is almost always based on ontological and metaphysical assumptions regarding a philosophical ontology.

CHAPTER 2
HUMAN RIGHTS AS INTERNATIONAL LAW: RADHIKA COOMARASWAMY

'In a globalised world where economies and cultures meet, interact and transform each other, it is imperative that we develop a set of standards that have international recognition and durability' (Coomaraswamy, 1994: 67).

Introduction

The previous chapter addressed the pragmatist/anti-foundationalist approach to human rights as represented by Richard Rorty. That chapter argued that, although appealing and persuasive on some levels, Rorty's framework is unable to provide a defensible theory of human rights. The argument was not only that Rorty denied the need for and the existence of foundations, but that he did rely on foundations and that they were flawed and inadequate. The chapter ended by asserting that a minimal argument for human rights needed to appeal to a 'meta-ethical foundation' (Freeman, 1994: 501) in order to be defensible. The inquiry now requires analysis of an approach that employs foundations that are able to provide more solid underpinnings for human rights.

One common approach to defend human rights is a legal theorist justification that relies upon legal structures and institutions to give authority to human rights. In contrast to Rorty's anti-foundational approach discussed in chapter 1, a legal position overtly appeals to an over-riding standard and an under-pinning philosophy when defending human rights. One noted theorist working within this jurisprudence, international legal positivist framework, is Sri Lankan writer Radhika Coomaraswamy (born 1953). The strength of Coomaraswamy's work is that she endorses international law as a foundation and uses it to justify human rights.[1] In this sense, Coomaraswamy's work implicitly responds to the issues raised in chapter 1. Building on Rorty's assumption that human rights are virtuous and beneficial, Coomaraswamy's work begins to provide some the grounding and justification absent in the

[1] Later chapters in this thesis will explore positions which endorse increasingly clearer and explicitly articulated foundations. This method is consistent with the over-arching aims of the thesis to show the necessity for clear foundations.

pragmatist agenda. Like Rorty, Coomaraswamy values human rights and their benefits, arguing that they are preferable to traditional practices which result in inequality and harm. But unlike Rorty, she grounds these claims in international law, arguing that harmful behaviour cannot be defended in the name of culture.

Coomaraswamy's position also provides important perspectives for this thesis, the most obvious of which are that she comes from a non-Western background and explores human rights as they relate specifically to women (Coomaraswamy, 1999a). These two facets provide the frame for Coomaraswamy's work which, on the one hand, values plurality, local and non-Western cultures, and, on the other, advocate universal standards, especially for women, when traditional practices conflict with and threaten what she regards as the fundamental rights of women.

Yet perhaps more importantly (in the context of this thesis), Coomaraswamy can be seen as representing the human rights perspective prevalent in the United Nations and among its advocates.[2] In this sense, her position on human rights is largely consistent with that of the dominant UN/international law outlook which emphasises extant legal documents (such as UN charters) as standards and measures of human rights and violations. This framework is enhanced by Coomaraswamy's background as a lawyer and legal theorist. As such she relies upon the existing international legal framework of rights (United Nations declarations, conventions and other similar documents) to justify the existence, validity and universality of human rights. Thus, Coomaraswamy's work provides a contrast with the other writers included in this thesis and offers an example of a non-Western, feminist who has close relations with the United Nations and associated legal structures. By analysing the legal approach this thesis begins to address some of the concerns raised in chapter 1, particularly when asking what foundations can be used to defend human rights.

[2] Coomaraswamy has held various positions within the UN, namely the Special Rapporteur on Violence Against Women (Lloyd, 2007: 91; Coomaraswamy, 2000) and the Special Representative for Children and Armed Conflict.

I argue in the following that Coomaraswamy's use of international law, on the one hand, provides a more stable and concrete foundation which was sorely missing in Rorty's pragmatist approach; on the other hand, her framework is inherently limited as it constrains her analysis and justification of rights to existing legal concerns. As important as it is, this emphasis on international law is not a sufficient basis for human rights as several important dimensions are omitted and elides what I argue is necessary for a theory of human rights. These include the need to acknowledge that human rights does indeed have a more substantial grounding that law. Furthermore, I argue that despite being regarded (Evans, 2005: 1047) as the dominant theoretical approach, the legal approach to human rights relies upon several undisclosed assumptions.

Evans (2005: 1054) notes that the legal discourse has come to dominate thought in human rights and its hegemony privileges legal interpretations as 'the sole source of truth-claims for the global human rights regime'. Despite this, the 'reasons for understanding human rights as a legal regime are never fully explained' (Evans, 2005: 1047). As part of this legal framework, Coomaraswamy does not explicitly include or attempt to address a deeper philosophical justification for her stance, or to explain why law is a sufficient basis in itself for human rights. In terms of what Coomaraswamy openly discusses and argues, she does not acknowledge the assumptions which inform and shape her position, which enhances the need to analyse her work.

This chapter will not only explore to what Coomaraswamy explicitly attributes her approach, but will attempt to reveal the latent assumptions which form the basis for her work. The limitations evident in Coomaraswamy's theory are indicative of the priorities and values implicit in a predominantly legal view of human rights, and in a sense it is not fair to expect this approach to include philosophical dimensions normally considered outside of its remit. However, due to the privileged position of law in human rights discussions, there is arguably a need to expose and critique the assumptions on which the outlook is based.

Coomaraswamy's approach to human rights does little to justify or theorise the link between law and human rights. Rather, it consists partly of implicit normative views pertaining to the nature of rights, law and humanity. Additionally, the priority given to human rights legal structures raises further issues regarding the processes by which rights are codified in international law, the values contained therein, and the unequal power yielded by dominant nations in the UN structure.[3] In short, I argue in the following that to be adequately justified rights require more secure and clearly articulated foundations than existing in law.

The following consideration of Coomaraswamy's international law view of human rights will firstly outline briefly her position. From this initial description, the chapter will then explore the various assumptions and positions which inform it. The argument is that Coomaraswamy's view of human rights relies on several main elements. Firstly, there are the implications which stem from Coomaraswamy's conviction that universal values both resonate with local cultures and can legitimately over-ride customary practices (1999a: 169). Secondly, Coomaraswamy situates her view of universal values within an anti-relativist stance which rejects rights violations in the name of culture. Thirdly, she provides justification for human rights by reference to international law and legal institutions.

The chapter demonstrates that this emphasis on international law is a prevailing perspective in Coomaraswamy's work which does not explicitly explore any other foundation, reasoning, justification or basis for human rights. By using international law, and the other assumptions identified here, as a basis for human rights, Coomaraswamy tacitly relies upon a number of assumptions regarding the nature of rights and of humanity. The chapter argues that, although she does not overtly acknowledge the presence of such principles, they still inform her human rights perspective. Because Coomaraswamy does not explicitly articulate many of the assumptions she

[3] Note also Gordon's (2006: 164) claim that 'the conception of universal human rights is constituted through a series of exclusionary practices'.

employs in her work on human rights, this chapter at times deduces her underlying position by connecting the diverse elements of her work. This chapter, therefore, suggests that Coomaraswamy's approach cannot provide justification for its position and is insufficiently theorised. The chapter now turns to Coomaraswamy's overall view of human rights.

Coomaraswamy's legal interpretation of human rights

Coomaraswamy does not explicitly articulate a theory of rights *per se* in the manner of other theorists (for example Jack Donnelly in chapter 3). However, the following is an amalgamation of various ideas and concepts which Coomaraswamy has expressed throughout her work and contains various elements including how rights are validated, and the actions which can be justifiably taken in order to implement rights.

Put simply, Coomaraswamy advocates the implementation of universal human rights across the world. She openly states that absolute standards are required in order to promote and protect the rights of marginalised people, especially women (1999b: 82; 2004: 50). These standards are said to be reflected in and enforced by international human rights law. In this sens Coomaraswamy's positions is aligned with Cerone who (2001: 12) notes that:

> Human rights law sets forth the obligations of states to respect and promote certain basic rights of individuals within their territory or otherwise subject to their jurisdiction. It is derived primarily from international agreements among states, and thus largely depends on whether a given state is a party to those treaties.

Coomaraswamy relies upon the perceived international consensus on human rights to validate her claims to their universality. There are several dimensions to this claim, the most obvious being that rights apply to all people equally regardless of culture, nationality, religion, sex or any other variable. Another implication is that human rights take precedence over other local values and behaviours when in disagreement. For Coomaraswamy, (2004) such international standards are given higher priority than any local, traditional practice which may harm people or limit their equality and freedom.

In developing this framework, Coomaraswamy targets specific practices against women in non-Western nations, including female genital mutilation (FGM), honour killings, and *sati*. These customary practices are often justified by their adherents in terms of long-standing, socially embedded beliefs – *sati*, for example, is said to be linked with the idea of 'heroic death' (Coomaraswamy, 2004: 45).[4] The value of these practices to the cultures in which they have developed is thus defended in terms of social solidarity and the role they play in a society in which resources are finite. Coomaraswamy (1999a: 180), however, rejects this view and maintains that there are over-riding, 'bottom-line', trans-cultural standards which apply in cases where physical harm is threatened and life choice is limited. Human rights can and should, according to Coomaraswamy (2004: 50), 'trump' local customs; that is, human rights should be regarded as preferable to, and ought to take precedence over, traditional practices which cause harm, and therefore justify intervention or pressure from the international community to 'eradicate' them (Coomaraswamy, 1999b: 84).

Coomaraswamy provides further justification for judging and preventing harmful local practices. She (2004: 43) states that in 'deciding which cultural practices deserve international attention and agitation and which practices require criminalisation, it is important to consider the nature of the practice'. FGM and other such practices 'in the area of violence against women are *exceptionally inhuman* because they most resemble torture (Coomaraswamy, 2004: 49, emphasis added). They involve', she continues, '"severe pain and suffering" and this aspect puts them in a separate category from other human rights abuses'. As FGM inflicts such physical damage and is elevated to a higher level of violation, it requires the most urgent action from the international community (Coomaraswamy, 2004: 50). Coomaraswamy (2004: 50) argues that torture-like practices which cause severe pain and suffering should come under 'maximum international scrutiny'. In contrast, for practices which also affect women's rights but do not resemble torture or leave violent irreversible effects, Coomaraswamy also urges advocacy and agitation. This

[4] For discussion on the perceived inherent value of culture, see for example Marglin & Marglin (1990).

will draw attention to rights violations with the hope that change will come gradually and from within – not imposed from outside.

However, according to Coomaraswamy, international scrutiny should not be arrogant or ethnocentric in nature, but by way of education and legislative prohibition. Coomaraswamy (2004: 43; 1999b: 86) suggests that FGM requires 'education and health programmes supported by the international community' which engage with the local community and gradually transform attitudes will be beneficial. Such education programs are intended to drive home the injurious physical and health effects of FGM. Further, Coomaraswamy (2004: 43) also argues that prohibiting FGM (and other relevant practices) with criminal sanctions is essential. This would show that the state recognises that FGM violates human rights and thus will not be tolerated. 'Unless the practice is banned', she (2004: 43) writes, 'parents have no excuse to not give up their daughters to the practice'. In framing the problem and solution in this manner, Coomaraswamy can be seen as arguing that some values (those which correspond to human rights) are more highly regarded than others.

In Coomaraswamy's view, being codified in international law and endorsed by the international community adds weight and authority to human rights. When justifying intervention or advocacy for change, she invokes the authority and legitimacy of international law. For example:

> …because these cultural practices resemble torture, universal human rights must be seen to easily *trump* cultural relativist arguments that foster these particular practices. Minorities or majorities that engage in such practices must be seen to be *violating some of the most fundamental principles of international human rights law* (2004: 49-50, emphasis added).

There are two clear implications from this statement. Firstly, there is the view that human rights can legitimately over-ride local practices and justifications which foster rights violations. In other words, human rights are conceived as advancing preferable ways of treating people, and, by implication, *how* people should be treated and *why*. Secondly, the statement encompasses an implicit

link between human rights and international law. Human rights are validated via international law, and violations are measured against the standards set by that law. Violation of international law is thus used as a measure of violating rights and as justification for the eradication of such abuses. Further, for Coomaraswamy, international law is not merely a Western construct imposed on uncooperative nation states. It the product of an 'international civil society' (1999a: 174) which arrives at law through consensus. The international legal framework thus derives from a 'common humanity' (Coomaraswamy, 1999a: 169) and is therefore universal. Because international human rights law is said to be based on consensus and commonality, the standards it sets are normative (1999a: 173, 175). But also, arguably, this position is implicitly seen to express and protect humanity in a way that local customs and traditional behaviour often do not. In other words, it privileges the universal over the specific.

Human rights as reflecting diverse cultural traditions

Yet despite advocating universal standards, Coomaraswamy affirms that human rights are also derived from a variety of cultural perspectives. For Coomaraswamy, the universality of human rights is supported by her argument that they are consistent with local, non-Western values and cultures. She (1999a: 169) avers that every culture contains values which are equivalent to those expressed through human rights: '…human rights and their postulates such as the equal dignity of human beings *resonate in all the cultural traditions of the world*' (emphasis added). Values congruent with human rights are said to be fostered throughout the world, and thus are not alien to non-Western nations. In justifying this link further, Coomaraswamy (1999a: 169) goes on to argue:

> The discourse of human rights allows us to deal with issues of violence and injustice not only within many different indigenous traditions but also with some measure of universality and a *common humanity*. The discourse has resonance in everyday experiences of individuals. Otherwise it would not have developed so dynamically and have become used by such different groups throughout the world. In other words – yes, perhaps human rights in its present-day incarnation is a product of the Enlightenment, but

> its general thrust has resonance in diverse spiritual and cultural experiences [emphasis added].

Two implications follow from the above. Firstly, as human rights are seen as resonating within different cultures, it is possible to reach consensus and agreement about what rights people have and standards which should govern behaviour.[5]

The second implication is that Coomaraswamy's words (1999a: 169) above regarding the human rights discourse are also significant for her use of the phrase 'common humanity'. These two, apparently straight-forward words intimate that Coomaraswamy is implicitly relying upon or evoking a particular notion of 'the human' that is not explained or developed in her work. Rather, this notion is part of the background in front of which Coomaraswamy stages her legal perspective on rights.

Coomaraswamy's endorsement of universal rights

Having outlined her approach to human rights, the chapter now begins to unpack the assumptions which underpin Coomaraswamy's position. A first point is her relationship with Enlightenment values.

Enlightenment values and rejection of cultural relativism

It is not uncommon for many non-Western scholars to be critical of the philosophical developments of the Enlightenment, particularly among postmodern and critical theorists and others.[6] They are especially sensitive to the fact that the ideals and values which spawned from such a movement claim universality when they are the product of eighteenth century Europe. As noted above, in some respects Coomaraswamy shares this scepticism of Enlightenment values including their 'notions of order and discipline couched in terms of a paternalistic enterprise' (1999a: 169). Despite this critical stance

[5] Compare this point with Donnelly's (2003: 71-77) argument that value systems in non-Western cultures that resemble, overlap or are consistent with human rights are not the same as universal human rights as they are known today.

[6] Classic texts that interrogate the Enlightenment's legacy include, Gray (1995), Foucault (1975), and Horkheimer and Adorno's *Dialectic of Enlightenment* (1972). See also Bronner (2004) for a more contemporary treatment of the Enlightenment's legacy.

towards aspects of the Enlightenment, Coomaraswamy is buoyed by the Enlightenment notion of human rights. In spite of concerns about modern rights having their origins in a particular place and time, she asserts that human rights 'are universal in scope and application'. She continues:

> In certain contexts and social experiences the Enlightenment project of human rights provides us with a framework to deal not only with brutality and violence but also with arbitrariness and injustice that must necessarily shock the conscience (Coomaraswamy 1999a: 169).

So, for Coomaraswamy, Enlightenment thinking is not always a case of colonialism, paternalism and ethnocentrism. She overtly identifies the benefits of its legacy: freedom, liberty and rights, and a framework of values by which to measure injustice and inequality. In this sense, Coomaraswamy (1999a: 168) derives her belief in universal standards and rights from Enlightenment philosophy.

This faith in universal values is bolstered by Coomaraswamy's rejection of 'cultural relativism' (the view that all cultures have intrinsic value and meaning that cannot be challenged by outsiders).[7] As highlighted above, she believes that there is just cause for human rights to 'trump', or over-ride, local customs and values when those customs inflict harm on people and are otherwise inconsistent with international law (Coomaraswamy, 2004: 50). As such, Coomaraswamy makes it clear that she has no truck with either cultural relativism or its underlying epistemological relativism or its practical outcome, moral relativism. For her, human rights violations cannot hide behind, or be justified, in the name of 'culture'. Perhaps more importantly, she (1999b: 79) asserts that cultural relativism poses one of the greatest challenges to international human rights, and specifically to the benefits of a feminist approach to rights. Coomaraswamy (1999b: 79) writes that:

> Though feminism attempts to strengthen the human rights framework by making it apply to a larger segment of the population, cultural relativism seeks the opposite. It often challenges the very

[7] See Coomaraswamy (2004: 39) for an example of how she views cultural relativism.

> substance and basis of human rights as a Eurocentric world view that ignores the diversity of the world's cultures.

This division highlights the need to defend human rights and women's rights from the potentially destructive influence of cultural relativism. As Coomaraswamy seeks to extend the reach of human rights, it is necessary to fend off attacks from those wielding relativist arguments. This defence is all the more important when Coomaraswamy and others seek to assert universal rights over the very practices which relativists (and other advocates of 'traditional' values) might wish to defend.[8]

The apparent dichotomy between universal values and relativism is explored by Coomaraswamy when she (2004; 1999b) notes that what may be considered human rights abuses (from the perspective of rights advocates) are often perceived as normative cultural practices that are embedded in tradition and thus articulate and uphold cultural identity. This is particularly the case in non-Western and religion-based cultures which often deny the liberty and rights of women. The relativist assumption is that local practices have specific meanings within their cultural context, and such notions are simply not compatible with universal human rights which conflict with local standards.[9] Specifically, practices which advocates of Western-style rights might find abhorrent – such as female genital mutilation and *sati*, the practice of burning a widow on her husband's funeral pyre – are often seen entirely differently from within the culture in question.

Coomaraswamy (1999b: 83) illustrates this tension by contrasting the views of human rights advocates and lawyers on the one hand, and anthropologists on the other:

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[8] As Langlois (2001: 44) demonstrates, it is not only cultural relativists who question the universal standards of human rights. Some governments, including some from Southeast Asia, invoke claims to a distinctive set of 'Asian values' that are purported to be at odds with imposed human rights. However, Lanlgois argues that these claims are the voices of authoritarian, self-interested leaders rather than reflective of the values and customs of their peoples as a whole.

[9] For further discussion of this issue, see for example, Fopp (2008: 18-19) and Fay (1973: 9-10).

> While lawyers and human rights activists give graphic accounts of pain and suffering endured by women, often accompanied with photographs, many anthropologists highlight the fact that these practices are community rituals and celebrations, involving joy, love, and affection. They are viewed not as classic abusive situations, but as moments of celebration (1999b: 83).

This passage can be contrasted with Coomaraswamy's critical stance on the relativist views of anthropologists:

> Some argue that FGM is about 'being human the African way'; that it is about the notion of a rite of passage to adulthood, integrally linked to concepts of symbolic birth and African ideas about women and womanhood. FGM is seen as a great moment in the life of women, it is a celebration similar to a wedding (2004: 41).

Indeed, FGM is sometimes justified as necessary for a woman to attract a husband and financial and social security (Coomaraswamy, 2004: 43). By way of example, Coomaraswamy (2004: 39) quotes African Scholar Fuambai Ahadu's views on female genital mutilation:

> It is difficult for me – considering the number of ceremonies I have observed, including my own – to accept that what appear to be expressions of joy and ecstatic celebrations of womanhood in actuality disguise hidden experiences of coercion and subjugation. Indeed, I offer that the bulk of Kono women who uphold these rituals do so because they want to … they embrace the legitimacy of female authority, and particularly, the authority of their mothers and grandmothers.

The perspective articulated by Ahadu expresses a relativist position (to which Coomaraswamy objects) by emphasising the inherent meaning of cultural practices, and it implies that practices, such as FGM, are an intrinsic part of this particular African culture and identity and therefore presumed to be above reproach.

A similar perspective is identified with reference to other practices performed on or by women which can be considered harmful and as violations of human rights. These include 'honour killings' in Arab nations and *sati* (see Coomaraswamy, 2004: 44-49). Such traditional behaviour is justified in terms of long-standing and socially embedded beliefs. *Sati*, for example, is said to

be linked with the idea of 'heroic death' (Coomaraswamy, 2004: 45). Similarly, other behaviour which affects the life of women in different nations is often rationalised in terms of, for example, the need for family unity, or to maintain the male bloodline.

However, Coomaraswamy rejects the view that these practices can be justified in the name of 'culture'. Rather, she sees them as varieties of torture which not only cause irreparable physical harm, but violate fundamental rights. In her view, FGM constitutes a subjugation of women in patriarchal societies. In particular, she sees FGM as a means of controlling female sexuality while *sati* 'was actually a means of dealing with the unwanted widow' (2004: 45).[10]

Pluralism, autonomy and choice: solutions to human rights violations

An underlying premise in Coomaraswamy's attack on human rights violations against women is that they limit the choice of women to live the type of life they might otherwise choose. Patriarchal family structures, for example, can restrict liberty of women as they are limited to certain roles within a family or within a physical domain (such as a house). As noted earlier in this chapter, Coomaraswamy believes it is incumbent on the international community to apply pressure on such abuses of rights so that choice and liberty are maximised. In other words, Coomaraswamy places value on the ability of women to choose their own circumstances and make active decisions about the nature of their lives. For women's rights to be achieved there needs to be choice:

> This notion of choice is integral to a human rights understanding of the issue of cultural pluralism, and many feel that our attitude toward cultural diversity should be conditioned by this choice.

[10] The legal approach to human rights, however, seeks to address tensions between universal rights and standards on the one hand, and traditional values and state sovereignty, on the other. As Evans (2005: 1052) observes, international law aims to 'resolve the contradictions between the cosmopolitan claims of human rights and the principles of sovereignty, non-intervention, and domestic jurisdiction, upon which the tradition of international law is built'. Here, the tensions between international human rights and traditional practices become evident. This debate can be generally conceptualised in terms of inter-cultural judgement of behaviour, self-understandings, and 'arrogant' stances towards apparent human rights abuses. This issue will be taken up in much greater detail in chapter 6 on Charles Taylor.

> Cultural diversity should be celebrated only if those enjoying their cultural attributes are doing so voluntarily. By promoting choice, voluntariness, and the integrity of female decision-making we may be able to reconcile the dilemma between cultural diversity and the need for the protection of women's human rights (1999a: 181).[11]

For Coomaraswamy, choice and autonomy are not merely aspirations or ideals to aim towards. These concepts also provide standards by which cultural practices should be measured and evaluated. In her view, if a practice or belief inhibits or constrains personal autonomy, then they need to be the subject of international scrutiny and human rights law:

> In attempting to identify which aspects of customary and religious law and practice should be the subject of this minimum core approach, a guiding principle in determining the provisions may be the principle of autonomy. Pursuing the principle of autonomy would imply removing those aspects of customary and religious law and practice that prevent women from being in a position to make decisions about their lives (2004: 65).

So Coomaraswamy believes that cultures should value and promote personal autonomy, and those which do not should be altered so that they fall into line with this over-ridding principle. Again, this principle derives from Enlightenment philosophy and as such privileges Western liberal concepts over others.

Central to Coomaraswamy's view of autonomy is the belief that for a *human* life to be fully realised, there must be liberty and choice; the adoption of cultural practices must be voluntary and free from coercion. This is an important issue to identify here, as it reveals how Coomaraswamy understands humanness and what is needed for a fulfilling human life even though she does not articulate it in these terms. People need to be able to freely, actively and rationally decide what type of life they engage in without the social, political and economic pressures which often lead to them

[11] But the capacity to choose or to aspire to a preferred chosen life is always mitigated and restricted by social context. Appadurai (2004: 69) argues that the capacity for impoverished and marginalised people (the very people who are the subject of human rights) to aspire to and realise their own vision of the good life is attenuated by virtue of their social status and position. Thus, arguments regarding human rights that foster individual choice are somewhat more problematic than Coomaraswamy's words make it appear.

submitting to harmful human rights abuses (such as FGM). She (2004: 66) has identified autonomy thus:

> The principle of autonomy is integrally linked to concepts of freedom and choice that underpin what is loosely called a western epistemology. The project of the Enlightenment enshrined these concepts in law and in practice. Individual men were made the centrepiece of the universe not God. Many of the struggles of the twentieth century have been to expand the beneficiaries of the Enlightenment project to include woman [*sic*] and non-western males.

For Coomaraswamy, then, a human is construed in similar terms to that of classical liberalism and the Enlightenment – individuals free to make their own choices. These values are said to inhere in each human; there is something fundamental about humans that requires that they be free and at liberty, and to deny these tendencies is to deny humanity. This argument is not explicitly developed in Coomaraswamy's work, but is derived from the claims she makes about rights, the abuse of rights, and the ideal manner in which life should be lead. These issues are not directly addressed by Coomaraswamy, but certain responses to them are merely asserted and assumed, and remain undertheorised. These background assumptions constitute a philosophical edifice on which Coomaraswamy's assertions pertaining to human rights and law are based. This edifice contains specific assertions about what a good human life should be which are also congruent with those of Western liberal values. Additionally, the philosophical basis employed here also makes the fundamental – and seemingly self-evident – claim that human life is not merely worth preserving, but that it should be allowed to flourish to its full potential.

Law and legal institutions

As foreshadowed in the introduction to this chapter, Coomaraswamy emphasises the legal conception of human rights, an approach which Evans (2005: 1047) argues dominates other conceptions in the scholarly literature and the public discourse. The underlying premise in her work is that the international legal framework (as expressed by UN treaties, conventions and other documents) enable people to enjoy rights and provides protection from

violation of those rights. When identifying what rights humans have and examples of violations, Coomaraswamy regularly refers to UN charters and related treaties to justify her position. For example, when arguing about the rights of minority groups, Coomaraswamy (2004: 37) writes:

> The essence of minority rights as recognized by the international community is contained in Article 27 of the International Covenant on Civil and Political Rights. It gives minorities the right to enjoy their own culture, to profess and practice their own religion and use their own language.

Here Coomaraswamy's perspective is evident: declarations *give* rights, as she implies when she (2004: 37) argues that 'The Declaration of the Rights of Minorities gives minorities the right of survival and the right to promote their identity. The Declaration also *gives* them the right to enjoy their own culture, religion and language …' (emphasis added). Her work is replete with such examples.[12] In such cases, Coomaraswamy presents clauses from legal covenants and treaties as justification for rights and makes the assumption that these speak for themselves and require no further rationalisation. In one particular example (1994a: 172) she states that attempts by lobby groups to make women's rights human rights were successful as they were recognised by the 1993 Vienna Declaration and Program of Action.

Elsewhere she argues that human rights (and the rights of particular groups such as children) should be deemed universal as the supporting legal framework receives almost universal endorsement. She (2004: 63) notes that:

> The rights of children is one area of international human rights that has near universal recognition and approval. The Convention on the Rights of the Child is the most widely ratified Convention in history and only two countries have not signed the Convention to date …. The Convention on the Rights of the Child would therefore preclude those aspects of customary and religious law that violate the rights of the child.

[12] For example, see Coomaraswamy (1999a: 172; 1999b: 82; 2004: 52, 55, 58).

Therefore it is arguable that in addition to rights being granted by international law, Coomaraswamy understands human rights law as a reflection of international consensus, and thus universal. Put another way, in Coomaraswamy's view, human rights are created by legal artefacts, and these artefacts are a product of consensus. Yet, as Evans (2005: 1047) argues, the 'reasons for understanding human rights as a legal regime are never fully explained' by advocates of this approach.

There is, however, some degree of ambiguity in Coomaraswamy's foundation in law. There is not a direct or explicit one-to-one correlation between rights and international law mentioned in her work. The link between rights and law seems to be largely tacit and, arguably, is rooted in Coomaraswamy's background as a lawyer. This latent basis for rights is further supported when we consider that Coomaraswamy does not provide any further justification of rights beyond legal artefacts – and it is this absence of theory and explicit foundation which reveals Coomaraswamy's framework to be problematic.

The link between human rights and international law is neither clearly forged nor made explicit by proponents of this approach. Embedded within this link are assumptions about what constitutes law and about what specific human rights laws express about 'being human'. For example, this point raises key questions around the character of these laws: Are laws the product of consensus? Are they derived from a pre-existing moral framework? As part of this general criticism, I might add that the legal approach to rights does not provide an explicit metaphysical foundation despite inherently advocating a specific view of what constitutes humanity; rather, the approach implicitly eschews preferencing any one metaphysical outlook over others.[13]

In addition, Coomaraswamy includes two aspects of localism which serve to validate her view of human rights. The first is that, although human rights (as currently understood) are predominantly the product of the Enlightenment, the core principles behind them are not alien or novel to non-Western cultures.

[13] Despite this claim, metaphysical assumptions are implicit in Coomaraswamy's perspective, as will be addressed later in this chapter.

As noted earlier in this chapter, Coomaraswamy (1999a: 169) avers that the core principles which underpin human rights are evident in many cultures, not merely in Western liberal democracies. Secondly, Coomaraswamy recognises the need for international law to have local resonance for it to have true acceptance and universality. She (1994a: 39) maintains that:

> … for human rights to be effective, they have to go beyond the normative, textual existence and become part of legal culture of a given society. They must strike a responsive chord in the general public consciousness with regard to political and civil issues.

Implicit in this idea is that human rights need to make sense within local traditions to be respected and effective. They cannot merely be imposed from without but must resonate within: 'Unless human rights discourse find legitimacy in these areas of a country's national life, women's rights and human rights will remain mere words on paper' (Coomaraswamy, 1999a: 182).

This resonance with different cultures shows for Coomaraswamy that there is some common ground on which to argue for human rights. That non-Western cultures are seen to have their own versions of human rights legitimises international interventions, rights education and over-riding or trumping local customs by universal standards. It gives further weight to the universalist thrust of human rights (and Coomaraswamy's views) because not only do different groups of people agree on standards, but that it is 'human nature' to do so (see 1999a: 169). However her reliance on 'human nature' begins to reveal the assumptions that underpin Coomaraswamy's legal perspective.

An important aspect to Coomaraswamy's work is the assumption that laws articulate pre-existing values and principles. International and domestic human rights laws are perceived as expressing the moral principles held by both the architects of the laws and the nation states which endorse them in the apparent international consensus. The assumption that laws unproblematically represent high moral ideals is crucial to the legal approach to human rights, and will be addressed further later in this chapter.

Coomaraswamy also shows that local *law* must also be consistent with international law. Implicit in this assertion is that not only should international law take precedence over its domestic counterparts, but the *values* expressed therein are both superior and universally applicable. This supports Coomaraswamy's conviction that law is a sufficient basis for human rights.[14] And as part of this foundation, then, other issues (including those pertaining to metaphysics and philosophical anthropology) are, generally, excluded from her frame of reference. Regardless, Coomaraswamy does indeed invoke aspects as a philosophical anthropology when endorsing autonomy as a 'guiding principle' (2004: 65). However, this aspect to her work is neither realised as such nor presented in such terms. Yet her assumption that international law reflects moral standards and thus constitutes a sound basis for rights obscures a cluster of specific views about *inter alia* rights and the human condition. Latent (metaphysical and ontological) assumptions reside in the legal approach even though Coomaraswamy evades them or implicitly renders them unproblematic.

Langlois (2004: 481) comments on this approach to human rights by arguing that the:

> … claim commonly made by proponents of the human rights discourse is that the discourse represents values by which all people everywhere can respect and to which they give their allegiance. The crucial aspect of this claim is that there is a set of values which can and should be universally observed despite the particularity of the human traditions from which those respecting these values come. These values are called Human Rights …

Thus in Coomaraswamy's view international *consensus* can be achieved on certain values and behavioural norms; these norms translate into human rights which are said to have universal appeal and are considered to take priority over local values if they are in conflict. However, as Langlois (2002: 487; 2004: 257) and Gordon (2010: 163-166) argue, claims to international

[14] Yet without legal restrictions on practices which violate human rights and the codification of rights in law, rights will only have limited influence on policy and be of minimal effectiveness.

consensus are inherently contentious; rather than consensus, human rights are characterised by controversy. However, although the apparent consensus on human rights:

> exists among those who operate at the level of international politics and international human rights law, this consensus is neither derived from nor easily transposable onto the plethora of ethical positions and traditions that exist 'below' the international regimes of human rights (Langlois 2002: 487).

I will discuss below why the link between international law (supported by apparent international consensus) and human rights is problematic. But at this stage it is sufficient to note that the assumed consensus on human rights is based upon implicit values and assumptions.

State centred-ness

One such assumption follows from an implication from the dominance of legal institutions, namely, that nation states have a significant role to play in establishing and enforcing human rights. This works on at least two levels. Firstly, nation states contribute to the formulation of international law through the UN and similar institutions. These states bring their own cultural values to the table such that their fundamental assumptions about human life and entitlements are incorporated into human rights law. There is consensus around what rights people should have based upon a shared humanness. Secondly, states play a direct role in protecting and enforcing human rights. For example, Coomaraswamy (2004: 43) notes that a legal ban on FGM is required as it constitutes 'state recognition that such practices that violate women's human rights will not be tolerated'. She notes that it is a nation state's responsibility to protect people from violations of their basic rights.

This can mean legislating against acts which occur in the private sphere (the home or family relations). States can be held responsible for failure to prevent violence to women (and others), indicating an expansion of the role of the state in human rights implementation (1999a: 176). In Coomaraswamy's (1999a: 176) words, states are 'responsible for the violation of women's rights

that take place in the marital home if they do not use due diligence to prevent, prosecute, and punish offenders'.

The point here is that Coomaraswamy relies on the role and responsibility of the nation state in her notion of human rights. Without the nation state, it is much harder to achieve consensus on rights, protect rights and punish violations (although Coomaraswamy, 1999a: 175, does acknowledge that much rights advocacy occurs above or below the level of states). The importance she places on nation states is evident throughout her work and contrasts with other theorists who do not place such an emphasis.

Pluralism: right to culture *versus* right to equality

Another prong to her approach to human rights (and one which is allied to her emphasis on autonomy) is Coomaraswamy's qualified endorsement of cultural pluralism. Her belief in universal values does not prevent her from advocating cultural pluralism in which diverse ways of life and world views are respected and encouraged to flourish. However, for Coomaraswamy, this pluralism must be tempered by over-riding standards which take precedence if culture leads to harm, deprivation or inequality. She (1999a: 180) notes that:

> Pluralism envisions a state that allows a thousand flowers to bloom. But unless there are bottom-line standards, pluralism will be at the expense of women and their bodies. Female genital mutilation, *sati*, punishment by stoning, and equity in personal law will prevail over universal standards. Women's groups argue that pluralism is necessary but must be built on a firm foundation of human rights (1999a: 180).

This perspective is underpinned by Coomaraswamy's discussion regarding the right to culture *versus* the right to equality. The Universal Declaration of Human Rights, among other legal instruments, identifies the right of people to enjoy their own culture. This includes a right to practice their own religion, language and other values (Coomaraswamy, 2004: 52-53). The assumption is that no one culture or way of life is superior to any other, and that people should not be marginalised or discriminated against by virtue of their culture.

This position is significant, as it reflects the goals of pluralism, freedom, anti-imperialism and cultural relativism. However, Coomaraswamy does not endorse this perspective unconditionally.

In cases where culture leads to inequality or physical harm, she argues that the right to *equality* should trump the right to culture. That is, the overriding value here is that people have a greater right to be treated equally (*inter alia* under law and social conventions) than to practice a culture which may have lead to harm and deprivation. Coomaraswamy (1999b: 83) notes that anthropological assertions about the symbolic value of practices such as FGM overlook the crucial point that 'what we are speaking about are often the most fundamental of human rights – the right to life and to physical integrity'.

In so saying, Coomaraswamy is again asserting specific values regarding the value of human beings. Her words regarding the right to life and physical, bodily integrity invoke notions of individuality, and place the individual at the basic unit of society. What is more, these conceptions of the human person are formulated in terms of fundamental rights implying that a) humans are *entitled* to be treated as individuals whose integrity (physical and other forms) is inviolable, b) protecting individual rights in some way corresponds to an ideal vision of what a human life should be, and c) this ideal is derived from a perceived fundamental human nature (which in turn gives validity to claims of universalism).

While I have highlighted these dimensions of Coomaraswamy's work, she does not elucidate them; rather, they are implicitly asserted (for the most part) and without critical reflection as to the values they espouse. While she does make reference to the 'guiding principle' of autonomy, and invokes a 'common humanity' (1999a: 169), these concepts are deployed with little regard for their implications for human rights theory. As Langlois (2004, 2005a) argues about human rights more generally, ontological and metaphysical assumptions are present regardless of intent, and it is thus necessary to confront these issues. Furthermore, the assumptions present in many supposedly neutral or non-metaphysical accounts of human rights unintentionally advocate specific

assumptions typical of liberalism, such as those that give primacy to individualism. Given her preference for individual rights, Coomaraswamy arguably falls into this category, notwithstanding her claims to be a critic of Enlightenment values.

Advantages and disadvantages of Coomaraswamy's approach

Coomaraswamy and Rorty

While portions of the preceding discussion have been directed at a critique of Coomaraswamy's position, it is also important to note the strengths of her work, particularly in contrast to the pragmatist position. The issues and perspectives put forward by Coomaraswamy implicitly respond to criticisms of Rorty's human rights framework. Perhaps the most germane example of this (in terms of this thesis) is that Coomaraswamy provides a clear foundation for human rights, however flawed and inadequate that foundation may be. While Rorty denied that rights can or should be defended on any grounds other than their apparent utility, Coomaraswamy relies upon a legal framework for justification. Similarly, the Rortian position outwardly[15] argued that there are no universal standards by which to judge behaviour or validate human rights claims. In contrast, Coomaraswamy's legal approach endorses the universal, over-riding standards codified by human rights declarations and treaties.

This fundamental difference between the two approaches considered in this thesis so far manifest themselves in other, related areas. An example is the way in which Coomaraswamy rejects tradition or culture as a basis for defending certain practices. Rorty argued that the human rights culture is valuable because it is an existing way of viewing the world which provides benefit to many people. He provides no further justification of rights. Yet, it is just as valid to argue that practices such as *sati* are deeply entrenched cultural practices which perform positive benefits (while also violating the human rights of others). Coomaraswamy's approach, however, appeals to over-riding standards (international law) which provide criteria for criticism.

[15] Although Rorty explicitly claimed that universal standards do not exist and are irrelevant to debate, his position implicitly endorses Western, liberal values, as illustrated in his assertion that human rights are believed to be superior.

The implication is that Coomaraswamy's position counters the apparent relativism[16] asserted by Rorty in her insistence that it is not possible to defend any behaviour in terms of culture alone.

By the same token, by identifying foundations for human rights, Coomaraswamy avoids the relativist pitfall of being unable to *defend* values such as human rights. If there are no criteria by which to judge, then there is equally no criteria by which to defend. Coomaraswamy bypasses this dilemma, and in doing so, and by allying human rights with international law. addresses some inadequacies of Rorty's approach. Where Rorty claims that human rights have virtue merely because of their utility, Coomaraswamy provides a basis for rights in law and law functions as a meta-ethical foundation on which she can rest her claims.

Yet, as identified earlier in the chapter, Coomaraswamy does not explore the assumptions and values which constitute this meta-ethical foundation. What is more, it is my contention that relying upon international legal structures, human rights charters, does not in itself provide a sufficient foundation for human rights.

Coomaraswamy and taken-for-granted assumptions

Despite the strengths of Coomaraswamy's approach to human rights – which include strategies for rights advocacy and implementation – it is arguably a less than ideal framework. There are several dimensions to this. Firstly, her reliance on legal structures to define and justify rights can be seen to be limiting in some respects. I acknowledge that human rights require international laws to be effective; however, using international law alone as a basis for rights is in itself insufficient. This point is reinforced by Langlois' (2004: 244) assertion that human rights need a firmer basis than the legal infrastructure as this only expresses or reflects rights rather than creates

[16] Rorty appeared to be both relativist and non-relativist at the same time. He was an epistemological value relativist in that he disputed the possibility of arbitrating between competing values; yet he was a staunch advocate Western democratic values (specifically of the North American variety) and a believer in their superiority. In this sense Rorty was a cultural absolutist (see Fopp, 2008, especially chapter 1).

them. Human rights *law* are not the *rights* themselves, as they are at least one step removed – rights are derived from sources regarded as more universal or transcendent than law, and often include assumptions about the nature of humanity and justice. It is not adequate to claim that people have rights merely because they are codified in international law. There arguably needs to be an examination of where rights are assumed to emanate and why humans ought to have them. There are several implications stemming from this claim.

Firstly, a nation state's apparent endorsement of international law does not necessarily indicate that the state actually agrees with it or intends to enforce it. By reducing human rights to state-centred agreement, the effectiveness of rights depends upon the good will of governments. Signatories to legal instruments may have ulterior political motives for doing so such that, although these states may officially recognise rights, they do not promote or protect them in practice. It may be that a state wants to appear to respect rights, or may need to maintain cordial relations with other nations by signing; or it may be a case of 'state elites cynically agreeing to human rights norms out of political expediency and thereafter manipulating culture for their own ends' (Harris-Short, 2003: 133). As Langlois (2004: 247) observes:

> Indeed, it is likely that the peoples under the rule of these 'less benign governments' are in greater need of protection from human rights. Rather, the implementation of human rights is limited by the 'prerogatives of the state' (Langlois, 2004: 247).[17]

Dunne and Hanson (2009: 62) agree: 'after all, no state leader openly challenges the principles underpinning the human rights regime'. It is therefore arguable that a legal view of human rights reduces the efficacy of the rights themselves as they are ultimately left in the hands of those most able to violate human rights.

[17] Langlois (2004: 247) also argues that by reducing human rights to instruments of state power, 'the capacity to act as a form of moral criticism against state power' which forms a crucial part of the aims of human rights is somewhat diminished.

There is another sense in which legal consensus provides only a vague basis for claiming universality. Because different cultures conceptualise the world and arrange their societies in different fashions, then it is conceivable that they will interpret international laws differently. There is therefore the potential for disagreement and dispute regarding what international norms actually mean. Furthermore, authority of universal rights then comes into question if there are these caveats surrounding international agreement and consensus. As Evans (2005: 1054) argues, although the privileged position of human rights remains largely unquestioned:

> … an increasing number of scholars argue that is no longer acceptable that we view the human rights discourse as an unproblematic moral program upon which all states and peoples agree. If this assessment is apposite and claims of global agreement are indeed premature, then the privileging of international law as a solution to an imagined consensus raises many questions. What, for example, is the role of international human rights law in the global order? Why is international law so privileged within the discourse of human rights if no consensus exists? What interests does the privileging serve?[18]

This leads to another dilemma posed by Coomaraswamy's work. Given that international law dominates the human rights discourse, there is a need to investigate its powerful, privileged position and the hidden assumptions that lay within it. 'Inevitably,' Michael Ignatieff (2001b: 102) argues, 'power invites challenge'. Thus the power relations behind human rights law (who gets to determine its contents, how they are implemented and on whom) is ripe for critical interrogation.

Furthermore, as I have mentioned earlier in this chapter, there is an implicit connection in Coomaraswamy's approach which is assumed and undisclosed. This connection is between the international declarations of human rights and the under-theorised and undefended value she places upon humans. By asserting that humans should not be treated in a certain way because it

[18] Harris-Short (2003: 131) argues similarly that if there was a true international consensus on 'the universal relevance and applicability of human rights norms, arguments seeking to justify non-compliance on grounds of cultural difference should, in theory, be relatively rare. The reality, however, appears to be somewhat different'.

contravenes international law, I argue that Coomaraswamy invokes the ontological assumption that humans are special and possess an innate dignity that should not be violated. Yet she does not defend this view; it is assumed and unexamined. International human rights law is only of importance inasmuch as it seeks to protect and enhance human worth. This constitutes a *normative judgement* pertaining to philosophical anthropology, yet this judgement is not defended, merely assumed.

It is arguable that despite advocating Enlightenment values of individual freedom and autonomy (Coomaraswamy, 1999a: 169) and cultural plurality, Coomaraswamy is promoting specific metaphysical beliefs about the value of *individuals* which themselves stem from the liberal tradition. This is reflected in her (2004: 65) preference for autonomy and self-determination as 'guiding principles' in assessing human rights. Additional weight is given to my point here when Coomaraswamy advocates 'removing' aspects of restricting traditional law, employing 'arrogant' assessment of such practices, and claiming that human rights 'trump' all other values and practices when they are in conflict (Coomaraswamy, 2004: 65; 1999b: 87). In other words, Coomaraswamy's assumption that international law is a product of consensus based on a shared humanity is not persuasive, as states may negotiate based in their own interests rather than on a vague sense of universal humanity.

In her endorsement of international law and universal standards, Coomaraswamy does not explore what is arguably a central issue germane in theories of rights which pertains to what Langlois (for example, 2004: 260) terms a high philosophical anthropology. These issues include the implicit value placed on humans when asserting human rights, what these claims say about rights and so forth. Such values are arguably invoked when discussing rights regardless of the speaker's awareness of it. In other words, these concerns are tacit and implicit if they are not clearly articulated by the theories (Langlois, 2005). As the preceding discussion identified, Coomaraswamy's vision of human rights does not explore the anthropological philosophy which lay behind it.

She does refer to a 'common humanity' (1999a: 169) and a consensus based upon commonality, but these are vague, expressed as taken-for-granted assumptions and are not used to justify rights in any systematic or persuasive way. The link between what constitutes a common human essence and human rights is not overtly present. Coomaraswamy does highlight that human rights principles are evident in all cultures, which would indicate that a singular metaphysical basis for rights is unsuitable. However, she does not explore what is meant by this in any great depth, nor unravel its implications for human rights. Therefore, there remains the question of how human rights can be further underpinned and theorised by reference to a clear and explicit foundation; and this foundation necessarily needs to explore aspects of 'human nature' and why it is that humans should possess human rights. The next chapter will address these concerns by analysing a political realist position, specifically the work of Jack Donnelly. Although his position has much in common with Coomaraswamy's, in my view, Donnelly's perspective invokes a clearer notion of a human nature on which human rights can be built.

Conclusion

The chapter has argued that Coomaraswamy's view of human rights is dependent upon at least two prior assumptions that have shaped her perspective. The chapter has presented Coomaraswamy's work as an implicit response to Richard Rorty's account of human rights and its underlying principle. The most notable feature of her approach is her conviction that universal values should legitimately take precedence over local practices. This is informed by her rejection of cultural relativism; she does not endorse the view that any practice can be regarded as culturally valuable in its own right. Rather, Coomaraswamy argues that if practices harm people or limit their freedom, then there is a legitimate case for intervention to prevent such practices. She does not regard it as culturally insensitive or imperialistic to judge other cultures in this regard as she illustrates with reference to FGM. Furthermore, she deploys Enlightenment values regarding the nature of human life and liberty to provide criteria by which to assess human rights violations. In contrast to Rorty's pragmatist view, Coomaraswamy founds her

position on meta-ethical criteria which are used to resist the traps of relativism.

These criteria, of course, are based on international law. The chapter argued that, for Coomaraswamy, codification in international law is sufficient basis for human rights to be respected. Her work often makes reference to various legal instruments, treaties and agreements to support her claims for human rights. Coomaraswamy justifies her position by asserting that these laws are the product of international consensus which expresses a shared humanity (a contentious claim in itself). However, as argued in this chapter, this commonality is not explored by Coomaraswamy and seems to be taken-for-granted.

The argument that Coomaraswamy does not explicitly take up many of the assumptions behind her framework was then addressed further in the chapter. It argued that legal artefacts alone are not a sufficient basis for human rights as they, firstly are entwined with international politics, and secondly say nothing about the origins of rights. It also leaves unanswered the more fundamental question of why international laws should support human rights. Additionally, the analysis suggested that Coomaraswamy's approach does not offer any explanation as to why humans should have rights. There is no link between aspects of human existence and rights themselves in the way that other theorists have presented. Because of this lack of direct connection between what is universal about humanity and human rights, the chapter argued that Coomaraswamy's perspective is wanting in that it cannot provide an adequate justification for rights.

This chapter has been an exercise in exploring the underlying assumptions and deficiencies in a particularly type of human rights theory – an approach which is congruent with the dominant UN and advocacy view. The implications, though, need to be made clearer. For a theory of human rights to be persuasive and cross-culturally relevant, it needs to explore its own foundations explicitly. What is more, the chapter has highlighted the need to provide a sufficient basis for human rights which extends beyond a vague,

taken-for-granted notion of universality, and reference to international law. If human rights are claimed to be universal, then there needs to be, as far as is possible, a clear, explicit and compelling justification for this claim; it is not enough to assume that rights and human commonality are self-evident, but they should be thoroughly explored. Otherwise human rights themselves are more susceptible to ardent criticism.

CHAPTER 3
REALISM AND THE UNIVERSAL DECLARATION: JACK DONNELLY

'Human rights are, literally, the rights one has simply because one is a human being … Human rights are equal *rights: one either is or is not a human being … They are* inalienable *rights: one cannot stop being human, no matter how badly one behaves nor how barbarously one is treated'* (Donnelly, 2003: 10).

Introduction

Chapter 2 explored human rights within a legal framework and ultimately found that approach to be wanting. The argument of that chapter was that although relying upon international law and agreements is preferable to abjuring discussion of underlying assumptions (à la Rorty), the legal framework is, in itself, an insufficient basis to defend human rights. True, legal standards are required to enforce human rights and evaluate human behaviour. But such standards alone cannot support a regime of rights particularly if the apparent consensus that gives rise to law is contested. In fact laws articulate and reflect the underlying values which support human rights rather than defending them. The chapter ended by concluding that a more substantial basis is needed for a robust theory of human rights. This begs the question: what more can be added to understanding human rights that will lead to the goal of a defensible, resilient framework?

Given that international law is an essential dimension to effective human rights, a sensible next step would be to explore a stance that provides more clarity and breadth than the legal perspective discussed in chapter 2. One such theorist is pre-eminent American political scientist Jack Donnelly who has been described (Goodhart, 2008: 184) as 'the leading theorist of human rights today', one who demonstrates an 'unparalleled breadth of learning' a 'surety of argument and power of exposition'.[1] In several respects, Donnelly's approach over-laps with Coomaraswamy's. For example, Donnelly overtly argues that human rights are intrinsically universal, and that this universality is inter-related with the apparent consensus of international law. Donnelly,

[1] This is not a view with which I entirely agree. Despite Donnelly's prominence as a human rights theorist, there remains comparatively little in the way of secondary literature which engages with and critiques his position, but see Goodhart (2008), Prasad (2004), Langlois (2003, 2004), Freeman (1994), Alston (1991), Bedau (1992), Forsythe (1990).

clearly and explicitly contends that human rights are universal on a number of levels. What is more, his work articulates a commonsense, axiomatic view regarding what human rights actually are. He is equally unabashed in defining human rights as rights one has purely by virtue of being born a human being (Donnelly, 2003: 7; Dembour, 2010: 2). Dembour (2010: 5, 8, 12-13) notes that Donnelly's endorsement of this view aligns him with what Dembour terms the 'Natural School' of human rights theory in that he argues that 'human rights law embodies the human rights concept'. Arguably, it is also a commonly held view in broader political discourse and popular culture which takes for granted certain assumptions pertaining to the character and value of humanness.

Just as Coomaraswamy's work provided some of the missing elements in the pragmatist position, Donnelly's view of human rights implicitly builds upon Coomaraswamy's outlook by including some crucial dimensions. As I argue in this thesis so far,[2] theories of human rights are (necessarily) constructed on a foundation of assumptions regarding 'human nature' which include tacit metaphysical and ontological assumptions about rights. Rorty did not acknowledge the relevance of these *a priori* views when making his case for human rights, rendering his approach flawed. Coomaraswamy founded human rights in international law which, as argued in chapter 2, is in itself also an insufficient foundation. Donnelly's approach, however, explicitly grounds human rights in what he sees is the moral nature of humans.

I argue in the following that, in defending his universalist position, Donnelly relies upon the United Nations Universal Declaration of Human Rights as a basis for his claims about the nature and content of human rights. In other words, The Universal Declaration is used by Donnelly as an 'ideal paradigm' (Prasad, 2004: 2) which provides the 'canonical list of human rights for our time' (Besau, 1992: 143). Donnelly's emphasis on international law and its alleged widespread agreement has prompted Langlois (2004: 256) to argue that Donnelly's approach:

[2] Or so I would argue and will become clearer by the later stages of the thesis.

> … eschews the question of philosophical anthropology and ontology, and self consciously attempts to articulate a descriptive account of human rights – an account that starts with the way we use human rights now.

Thus, Donnelly's work takes as an analytical point of origin such concrete aspects as the Universal Declaration of human rights, and the seeming consensus among nations regarding the substantive content of rights.[3]

I go a step further than Langlois' assertion above to argue that although Donnelly avoids invoking the metaphysical aspects of rights he invokes them nonetheless in the philosophical anthropology that underpins his views. That is, these underlying values of realism and human nature do inform Donnelly's theoretical framework for human rights. In the first instance these premises are explicitly outlined by Donnelly in theorising and justifying his views. But my argument then asserts that Donnelly's conception of human rights relies upon his assertion that human nature and dignity are socially constructed. This is, in turn, related to Donnelly's contentious claim of the universal applicability of human rights in a way that attempts to avoid the trappings of cultural relativism.[4] My position here stresses that Donnelly's notion of human nature, however thin or under-theorised, however slim its philosophical dimensions (Langlois 2003: 512) (and seemingly at odds with claims to universalism), *does* underpin Donnelly's perspective. In contrast with Rorty and Coomaraswamy, Donnelly *does* explore some sense of 'humanness' on which he bases human rights. Despite this, Donnelly does not explicitly, extensively or comprehensively address these issues, leaving them largely unexamined. As Langlois' (2004: 256) claims, Donnelly 'eschews the question of philosophical anthropology' in the sense that these concerns are ignored, yet they remain an integral, latent element of Donnelly's work.

The second dimension to my argument will address some of the shortcomings of Donnelly's position by way of revealing further tacit assumptions which are

[3] See Prasad (2004: 5); also Donnelly (2000) for an account of his broader view of realism in international relations.
[4] See Goodhart (2008: 184-185).

not openly disclosed by Donnelly, such as his preference for Western liberal values disguised as universal principles. As will be evident in the following, a key aspect to my argument is that, although Donnelly avers that human rights are not particularly Western in character, his claims to universality mask the liberal American values which underpin his view of rights.

As with other chapters in this thesis, I will begin here by outlining Donnelly's view of human rights. This will include his definitions and origins of rights, and the elements that make up his universalist outlook. The chapter will then contribute to my broader argument (developed throughout the thesis) regarding the underlying assumptions which shape and inform Donnelly's approach. This will come in two parts: firstly by illustrating the wider, underlying theories which he employs to reach his human rights perspective. Then secondly, some taken-for-granted assumptions which Donnelly utilises without acknowledgment or reflexivity which will be introduced by way of critique of his framework. This comparative section will not only illustrate how Donnelly's approach is distinctive, but will also suggest that it has resonance with theorists who, on the surface at least, appear to emanate from substantially different frameworks (such as Richard Rorty). My discussion will now turn to Donnelly's stance in human rights.

Donnelly's view of human rights

Donnelly is particularly direct in his broad definition of human rights. He repeatedly asserts that human rights are 'literally, the rights one has simply because one is a human being' (Donnelly, 2003: 10).[5] Such rights are, Donnelly insists, *universal*, in that they apply to all people everywhere, and *inalienable* – they cannot be taken away (Donnelly, 1999a: 80). This is because of the simple facts that one either is or is not human – therefore one either does or does not have human rights – and cannot cease to be a human and so cannot stop having these rights (Donnelly, 1999a: 80; 1999b: 61; 2007: 282). Similarly, he (1982a: 305) contends that human rights are conceived as 'naturally inhering in the human person'; they are not granted by

[5] See also Donnelly (2007: 282; 1999a: 79, 80; 1999b: 61; 1982a: 305, among many others).

states or awarded through desirable actions. So Donnelly's simple definition of human rights thus ties possession of rights with one existence as a human. Because of this, human rights in Donnelly's view are a special type of rights distinct from other rights claims.[6]

Similarly, on Donnelly's account, human rights are based on a special relationship between an individual person and the nation state. Although the state does not grant rights in the purest sense, states are required to enable persons to enjoy their rights. This principle has at least two aspects. Firstly, the state is responsible for preventing human rights violations either from itself, or from other (groups or individuals) within the society (Donnelly, 1999b: 61). Secondly, according to Donnelly, the state must provide the institutional and legal means for people to seek remedies for abuses of their rights. In all but extreme violations of rights, Donnelly argues that rights enforcement comes from within the state.

Donnelly (2003: 13) argues that *human* rights are different from *legal* rights which share similar characteristics. While legal rights are derived from the law and other types of rights are derived from similarly tangible domains (such as contractual rights coming from contract), Donnelly (2003: 13; 1985: 27) maintains that human rights are substantively different in that their source is 'human nature'.[7] That is, they are said to reflect a deeper sense of what humanity is, what it ought to be, and how it should be attained. In this sense, Donnelly's vision of human rights is clearly linked with moral claims about human existence. On this account, human rights are moral claims about the nature of human interaction, social organisation and the expectations of the state in protecting them; they are 'moral rights of the highest order' (Donnelly, 2003: 11).

[6] Donnelly's point here intimates that his theory relies upon implicit views of what it means to be human, as will be discussed later in this chapter.
[7] Again, Donnelly's reliance on 'human nature' for explaining human rights is scaffolded by a tacit philosophical anthropology that emphasises a particular regard for human life.

Origins of rights: Western but universal

In common with the majority of human rights scholars, Donnelly acknowledges that human rights are Western in origin. He (for example, 1999b) does, however, go further to argue that claims to non-Western human rights-style values (such as those put forth in the 'Asian values' debate, or as argued by Coomaraswamy) are not defensible.[8] So, for Donnelly, human rights are unquestionably and solely Western in origin. Yet, despite these origins Donnelly makes the seemingly contradictory claim that this fact does nothing to suggest that there is anything inherently Western about human rights. He (2003: 62) insists that human rights are universal and reflect 'no special Western virtue or merit'. But Donnelly's argument begs the question: how does he reconcile this apparent tension between the specific origins of human rights and claims to their universality?

Donnelly (2003: 58) argues that human rights evolved in the context of the development and modernisation of states, markets and growing political demand for equality and tolerance. The modernisation of European and derivative societies (such as the United States) along with the expansion of markets, capitalist economies and the state, presented ever-growing threats to human dignity. In essence, Donnelly argues that this multifaceted process gradually eroded traditional systems of community and traditional support and exposed people to new political and economic threats with traumatic consequences (Donnelly, 2003: 58-59; Freeman 2002: 64). Simultaneously, claims to equality and toleration emerged, increasing the pressure for protection from poverty and discrimination.

Human rights initially responded to and were intended to address these changes (Donnelly 2003: 59). The Western origin of human rights is thus seen as an accident of history. Human rights 'initially emerged – were "discovered" – in Europe not because of superior Western virtue or insight but because, for better or worse, modern states and capitalism first appeared there' (Donnelly, 1999b: 69; see also 2003: 62). Therefore for Donnelly,

[8] See also, Hood (2001, 1998) and Yung-Myung Kim (1997).

human rights as they first emerged in the West were only the first instance of responding to the deleterious effects of modernity, not a reflection of any 'deep Western cultural roots' (Donnelly, 2007: 287). He (2003: 78) expands on this point by noting that the:

> historical connection with the West is more accident or effect than cause. Westerners had no special cultural proclivity that led them to human rights. Rather, the West had the (good or bad) fortune to suffer the indignities of modern markets and states before other regions. By necessity rather than superior virtue they got a jump on the rest of the world in developing the response of human rights.[9]

Furthermore, because these detrimental by-products of modernisation are now apparent throughout the world, human rights, on Donnelly's account, therefore have near-universal relevance in responding to such threats to humans: 'They thus have relevance wherever those transformations have occurred, irrespective of the existing culture of the place' (Donnelly, 2007: 287). The near universal applicability of human rights is for Donnelly akin to laws of physics being relevant throughout the world. He (1999b: 69) notes that the principles discovered by Newton, for example, in Europe are equally applicable in all parts of the world – their European origins are irrelevant. Similarly, the applicability of internationally recognised human rights is 'independent of their place of origin'. This is an important point – as it illustrates Donnelly's claim to universalism despite the specific origins of human rights – so it merits reiterating in his own words:

> This history does not make these rights any more irrelevantly 'Western' than the origins and initial spread of both Newtonian and quantum physics make them 'Western' physics inapplicable to Asia. Whatever applicability – or inapplicability – internationally recognised human rights have is independent of their place of origin (Donnelly, 1999b: 69).[10]

[9] These words imply that human rights are both universal and inevitable, and can be interpreted as saying that if human rights had not developed in the West, they would have emerged elsewhere with more or less the same characteristics.

[10] Although he is not suggesting that human rights have the same immutable, timeless explanatory power as the laws of physics, Donnelly walks a dangerous line by drawing the analogy identified here. His emphasis is on the applicability of a perspective regardless of its origin, but there remains an undertone implying that human rights are similar to scientific principles in that they are inherently linked with nature.

But in making such a claim, Donnelly fails to recognise the power relations inherent in the hegemony of one particular version of human rights. For a Western-based notion of rights to dominate, other views of human rights – and the implicit cosmologies, world views and metaphysical interpretations – are necessarily excluded. For Donnelly to claim that dominant Western-style rights do not bear the stamp of their origin, and are therefore universally applicable, is to ignore the political contests that inhere in the development of rights. For example, Gordon (2006: 164-165) argues that 'universal human rights [are] constituted through a series of exclusionary practices' whereby dominant ideological forces are privileged in the guise of universality.

How are human rights universal?

The argument so far shows that Donnelly clearly endorses the notion that human rights are inherently universal. But how does he defend this position given the controversial[11] nature of the claim, particularly in the light of anti-foundationalist arguments (for example, that of Richard Rorty) that challenge the existence of over-arching, universal values. Donnelly's approach relies upon conceiving human rights as universal in several respects, and non-universal in others. In contrast to other theorists included in this thesis, Donnelly explicitly addresses these concerns, albeit not until relatively recently (Donnelly, 2007). The first aspect of Donnelly's universalism is spelt out in his definition of human rights included earlier in this chapter. Namely, as human rights are based on one's existence as a human being, then they are universal in the sense that every person possesses them.

Donnelly (2007: 283) terms this *conceptual universality* – that is human rights are universal on a conceptual level, a concept which implies that 'human rights are, by definition, equal and inalienable'. That human rights are universal in possession, however, does not imply for Donnelly that they are universally enjoyed because they are not uniformly enforced. He (Donnelly

[11] This claim is controversial in that the universality of human rights is contested so that, as Langlois (2004: 257; 2003: 513) argues, fragmentation rather than universality or consensus define the political debate on human rights. Donnelly's claim is also challenged by cultural relativists who argue against imposing presumed universal values on incompatible cultures.

2003: 9) maintains that people still have human rights even if those rights are not enforced or accessible. This is what he terms the 'possession paradox' (2003: 9; see also Parekh, 2008: 140-142). In this sense, human rights are taken to be *a priori* in that they are 'antecedent to membership in any political community' (Parekh 2008: 141).

A second aspect of Donnelly's universalism is concerned with international legal frameworks (2007: 288). He derives this claim from the apparent widespread endorsement of international human rights law by many nation states. 'Virtually all states', Donnelly (2007: 288) has stated, 'accept the authority of the Universal Declaration of Human Rights'. The effect has been that the acceptance of such authority depicts the contents of the Universal Declaration as universal to the extent that '[f]or the purposes of international relations, human rights today means, roughly, the rights in the Universal Declaration' (Donnelly, 2007: 288). This 'realist' (Prasad, 2004: 5) position essentially translates the (near) universal endorsement of international human rights law into the universality of human rights themselves.

The third aspect to Donnelly's conception of universality is what he (2007: 286) terms *functional universality*. Functional universality refers to the effectiveness of human rights regimes in addressing threats to human dignity from modernisation, markets and states – the primary need for, and source of, human rights according to Donnelly.[12] Although, as Donnelly contends, human rights originally emanated from the West, the conditions which pose threats to human dignity and flourishing have become universal around the world with the globalisation of markets and capitalism. And human rights, again in Donnelly's perspective, are considered the most effective method of protecting against such threats. This begs the question, why is it considered necessary to preserve human dignity and mitigate the consequences of free market capitalism? I argue that underpinning Donnelly's desire to act in such ways is a view of humanity that stems from ontological and metaphysical sources. I will address this later in this chapter.

[12] See, *inter alia*, Donnelly (2007: 287; 2003: 57-70).

In his (2007: 287-288) own words:

> The spread of modern markets and states has globalized the same threats to human dignity initially experienced in Europe. Human rights represent the most effective response yet devised to a wide range of standard threats to human dignity that market economies and bureaucratic states have made nearly universal across the globe. *Human rights today remain the only proven effective means to assure human dignity in societies dominated by markets and states*. Although historically contingent and relative, this functional universality fully merits the label universal – for us, today [emphasis added].

Donnelly's case for universal human rights is further buttressed by his view that rights are not particularist in origin. As Donnelly sees it, '[n]o culture or comprehensive doctrine is "by nature", or in any given fixed way, either compatible or incompatible with human rights' (Donnelly, 2007: 291). Cultures are malleable and in a constant state of flux so that:

> Whatever their past practice, nothing in indigenous African, Asian, or American cultures prevents them from endorsing human rights now. Cultures are immensely malleable, as are the political expressions of comprehensive doctrines (Donnelly, 2007: 291).

The argument to stress here is that as cultures are flexible and changeable, there is great scope for agreement and consensus. Cultures do not have to be locked into a 'traditional' view of social organisation which might be anathema to human rights, but can incorporate new notions of rights to respond to changing international politics. All cultures can be receptive to human rights. This assertion is a tremendously powerful tool in the fight to enforce human rights standards, particularly in regions where 'culture' is used to defend harmful practices. However, the fundamental question remains: why is it important to protect the vulnerable and enforce rights? I argue that answers to this deceptively simple question are inevitably tied to metaphysical assumptions about the inviolability of humans.

Despite his claims to universality, Donnelly outlines some aspects of human rights that he *does not* regard as universal. The most relevant of which

pertains to *ontological universality*. By ontological universality he (2007: 292) is referring to a 'single transhistorical foundation' for human rights, which he claims is indefensible, a view shared by Rorty and others. In this sense, Donnelly rejects meta-ethical foundationalism as a legitimate basis for human rights (2003: 18-21; Dunne & Wheeler, 1999: 7). Ignoring these ontological possibilities as a basis for rights, Donnelly (2007: 293) argues that there can be no single 'objectively true' 'comprehensive doctrine' or 'moral code' because human rights have been ignored or denied through history by most doctrines. He asserts that, by following this logic, either all doctrines are 'objectively false or immoral', or that the one objectively true set of values have been widely interpreted incorrectly. Once again, however, because there is no ontologically universal foundation for human rights, there is potential to find common ground regarding contested conceptions of rights. Although a multitude of valid foundations exist, these need not be a barrier to consensus at the general level of rights. Donnelly develops these implications by suggesting a framework of overlapping consensus, a consensus disputed by critics such as Langlois (2003: 256; 2004: 512).

Overlapping consensus

The dimensions of universality discussed by Donnelly run in tension with arguments in favour of the relativity of human rights. As noted above, Donnelly proposes that human rights are universal in a number of important ways including at the level of international law. He asserts that this universality is partly based on an *overlapping consensus* between signatories to the Universal Declaration and similar legal instruments. Donnelly claims that the near-universal acceptance of these instruments is evidence of consensus on human rights between nation states.[13] For Donnelly 'rights exist above all because they are found in internationally agreed-upon document' (Freeman, 2003: 50). However, such consensus only signifies agreement on some levels and not others.[14] For such a consensus to be

[13] See also, Langlois (2004: 256) and Prasad (2004).

[14] As I will illustrate, critics such as Langlois (2003: 512-513) argue that such consensus is merely a product of international politics rather than reflecting the 'multifaceted and heterogenous worlds that exist beneath the superficial veneer of international politics, diplomacy and decision making'.

achieved there is agreement only on broad conceptions of human rights (as outlined in the Universal Declaration; Donnelly, 2003: 94). For Donnelly, this allows for a range of interpretations of rights and variety of implementations based on local values and customs (Donnelly, 2003: 96-97). He (2003: 51) notes further:

> The overlapping consensus on the Universal Declaration model is *not* a transhistorical 'anthropological' consensus. It does not imply that every person, every society, or even every single government accepts the Universal Declaration.

Rather it means that contributing nations have reached near-universal agreement on basic broad concepts such as equal dignity, respect and autonomy (2003: 51, 61).

Donnelly (2007: 291) asserts that human rights are endorsed by an increasing number of diverse doctrines around the world, providing, 'the foundation for a convergence on the rights of the Universal Declaration'. This allows for the possibility of a multiplicity of foundations and justifications for human rights at the local, cultural level, while the need for any one foundation at the transnational level is avoided. As Donnelly (2007: 292) puts it: 'Overlapping consensus implies that human rights can, and in the contemporary world do, have multiple and diverse "foundations"'. This is because:

> Human rights can be grounded in a variety of comprehensive doctrines. For example, they can be seen as encoded in the natural law, called for by divine commandment, political means to further human goods or utility, or institutions to produce virtuous citizens. Over the past few decades more and more adherents of a growing range of comprehensive doctrines in all regions of the world have come to endorse human rights – (but only) as a political conception of justice (Donnelly, 2007: 290).

The wide endorsement of human rights (at least at the political level) indicates for Donnelly (2007: 290-291) that human rights can readily be adapted by cultures regardless of their past practices. Furthermore, this supposed

consensus[15] is said (Langlois, 2004: 256) to 'inform our thinking, rather than our thinking being informed by abstract rationalism based upon superseded religious ideas or metaphysical assumptions'. In other words, overlapping consensus enables Donnelly to bypass philosophical foundations or attempt to resolve competing foundational claims to human rights (see Langlois, 2003: 514).[16]

This is the essence of Donnelly's consensus – it is a partial, rather than complete, agreement. That is, the agreement is centred on a shared political conception of justice, rather than on religious, moral or philosophical doctrines which support a philosophical anthropological defence of human rights. (Donnelly, 2003: 40-41; 2007: 289). According to Freeman (2003: 501) 'Donnelly looks at the rights practices that already exist at the international level and accepts them – or at least those that he finds acceptable – without the application of any other criteria'. In doing so, 'Donnelly eschews philosophical foundations in favor of de facto international consensus' (Freeman, 1994: 501).[17]

Realist framework

Critics of Donnelly's framework have identified his interest with the rights set out in the Universal Declaration. Prasad (2004: 2) has noted this list of rights is used by Donnelly as an 'ideal paradigm' while Besau (1992: 143) says that for Donnelly this is the 'canonical list of human rights for our time'. Donnelly (2007: 288) himself has noted that for all intentions and purposes, human rights can be defined as more or less those rights specified in the Universal Declaration. Thus equating human rights with their tangible, codified manifestations (such as the Universal Declaration) is arguably consistent with a 'realist' position on human rights (see Freeman, 1992: 501). Put differently, this perspective states that human rights are a fact of the world, made by

[15] I used the word 'supposed' because some scholars argue that 'on crucial questions concerning human rights there is not consensus but controversy' (Langlois, 2004: 256-257; also 2003: 514).
[16] Additionally, this consensus is an essential part of Donnelly's 'relative universality', although consensus is achieved more in theory than practice (On, 2005: 588).
[17] Langlois (2003: 513) is similarly critical of the consensus view, labeling it a 'very one-eyed view of the world'.

humans for human purposes, and the standards set by these rights should be abided by. As Donnelly (2003: 21) puts it: 'Human rights ultimately rest on a social decision to act as though such "things" existed – and then, through social action directed by those rights to make real the world that they envision'.[18] In other words, human rights are a 'social choice' (Freeman, 1994: 504). There is an assumption contained here regarding why humans should choose to 'act as though' human rights exist, although Donnelly does not justify why such a choice should be made or on what principles the choice depends. However, that Donnelly thinks it rights that humans decide to act as if human rights exist hints at his underlying political values and an associated philosophical anthropology.

From the above some apparent strengths of Donnelly's approach are evident. One of these is that his framework seemingly enables universal human rights without recourse to the seemingly perilous, controversial and difficult terrain of the metaphysical. That is, Donnelly's theory purports universality because it does not rely upon any particular metaphysical outlook for justification. Metaphysical and overlapping ontological concerns are seen to be circumvented altogether. Although this seems to be a pragmatic and appealing approach to human rights theory, I agree with Langlois (2003, 2004) and Freeman (1994) that Donnelly's deliberate avoidance of such issues is unsatisfactory because a) it eschews crucial dimensions of human rights, and b) he inadvertently deploys metaphysical and normative stances regarding the nature of humans and their rights, while simultaneously espousing universality. These issues will be taken up later in the chapter.

Assumptions underlying Donnelly's view of human rights

While Donnelly elucidates a particular view of human rights, there are certain wider perspectives and assumptions which inform this outlook. These come in two forms: a) those that he explicitly details and theorises in justifying and explaining his human rights framework; and b) those which are taken-for-

[18] Compare this with Richard Rorty's pragmatist position which on the face of it, is quite similar. Donnelly's and Rorty's views notably overlap with claims such as that 'our species has…been making up a nature for itself' (Rorty, 1991: 213) and that human malleability can alter political and social structures to include human rights.

granted and imposed upon his theory without acknowledgement. The first variety of assumptions includes six main elements: firstly, Donnelly's conception of human nature; secondly a view of human dignity; thirdly, the assertion that such dignity is best achieved through human rights and (fourthly) overlapping consensus; fifthly is Donnelly's realist framework which valorises existing rights and international law; and finally, his attempt to include local, relative values within universal rights.

These underlying assumptions will be detailed in the following sections as a way of illustrating how broader viewpoints shape a human rights theory. The second category of assumptions – b) above, those which are taken-for-granted and are, arguably imported uncritically – will be addressed later in this chapter. These unarticulated assumptions include Donnelly's preference for Western liberal values, and a similar bias for political systems that enhance personal, individual autonomy and dignity. The following aims not to merely describe Donnelly's framework, but rather to illustrate how his human rights view is shaped by broader concepts, such as a vision of human nature. The discussion now turns to the most prominent underpinning perspective: Donnelly's conception of the human.

Humanity

Some of Donnelly's critics (including Langlois, 2003: 512-513; 2004: 256-257 and Freeman, 1994) have argued that a major weakness in his approach is his avoidance of explicitly engaging with philosophical anthropology as a basis for defending human rights. However, I argue that while he does deliberately eschew these issues, Donnelly *does* invoke them *implicitly*. This is evident in his dealings with perhaps the most overt assumption upon which Donnelly's conception of human rights relies, namely, the appeal to humanness. I have emphasised that Donnelly repeatedly insists that human rights are the rights a person has *simply by virtue of being human*. To reiterate, Donnelly (1982a: 306) states that '[t]o have human rights one does not have to be anything other than a human being. Neither must one do anything other than be born a human being'. Human rights are not awarded

by the state or granted on the basis of merit or achievement. They inhere in the human being simply by virtue of the human's existence.[19]

Embedded in this aspect of Donnelly's work are further assumptions about the nature and character of humanness which in turn inform his broader outlook on human rights. The first such assumption is the connection he forges between existing as a human, and what he terms 'human nature'. (1982a: 306). For Donnelly, the *human* basis of human rights is obvious, even axiomatic. Just as legal rights have their basis in law, and contractual rights depend upon contracts, so human rights are based upon 'human nature' (Donnelly, 2003: 13; 1985: 27; Freeman, 1994: 501). On the face of it, this appears to be a contentious claim, as a sociological analysis dictates that any assertion that social practices originate from 'nature' should be regarded with suspicion, or at least be the focus of critical assessment. Claims based on a perceived *human* nature in particular arouse further misgivings and demand interrogation of the assumptions embedded in such claims. Yet, Donnelly makes assertions about the moral nature of humans without explicit justification.

The underlying notion of human nature – on which Donnelly's human rights outlook depends – is intrinsically bound up with moral issues: 'the source of human rights is man's [*sic*] *moral* nature' (Donnelly, 1985: 31). But what does Donnelly mean by the moral nature of humans? And what implications does such a framework have for a theory of rights? The moral nature of humanness is, according to Donnelly (1984: 31; Freeman, 1994: 504), dependent on a 'moral vision' of the *potential* for humans to lead better lives. This sense of the *possible* is, on Donnelly's (1985: 33) account, 'a deeper, human moral reality'. In other words, a moral outlook imagines a better world, a potential reality attainable through human rights. 'Human rights', Donnelly (2003: 15; 1985: 33) argues, 'are less about the way people "are" than about

[19] Freeman (2002: 61-62) finds Donnelly's claims here to be unsatisfactory, because *inter alia* Donnelly's justification for human rights purely on the basis of membership in the human race does not explain *why* this gives rights of a certain kind to humans. Freeman's point here intimates that there is more Donnelly's apparently axiomatic definition of human rights than a cursory examination might suggest.

what they might become; they are about *moral* persons, rather than natural or judicial persons'. And this moral vision sets minimum standards beneath which 'we cannot permit ourselves to fall' (Donnelly, 1985: 31; Freeman, 1994: 502).

On Donnelly's account, human rights rely upon a preference for social choice, and active decisions made in the political realm to achieve a moral ideal. Donnelly's critic, Michael Freeman (1994: 502) elucidates this position thus: 'Human rights represent a social choice of a particular moral vision of human potentiality, which rests on a substantive account of the minimum requirements of a life of dignity'. This moral vision involves human rights as a method establishing and guaranteeing 'the development of the human person envisioned in the underlying moral theory of human nature, thereby bringing into being that type of person' (1985: 32). In making these claims, Donnelly arguably invokes notions of a universal humanity to underpin human rights, despite his own challenge to the importance of doing so.

Despite the seemingly commonsense logic of his claims, at least two scholars (Langlois, 2004, 2003; Freeman 1994) argue that Donnelly's notion of human nature is obscure and under-theorised. Langlois (2003: 514) in particular notes that Donnelly avoids the crucial question 'What is it to be human?' I argue that Donnelly *does* provide a response to this but only in a general, indirect and superficial manner. And because Donnelly avoids these essential foundations they seep into his theory unacknowledged.

But Donnelly has attempted to justify his avoidance of metaphysical issues by defining human rights in a specific way. His argument is that human nature has little or nothing to do with the natural world, but is a socially constructed project (Donnelly, 2003: 15, 1985: 32). For Donnelly (1985: 32) humans, as social beings, create their 'essential nature' from themselves. Human rights are, therefore, a method of 'self-actualisation' and a 'self-fulfilling moral prophecy' (2003: 15; 1985: 33) as they work to achieve the ideals set out by a moral human nature. Donnelly (1985: 31, 32) labels this approach

'constructivist' in that it works on the basis that humans *construct* human rights from their own social and political contexts.[20]

By making this assertion, Donnelly distances himself from natural rights theories that posit that human rights are derived from God, nature, or the ontological, bio-physical realties of existence.[21] Donnelly (1985: 31) claims that to base human rights on such a premise is to fundamentally misconstrue the nature of rights and common humanity.

> Human rights are not 'given' to man [*sic*] by God, nature, or the physical facts of life; to think of them in such terms is to remain tied to a vision of human rights as things. Like other social practices, human rights arise from human action (Donnelly, 1985: 31).

Thus, and contrary to what appears to be his view of the origins of human rights (that, by virtue of one's existence as a human), Donnelly emphasises the socially constructed nature of human rights, rather than as a 'pre-social' given, or rights bound to particular notions of natural or religious origins (2003: 15).[22] As Freeman (1994: 502) observes, this notion of human nature is 'a social project as much as it is a presupposition'. However, I argue that even though, as Donnelly maintains, that human rights can be a social construct, there is still an inherent philosophical anthropology (along with its metaphysical origins) at work. This is because Donnelly's view of human nature includes beliefs regarding what humans are, what they ought to be and what they can do (including the view that they can construct their own systems of meaning).

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[20] Again, compare Donnelly's views here with Rorty's.

[21] Compare such a view with that of Bryan Turner (see chapter 4) who argues that human rights derive from human frailty, and the human body's tendency to age and deteriorate.

[22] It is this conception of human nature as a social construct which forms the basis for Donnelly's historically contingent human rights. Freeman (1994: 503) argues that Donnelly fails to provide a direct and detailed substantive account of human nature. He (1994: 512) suggests that Donnelly himself concedes that the concept of human nature is historically contingent and subject to change, therefore undermining the defensibility of the concept. See also Langlois (2003: 514; 2004: 257). But this begs the question: how human nature – and thus human rights – can be called universal if their sources are social (read: particular) in origin? This dilemma encompasses several dimensions, although the first one pertains to Donnelly's concept of human dignity.

The above discussion illustrates that Donnelly recognises the social origin of concepts of human nature, yet his discussion of human nature in itself necessarily entails philosophical or metaphysical claims as to its character. This is an inescapable and unavoidable consequence of deploying notions of human nature and using them in defence of a position of human rights. If human nature or membership in the human species guarantees particular types of rights, as Donnelly maintains, and, even if these rights are the product of social traditions rather than a transcendent God, a philosophical anthropology still underpins these claims. There will always be metaphysical, ontological and teleological tenets that form the basis for claims to human rights. In Donnelly's (1985: 31) words, human rights amount to 'a particular moral vision of human potentiality' – that is a vision of what humans are, what they are capable of, and what they can be. So despite his claims to the contrary, Donnelly's work tacitly muses on what humans are, what they can be and what they ought to be.

Furthermore, Donnelly's assessment of the universality of human rights is not universally shared (despite the apparent consensus surrounding human rights law), but rather is informed by a normative *telos* that is constituted by pre-existing political and social values and preferences.[23] For Donnelly, these values are more or less consistent with Western liberal thought. But cast in terms of universality, Donnelly's framework elides the particular ontological and metaphysical presuppositions that inform it, yet ironically are considered by Donnelly himself as irrelevant. By denying the importance of, and eschewing the theorisation of metaphysically derived foundations, Donnelly appears to be more particularist than universalist. Donnelly's discussion of human dignity further reveals how philosophical anthropology plays an integral, yet unacknowledged role in his work.

[23] For another example of this see Howard and Donnelly (1986) who claim that liberalism is a necessary pre-requisite for human rights – a position that Kohen (2007: 140) describes as 'surprisingly ethnocentric'.

Human dignity

As noted above, Donnelly claims that being human is in itself justification for human rights. But what is it about a moral, contingent, human nature which gives rise to human rights? A moral vision could include any number of preferences for human living; Donnelly (1985: 31) himself acknowledges that 'human rights represent the *choice* of a *particular* moral vision of human potentiality [emphasis added]'. So why this particular choice? Analysing Donnelly's underlying values and assumptions provides some method of addressing these issues. He (1985: 32) notes that 'a constructivist theory begins with, and always centres on, the person and his or her inherent dignity'. As was noted earlier in this chapter, Donnelly maintains that human rights are the best available method of sustaining human dignity. But as Freeman (2002: 65) has noted, the link between human rights and dignity is problematic and far from certain.

Throughout his work, Donnelly asserts the inherent value and dignity of human life. For Donnelly (1982a: 314), human rights are not an end in themselves, but a means of achieving and protecting human dignity. Donnelly (2003: 14) contends that 'human rights are "needed" not for life but for a life of dignity'. He (1999a: 80) notes that human rights 'rest on and seek to realise a particular conception of human nature, dignity, well-being, or flourishing'. He (1999a: 80) continues:

> A human rights conception, however, insists that essential to their dignity, and to a life worthy of a human being, is the simple fact that they are human beings. This gives them an *irreducible worth* that entitles them to equal concern and respect from the state and the opportunity to make fundamental choices about what constitutes the good life (for them), who they associate with, and how (Donnelly, 1999a: 80, emphasis added).

So Donnelly employs premises regarding the character of human nature and dignity which are reflected in his position on socially constructed human rights. These dimensions of human existence inform Donnelly's human rights theory and provide a foundation on which his claims can rest. While Langlois (2003: 512) among others avers that Donnelly's theory is philosophically

wanting, and while Donnelly himself (2004: 18-21) questions the usefulness of seeking philosophical groundings and foundations, such underpinnings can be identified and exert a substantial influence on his position. The philosophical anthropology that Donnelly shuns is, I argue, evident in his work, particularly in his claims regarding dignity. The distinction I am making here between my own arguments and that of Langlois and Freeman is that although Donnelly outwardly eschews philosophical anthropology (as his two critics similarly contend), his work is implicitly based on these metaphysical concerns and that they are deployed unintentionally and remain unexamined.

Human Rights as best method of maintaining human dignity

Human rights are assumed by Donnelly to be the most effective method of assuring dignity in the face of threats from states and markets (2007: 288). Donnelly makes this contentious[24] claim amid arguments that other, non-Western cultures contain values which resonate and are consistent with contemporary human rights. He (2003: 71-88; 1999b: 64-69) tackles this debate head-on. Donnelly asserts that while non-Western traditions (such as traditional Confucian China or Islam) may contain values and precepts that are similar to human rights, there is a fundamental and crucial difference. Traditional Muslim societies, for example, do not value all humans equally and do not pursue human dignity in a manner consistent with human rights. Donnelly (2003: 74) claims that duty rather than rights take precedence in such cultures. Furthermore, rights are held to be 'a consequence of one's status or actions, not the moral fact of being human' (2003: 74). Duties to behave in certain ways towards others are owed to God rather than to those others on the basis of their humanity. Put differently, Donnelly (2003: 75) argues that Muslim societies 'did not pursue human dignity or flourishing through the practice of equal and inalienable rights held by all human beings'. This claim is itself contentious and would not be endorsed by many practicing Muslims.

[24] This claim is contentious as it explicitly portrays non-Western alternatives as insufficiently realising human dignity and moral human nature as Donnelly understands them. On this point, see Coomaraswamy (chapter 2), Hood (2001, 1998) and Yung-Myung Kim (1997).

Similarly, Donnelly (1999b) tackles claims that defend Asian cultures as possessing their own sense of human rights which are independent of those put forth by the Universal Declaration and contemporary international law. Traditional Chinese values may place greater emphasis on individuals' duty to a collective or group and institutions such as the family. A person's right to respect and dignity are attributed on the basis of this contribution rather than as inhering in the person. Donnelly (2003: 80; 1999b: 66) asserts that the awarding of rights based on merit 'is clearly not a *human* right. It had to be earned,' he continues, 'and could be lost. The ground of the right was not the fact that one was a human being. The dignity and worth in question are not seen to be inherent in the person'.

Furthermore, Donnelly (2003: 81) claims that traditional Chinese Confucianism did not even possess the language of human rights, let alone the concept. Even if traditional values – such as, prohibition of acts which might today be considered violations of human rights – were consistent with human rights, that does not mean that human rights existed in those societies (2003: 81). For Donnelly, claims to traditional non-Western human rights concepts tend to confuse human rights with notions of justice, human dignity and well-being (1999b: 66). Such ideals, as noted above, do not rely on the premise that human dignity (and therefore rights) are inherent in the person by virtue of their humanness. In essence, Donnelly (2003: 71) posits that although these cultures have had 'conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity', these notions are independent of and separate from human rights. Furthermore, for Donnelly they are *alternatives* to human rights rather than different formulations of essentially the same thing. This is despite Donnelly claiming that there is nothing distinctively Western about human rights. Kohen (2007: 140) argues that Donnelly's conception of non-Western dignity is incomplete and inaccurately represents how dignity is experienced and valued in other cultures. Kohen's observation here supports my claim that Donnelly's pre-conceived and pre-existing preference for Western human rights permeates his work but is shrouded by his espoused universality.

The viewpoint outlined here is crucial to Donnelly's broader perspective on human rights. Criticising non-Western alternatives to human dignity and rights allows Donnelly to valorise contemporary human rights as expressed by the Universal Declaration. The stance Donnelly assumes in relation to these alternative methods of realising human dignity underpins his broader position on human rights. In his analysis there is a clear preference for a conception of human dignity which places equal and inalienable value in each and every human. He (1999a: 81) notes that the vision of human dignity expressed by human rights is:

> … in a broad cross-cultural and historical perspective, extremely unusual. Many cultures and societies across time and space have shared values such as equity, fairness, compassion and respect for one's fellows. Very few, however, have sought to realise these values through equal and inalienable universal rights.

Because non-Western (and even pre-modern Western) conceptions of dignity do not, in Donnelly's eyes, contain such a preference, they are therefore viewed as inferior, less effective systems of attaining dignity than human rights.

By discounting non-Western conceptions of human dignity, Donnelly is in fact privileging a particular version of it despite his claims to universality. As noted above, he endorses contemporary human rights on the basis that they are said to value the inherent dignity and humanity of each person and are available to individuals only. As one observer has noted, Donnelly's position relies on 'faith in an exclusively individualistic notion of human rights' (Alston, 1991: 215). Although he denies that human rights are distinctively Western in nature, Donnelly's perspective prioritises a vision of dignity and humanity which is based in a particularly Western perspective. Alston (1991: 215) counters that Donnelly's 'underlying premise' is that 'human rights can only be defined in terms of a highly individualistic, Western perspective'. Therefore Donnelly's preference for human rights based on their capacity to realise human dignity obscures his own biases toward Western individualism. Furthermore, rather than human rights being not distinctively Western in character as Donnelly insists, Western values are introduced without

acknowledgement (or intent) so that non-Western, less individualistic concepts of rights are marginalised. In Donnelly's framework this privileging of Western values comes in the guise of identifying the most effective method of realising human dignity.

Consensus as universality of dignity

I noted earlier in this chapter that Donnelly proposes that there is a political consensus on human rights. That is, there is broad general agreement at the level of the concepts expressed in the Universal Declaration and other international legal instruments. For Donnelly, this consensus reflects a deeper convergence of concepts and morality. The recognition of basic rights to life and liberty, protections against torture and arbitrary arrest, for example, in the Universal Declaration, for Donnelly, express a sense of human dignity which he believes is universal. He (2003: 94) writes that such rights are 'so clearly connected to basic requirements of human dignity … that virtually every morally defensible form of social organization must recognise them'.

Furthermore, Donnelly (2003: 51, 61) insists that the wide endorsement of the Universal Declaration reflects a shared view of the humanity and human dignity, noting that the 'vision of human dignity they [human rights] reflect and seek to implement is accepted by almost all states as authoritative' (Donnelly, 2003: 61, see also 2003: 41). This agreement is reflected in the overlapping consensus of the international human rights framework. In Donnelly's view, this is the essence of the universal nature of rights and the consensus which supports it. He (2003: 51) highlights that the consensus approach relies on the claim that:

> … most leading elements in almost all contemporary societies endorse the idea that every human being has certain equal and inalienable rights and is thus entitled to equal concern and respect from the state – and that what holds this otherwise disparate group together is a fundamental commitment to human equality and autonomy.[25]

[25] Donnelly's words here resonate with Rorty's argument against a discernable common humanity.

Yet this point is disputed by some critics, including Langlois (2003: 512) and Freeman (2002: 64; 1994: 505) who argue that consensus at the level of international politics is only indicative of *realpolitik* rather than of a deeper consensus of diverse views held by heterogeneous peoples, and insincere consensus is a real possibility.

Yet for Donnelly, international human rights law is an expression of human dignity and the desire to preserve and maintain that dignity. Furthermore, the form of dignity expressed is essential, in Donnelly's view, for a just society. He (2003: 94) says: 'I am even tempted to say that conceptions of human nature of society that are incompatible with such rights are almost by definition indefensible in contemporary international society'.[26] Yet a clear explanation of why this might be so is missing in Donnelly's work. Furthermore such assertions inherently make claims about which conception(s) of human nature are preferable.

Diversity within universality

A central aspect to Donnelly's view on human rights is his acknowledgment that they are historically contingent and particular in origin. Similarly, he recognises the importance of cultural relativity and diversity. Yet he argues in for the *universality* of human rights. This apparent dichotomy between relativism and universalism is central to Donnelly's oxymoronic concept of '*relative universality*' (which he had previously termed 'weak relativism').[27] As was noted in the section above on overlapping consensus, Donnelly only argues that human rights are universal at the level of conception. That is, diverse nations agree on the main substance of human rights as a political conception of justice; but there the consensus stops. At two other levels identified by Donnelly, there is scope for divergence and variation. These are, firstly, difference of *interpretation*, and secondly of *implementation or form* (Donnelly, 2003: 96-97; On, 2005: 586). The reason for this is to allow for

[26] Donnelly (2003: 94) similarly states that 'it is hard for me to imagine a defensible conception of human that does not include almost all of these rights [recognised by the Universal Declaration]'.

[27] See Goodhart (2008) for a detailed critique of this term. While giving qualified endorsement of Donnelly, Goodhart goes so far as to argue that Donnelly's thesis is neither relative nor universal.

cultural, political and local differences, differences which are emphasised by arguments in favour of cultural relativism.

For Donnelly, there may be multiple defensible interpretations and implementations of human rights based upon a particular culture's outlook, religion or political preferences. There is, in this framework, scope for legitimate variation which falls within the range implied by the universally agreed concept of human rights. He (1999b: 84) argues:

> Internationally recognized human rights concepts may be interpreted and implemented in significantly divergent ways. Different states and societies may even weigh particular rights differently. But legitimate variations are limited to the (relatively narrow) range specified by the core concept of the right in question, and countries cannot legitimately pick and choose among internationally recognized human rights.

But Donnelly goes further than suggesting that divergence is permissible and defensible; he (2007: 299) states that relativity in implementation of human rights is 'not merely defensible but desirable' (see also On, 2005: 588). But why is such diversity desirable in the face of universal standards? And what would be his judgement if a particular divergence contravened, or was inimical to, the international universal convention? What values underpin such a claim and Donnelly's broader 'relative universality' position?

One response to the last question is a belief that diversity and difference should be valued in themselves. Donnelly's position also endorses the autonomy and choice of the people whose culture is at stake, as well as deeply imbedded cultural traditions (2007: 301). He (2007: 301) writes that 'autonomous choices of free people should never be lightly dismissed'. This preference for autonomy and freedom of choice is further linked to his conception of human rights as being concerned with *individuals*, which is in turn related to liberal origins of human rights. Once again, this approach underlies Donnelly's attempt to overcome the difficulties posed by claims to cultural relativity and diversity on the one hand, and universal rights on the other. This correlation is reflected in Donnelly's method of avoiding specific

spiritual, religious or metaphysical foundations for human rights, relying instead on international consensus at the general level only. At the same time it reveals his values and political preferences in that he emphasises an essentially liberal understanding of human rights.

Advantages and deficiencies in Donnelly's approach

This section will firstly provide a brief overview of the advantages of Donnelly's position. It will then build upon the analysis introduced above by revealing some of the unacknowledged and tacit assumptions which filter into Donnelly's theory and provide a substantial influence on it. Donnelly's approach to human rights is, on the face of it, persuasive and compelling as it has a number of strengths which assist in providing a workable human rights theory. For one, his faith in the universality of the rights specified in the Universal Declaration means that there is an existing, widely endorsed framework by which to consider and assess acts which may be considered as rights violations.

Secondly, Donnelly is keen to identify the historical and political contingency of human rights, noting that they are in fact the product of specific social forces and thus socially constructed. Human rights, on Donnelly's account, are not derived from religion or broader 'comprehensive doctrine', but created by humans for human requirements. Put differently, Donnelly's perspective by-passes troublesome arguments about specific foundations for human rights by asserting that they emerge from particular social, cultural and political environments.

A third advantage is Donnelly's perspective has the benefit of only requiring consensus at the broad, general level which only requires agreement on a political conception of justice. This avoids the problem of arbitrating between competing foundations for human rights and allows for a multitude of foundations can be used to justify particular human rights implementations. This aspect is particularly beneficial when addressing the basis of human rights, as it brings a degree of reconciliation between the competing forces of universal rights and diverse cultural values.

A fourth advantage of Donnelly's approach is that he clearly specifies that human rights are a moral expression of human dignity. Unlike other theorists, such as Coomaraswamy, Donnelly explicitly makes this connection between human rights and dignity, although imperfectly. In a similar vein, Donnelly openly defines what he thinks human rights are (the rights one has by virtue of being human and which are stated in the Universal Declaration) in a manner which is either refreshingly clear or overly simplistic in its application (I tend to view it as the latter). The benefits of clearly defining such dimensions of human rights are apparent when one considers the vast literature on the topic which generally fails to achieve any degree of consensus as to what rights are and from where they emerge. Furthermore, the clarity and directness of Donnelly's perspective circumvents the high degree of abstraction which is common among many scholars and provides definitions which are accessible and appealing.

Tacit assumptions

However, such strengths can also be regarded as deficiencies. Direct and axiomatic statements such as human rights 'are, literally, the rights one has because one is human' (Donnelly, 2003: 7) are arguably tautological and encapsulate a range of undivulged assumptions. They *prima facie* appear tautological and at least one could expect that they would be explicated so as to transcend their apparent tautological nature. For instance, Donnelly's repeated assertion that human rights stem from an inherent humanity does little to explain what this humanity is, nor why merely existing as a human brings with it special rights and entitlements. Freeman (2002: 60-61) contends that:

> Donnelly says that human rights are the rights one has simply because one is a human being. This is a very common and very unsatisfactory formulation. It is not clear why one has *any* rights simply because one is a human being. It is particularly unclear why one has the rights listed in the Universal Declaration.

Similarly, rooting human rights in a specific concept of dignity fails to recognise the values embedded in such a claim. As illustrated above,

Donnelly argues the case for human rights because they are the best alternative for realising human dignity. This formulation of dignity relies upon a specific, Western conception of individualism and autonomous moral agents (On, 2005: 589) and rejects non-Western ideas of dignity.

What is missing, assumed or tacit in Donnelly's formulation of human rights is a *normative stance* towards not only the value of human beings but also the idealised vision of what a human life should entail. Donnelly maintains that human rights are the rights of *individuals* – not groups or states – to certain minimum standards. A life of dignity entails rights to political involvement, freedom of religion, freedom of speech and the other rights expressed in the Universal Declaration. A life based around such rights is for Donnelly, a more preferable vision of human dignity – and a privileged way of being[28] – than one based on other, non-Western conceptions of dignity. Such conceptions, as have been detailed previously in this chapter, do not value the individual, either in itself, or as possessing inherent moral value. The implication of this analysis is that the most desirable basis for a life of quality is one which values individualism, and autonomy, concepts which in turn are Western and liberal in origin. By referring to this preferred mode of living in terms of human dignity, Donnelly's perspective appears neutral and inclusive rather than as valorising a Western vision of society. Yet in a sense it is exclusionary, or at least sets the (narrow) limits within which consensus on rights can exist. Steve On (1995: 589) notes that Donnelly's overlapping consensus requires a 'range of views that accept *ab initio* the proposition that human beings are autonomous moral agents'. In his own words, Donnelly (2003: 51-52) notes that consensus is bounded and only possible for 'those who see "human being" as a fundamental moral category and who see human beings as in some important sense autonomous actors'.

A further criticism that I level at Donnelly has to do with the historical origin of rights themselves. As indicated previously, in Donnelly's view human rights were developed in response to the deleterious effects of modernisation. Such

[28] I owe a debt to Prof Trevor Gale for this particular phrase.

profound change and its consequences are viewed by Donnelly as all but universal in the context of global markets and capitalism. Although human rights first emerged in the West, for Donnelly there is nothing distinctively Western about them. Rather, they are a remedial tactic employed to off-set undesirable by-products of structural change. Here Donnelly (2003: 78) clarifies this distinction thus:

> Social structure not 'culture,' does the explanatory work. When the West was filled with 'traditional societies,' it had social and political ideas and practices strikingly similar to those of traditional Asia, Africa, and the Near East. Conversely, as those regions and civilizations have been similarly penetrated by modern markets and states, the social conditions that demand human rights have been created.

However, to suggest that human rights are merely an expression of structural forces and, as it were, culturally neutral (or universal) is to be blind to both the origins of rights and to the biases in the vision of globalisation it underpins. To reiterate, Donnelly (2003: 78) asserts that the Western origin of human rights is merely an accident of history and that Western societies 'had the (good or bad) fortune to suffer the indignities of modern markets and states before other regions'. He (2003: 78) points to the spread of both rights and the conditions to which they are said to respond around the globe, concluding that they are all but universal. The implication here is that modern states and markets – which did in fact originally emerge in the West – is an ideal and inevitable form of social organisation. To suggest that the West got there first is, arguably, to subscribe to a linear notion of progress which asserts that all societies will, given time, become capitalist and market oriented. It is also to obscure the Western values embedded in such social structures and present them as 'neutral'. Similarly, it implies that human rights are an inevitable consequence of social development despite their Western origins. This implication is supported by Donnelly's (2003: 78) phrase regarding the manner in which the West 'got a jump on the rest of the world in developing the response of human rights'.[29]

[29] I would argue that Donnelly is guilty of what Connell (2007, 2006) would call 'Northern Theory', that is, writing from the perspective of the privileged global North in ways that exclude 'Southern' perspectives. The effect often results in bodies of work that make claims

This criticism is substantively different from Donnelly's claim that human rights are universal because of both their near universal endorsement and the prevalence of the 'indignities of modern markets'. His position relies upon his approach to universality in both the functional and international legal senses (see above). It also corresponds with a realist framework in that it avers that human rights are universal by virtue of widespread acceptance. The critique here however, claims that Donnelly confuses this endorsement, or universality, with an alleged lack of distinctive Western character in human rights. Merely because an idea or procedure is widely adopted and endorsed, it does not necessarily hold that the idea is without specific origin and its own identifiable value system. The fact is contemporary markets and states did emerge from the West, *and* their dissemination throughout the world is a consequence of active policies of those nations. Colonisation, trade and settlement assisted in transforming a once primarily Western practice into a global phenomenon. Furthermore, the power relations that stipulate which voices are heard and which are silent, what values are prevalent and which are marginalised, is often obscured from view (and felt most acutely by those on whom it is wielded rather than by the dominant). As Connell (2007: x) notes, '… when the claim of universal knowledge or universal values is made from a position of privilege, it is likely to serve hegemony not liberation'. Arguably, Donnelly's approach to human rights helps to maintain the status quo by obscuring the power yielded by dominant nations to assert a particular view of human rights.

The point to be emphasised here is that (near) universal endorsement of an idea does not preclude that idea from reflecting the values and characteristics of its origins. Likewise, simply because that idea is implemented in response to a (near) universally observed problem, does not mean that the problem is not the product of a particular world view. Put in terms employed by Donnelly, even though human rights are accepted as a permissible remedy to the common indignities of modern markets, it does not necessarily follow that

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to be universal but are reflective of specific politics and values. This particularism is thus hidden from view by sweeping, general declarations of universality.

both the problem and the remedy are not distinctively Western in character. As noted above, the West did encounter the conditions which threatened human dignity before other regions and therefore developed human rights first. But it has been through imperialism, colonialism and trade that these conditions were exported throughout the world as a result of Western values and practices. Even if human rights and threats to human dignity are conceived of at the structural rather than cultural level, it is not axiomatic that the structure cannot have particular origins which reflect specific values.

Indeed, Donnelly describes human rights as being *individual* rights in a relationship between the state and the individual not traditionally seen outside of modern Western civilisations. He notes that only the vision of human dignity expressed by human rights can be satisfactory for a truly meaningful, human life; other conceptions of human dignity – such as traditional Confucian ones – do not place due value on the inherent value of the individual. So, notions of individual freedom, inherent personal value, which evolved from a European philosophical tradition, are imbedded in human rights and their underlying values. Yet Donnelly denies that such values are uniquely Western, while simultaneously insisting that they are superior. In his claims regarding the universality of Western human rights, Donnelly again ignores the power structures and processes that lead to the dominance of some cultures, epistemologies and cosmologies over others. Similarly, he denies that the structural changes caused by European modernisation are not reflective of these values, but simply an evolution of human existence and human nature.

An alternative way to conceptualise this argument is to suggest that Donnelly is universalising the particular, in this case universalising a particular discourse about human rights. By denying the cultural specificity of human rights, and claiming that they are pragmatic response to universal problems, Donnelly effectively neutralises arguments regarding the imposition of Western values on the rest of the world. Although he acknowledges that human rights are historically contingent and subject to revision and change, Donnelly's approach still masks its cultural origins and biases. As Freeman

(1994: 512; also Langlois, 2003: 514) asserts, Donnelly supports human rights 'on the basis of a prerational commitment to liberal culture'.[30] It is evident here how Donnelly's assumptions inform his approach to human rights.

Conclusion

This chapter has discussed the universalist theory of human rights held by Jack Donnelly. The argument has been that his seemingly simple definition of human rights is shaped by his views regarding the character of human nature, human dignity and individualism. Although apparently axiomatic on the surface, Donnelly's work deploys unexplored and specific values pertaining to international politics and rights. My argument has sought to consolidate the apparent tension between Donnelly's claim that human rights are universal while being both socially constructed and the product of a particular social and political context. To insist, as Donnelly has done, that human rights – and the social changes to which they respond – are not inherently Western is not a convincing argument. As I have explained, Donnelly masks the culturally specific values of individualism by judging human rights to be a universal remedy to universal problems. My argument has illustrated this by suggesting that Donnelly's preference for a vision of human dignity based on individual rights is flawed. This preference is allied with dominant Western liberal (particularly North American) values and is arguably preferred by Donnelly because it is consistent with his pre-existing outlook. In this sense, the chapter has argued that Donnelly's claim to universal rights is based on an unacknowledged premise regarding the preferred method of social organisation. As such his claims to universality are undermined.

However, as noted in the chapter, Donnelly's assertion of universality is more accurate in other respects. There is some merit in arguing that human rights are universal because they are widely endorsed as a response to common

[30] Donnelly's insistence that human rights are not intrinsically Western is strangely at odds with the view he espouses in an earlier article with Rhonda Howard (1986). This article directly links human rights and liberalism, suggesting that there is a 'deep and essential theoretical connection' (1986: 805). However, the absence of such an explicitly link in his later work supports my argument that Donnelly is universalising a particular political preference.

and prevalent problems. This universality is reflected at the level of international law and politics. They are universal in that they are widely used tools which are accepted on many levels, including as a practical policy for improving the lives of the marginalised and deprived. Yet this is different from claiming that human rights are not distinctively Western and therefore easily adaptable. This type of universality is also itself an sufficient basis on which to justify human rights.

Furthermore, as argued by critics (such as Langlois, 2004, 2003; Freeman, 1994) Donnelly's approach lacks sufficient theorisation of concepts such as human nature which are inadvertently imported in rather than owned and defended. Similarly, Donnelly (2003: 18-21) actively avoids seeking foundations for rights in philosophical anthropology in a manner deemed necessary by Langlois (for example, 2004: 260). Donnelly's avoidance of such philosophical issues is countered with a greater emphasis on consensus and a realist stance on how human rights exist today. For him, this approach negates the need for foundational theorising. But as Langlois (2004: 257) asserts, the appeal to consensus is undermined by claims that human rights are not the subject of widespread agreement, but controversy and contestation.

Another key dimension to my argument in this chapter has been the influence of underlying assumptions – acknowledged or tacit – on Donnelly's theory of human rights. One of the most fundamental foundations of Donnelly's view that human rights are inherently universal stems from his assumption regarding human nature. Humans possess inherent value which cannot be removed anymore than a person can cease to be human, and this point thus enables Donnelly to claim the universality of rights. Similarly, Donnelly's view of human dignity entails that he privileges human rights over other similar belief systems as he maintains that human rights realise human dignity in the most effective fashion. Significantly, Donnelly's acknowledged foundations are further shaped by tacit assumptions. For example, although he denies that human rights are distinctively Western, Donnelly's conception of human nature and human dignity are shaped by his unarticulated preference for

Western-style individual autonomy. This is a significant and critical link because it is not explicitly articulated by Donnelly, but forms the basis for his preference for contemporary human rights.

Furthermore, despite his critics claiming that Donnelly avoids theorising human nature, I have argued in this chapter that his position on human rights is, in fact, informed by a notion of humanness. Donnelly's conception of humanity, morality and dignity provide an underlying framework and justification for his view on rights. It is arguable (as Langlois and Freeman do) that these foundations are not sufficiently developed or well theorised; however, it is clear that they form the basis for a human rights theory. I am somewhat sympathetic with Donnelly's critics in respect to assertions that his theorising of human nature and dignity, to a degree, take for granted their origins in Western liberalism and political realism. If a defensible vision of human rights is based primarily on an apparent agreement on certain Western-derived ideals, then if consensus shifts or breaks down there is no defence for human rights (Langlois, 2003: 513). Human rights, therefore, need more secure foundations than consensus, something more substantial and widely applicable to which advocates can appeal in circumstances which challenge human rights. The theorists who follow in this thesis develop frameworks that address this fundamental issue.

CHAPTER 4
HUMAN FRAILTY AND SOCIAL PRECARIOUSNESS: BRYAN S. TURNER

'…while human happiness is notable for its cultural diversity, misery is characterised by its unity' (Turner, 1994: 15).

Introduction

The previous chapters analysed approaches to human rights that relied upon foundations of varying clarity and theorisation. I concluded the discussion on Donnelly's perspective by searching for foundations that are more thoroughly theorised and which seek to include a more universal sense of philosophical anthropology than Donnelly is able to offer. I argued that Donnelly's framework provides some response to the dilemmas raised in the analysis of Rorty's relativism and pragmatism as well as to Coomaraswamy's narrow focus on international law as a basis for human rights. Donnelly's approach appears to be based on a tacit or largely unarticulated notion of a universal, moral human nature. Scrutiny reveals this vision to be somewhat skewed by his preferences for Western liberal values. The arguments that Donnelly marshals in defence of human rights obscure the specific and particular assumptions that underpin his claim to proposing a 'universal' theory.

Therefore, the question persists: on what can we found human rights that will attract cross-cultural appeal and approach what might be considered to be 'universal'? From the positions presented in the first 3 chapters of this thesis it might be argued that adequate grounds for human rights should: a) be metaphysically 'neutral', in the sense that no *particular* theological or political view of the world can be privileged; and b) be derived from a commonality of human experience that is sufficiently general to be described as 'universal'.[1] Can such grounds be established? I have already argued that anti-foundationalism, international law and political realism are, by themselves, insufficient for the task. But what about the more immediate experience of

[1] I might also add that an adequate framework for human rights also ought to recognise and engage with the philosophical anthropology which inherently informs any view of human rights.

human circumstances? Might there be some dimension to human experience that reasonably can be argued to be universal?

Sociologist Bryan S. Turner (born 1945) argues that this universality can be found in what he claims is a shared human ontology: human frailty and social precariousness. In doing so, Turner is notable for being the first author to address human rights from a sociological standpoint. He did this in his seminal 1993 article entitled, 'Outline of a Theory of Human Rights' (Turner, 1993; Walters, 1995: 31). Turner is responding to the limitations of traditional sociological theory – which is sceptical towards the idea of universal values, foundations and the politics of rights[2] – to provide the basis for a universal theory of human rights. According to Malcolm Waters (1995: 31), the 'key problem for Turner is to find a universal of human ontology that can explain the non-relativized character of human rights'. This approach might seem rather unusual for a sociologist, as theorists in this tradition tend to emphasise the relative, constructed, specific and contested character of truth claims. Yet, Turner simultaneously recognises both the discursive and contingent nature of human rights, and their origin in ontology.

Using Turner's perspective at this point in the thesis highlights the contrast with the theorists used in the previous chapters. The perspective explored in the following represents a distinct break from the previous chapters. While Coomaraswamy and Donnelly emphasise the legal and political manifestations of rights with only weak conceptions of human nature, this chapter explores more explicit formulations of philosophical anthropology and ontology as justifications for human rights. As the name suggests Turner's theory of human frailty places greater emphasis on what humans are as both corporeal and physical entities as well as socially situated bodies, rather than on less immediate – and more contestable – concepts such as international law.

[2] See Connell (1995: 25).

Turner argues that the basis of human rights should be drawn from what human beings have in common as physical and social bodies, rather than from their values or beliefs. It is the common ontology of the body which, Turner asserts, is the universal grounds for human rights. By including aspects of the objective body and connecting them to social context, Turner has contributed to rights theory in ways which other theorists have neglected. That is, many writers address issues of the origins of rights, what rights we should have and why we should have them; but the human body as such is excluded from the discussion. In fact, in much social theory, this exclusion is arguably the legacy of the sociological tradition and the desire to avoid reducing social phenomenon to biological determinism. Turner, however, attempts to overcome this issue and re-introduce the human body as an essential feature of both social theory and human rights.

In keeping with the structure of the previous chapters, the following begins with an outline of Turner's theory of human rights, describing his notion of human frailty and social precariousness. The chapter then continues by exploring Turner's broader sociology of the body that informs his more specific stance on human rights. This sociology of the body stresses both the ontological, corporeal and the socially situated dimensions of the human body. Turner does this, I argue, in an attempt to overcome the dilemmas posed by the need for a universal foundation for human rights, and the demands of pluralism and critical sociology that require the de-centring and relativising of value systems that purport to be universal.

I argue in the following that Turner's approach has great merit in that it attempts to identify a universal ontology as a basis for human rights. There is much appeal in a theory that seeks to avoid valorising particularist political and metaphysical views under the guise of universalism (à la Coomaraswamy and Donnelly). However, this chapter emphasises the point that underpinning the connection that Turner makes between frailty and rights is a tacit normative stance (Langlois, 2001: 98) that places value on humans and human rights. In the process, Turner inadvertently deploys specific

metaphysical and political views which he is attempting to elude despite his aim of universalism.[3]

Turner's theory of human rights

It is necessary to outline the human rights theory which Turner proposes so that the assumptions on which it is based may be more clearly identified. As noted in the introduction to this chapter, Turner bases his theory on what he considers a universal ontology of humans.

Human frailty

Despite widespread disagreement among philosophers as to both the existence and content of a common human ontology, Turner (1993: 500) argues that such a commonality *does* exist. Turner's position is based on the premise that the 'concept of rights can be defended through a sociology of the body'. For Turner, what humans have in common is not a metaphysical, externally derived, human essence, but a more immediate feature, a shared ontology. He argues that *human frailty* constitutes a common humanity across cultures. 'Human beings are frail,' Turner (1993: 501) asserts, 'because their lives are finite, because they typically exist under conditions of scarcity, disease and danger, and because they are constrained by the process of aging and decay'. Elsewhere, Tuner (1994: 12) writes: 'Finitude and death are inescapable outcomes of this process of degeneration from which the human body cannot recover'. Furthermore, this state of decay is said (Turner, 1993: 503; 1994: 15; borrowing from Gehlen) to be universal, that human beings are 'ontologically members of the same community of suffering from which they cannot escape'.

More specifically, this frailty consists of common characteristics of human existence, such as illness, disease, the effects of aging and death. For Turner, these human experiences transcend cultural boundaries and over-ride the different meanings attributed to such experiences by different societies.

[3] Despite this implicit assumption, Turner's work has the benefit of at least acknowledging the need to engage in philosophical anthropology and metaphysics in a manner that was absent in the theorists discussed to date.

Even though concepts of sickness and disease, wellness and illness (among others) are often culturally specific,[4] variable and fraught with ideological assumptions, the essential experience is universal (Turner, 1993; 1994: 13).[5] 'A toothache', notes Turner (1994: 15) in illustrating this point, 'is a toothache is a toothache'. In arguing this way, Turner (1994: 11) separates the foundation of human rights from 'the question of cultural and social variability'.

However, it is arguable that access to the means of relieving a toothache is unevenly distributed amongst and between societies, and therefore the relative importance and meaning ascribed to toothaches is differential rather than universal. Differentiated access to the dental care can lead to marked differences in how toothaches are experienced. For those from more privileged backgrounds, relieving a toothache might be no more than a minor inconvenience and a small cost. For the disadvantaged, it might be a large financial sacrifice or an extensive wait for public dental treatment. So for some a toothache may be much more of a concern, and a longstanding issue, while for others it is merely a minor and temporary problem. This point challenges Turner's assertion regarding the universal experience of pain and foreshadows my argument below that Turner's ontological basis for human rights problematic.

Turner (1994: 12) concedes his approach is attempting to base human rights and the notion of frailty on 'very general and abstract philosophical ideas about the character of the human condition, the nature of the everyday world and the life order'. But Turner asserts that these philosophical, even metaphysical, issues need not be a foundation for human rights. He (1994: 12) writes that:

> I believe that we can give a much more precise notion of human frailty which is not attached to such abstract notions. One might simply argue that given the nature of the human organism we are

[4] For example, Bordo (1988) and Good & Good (1982).
[5] See, for example, Turner (1996, especially chapter 8) for an analysis of how physical illness is shaped and given by social context. In this instance it is not simply a matter of the same physical symptoms being experienced universally. However, the presence of bodily afflictions – however interpreted or mediated – is considered by Turner to be a universal.

> all subject to general life processes such as ageing and sickness which expose the individual to a cycle of threat and danger. The very idea of disease, of course, suggests discomfort and lack of ease as general conditions of the human body. Finitude and death are inescapable outcomes of this process of degeneration from which the human body cannot recover.

Turner's argument therefore conceptualises the foundation for human rights primarily in terms of the basic conditions which all humans are purported to share regardless of social variability.[6]

Social precariousness

The other main dimension to Turner's theory of human rights is that the human experience is characterised by social precariousness. He (1993: 502) defines this precariousness as a result of social institutions evolving so that they no longer adequately serve human needs. Turner argues that there are two dimensions to this, the most important of which is the idea that the social institutions will change over time so that they eventually come to undermine, or even contradict and destroy, their original content and intent (1993: 502). This is because, by their very nature, institutions 'if they are to be effective in achieving public ends, have to be powerfully equipped and constituted' (Turner, 1993: 502). This means that the power of state institutions has to be guarded and guaranteed so that their effectiveness in maintaining strong government becomes more important than the standards of democratic participation (Turner, 1993: 502). Social precariousness therefore is a product of state power and its institutions.

Institutions become uncertain and insecure if they have to compete with other institutions and groups for resources (Turner, 1993: 503). In this scenario, corruption and abuse of office and the desire for increased prestige become prevalent. These forces work against the original intent of the institution. As Turner (1993: 503) notes:

[6] However, Turner also emphasises the contingent and discursive nature of human rights which separates their interpretation and implementation from their philosophical origins.

> social systems are subject to the contradictory problems of resolving the requirements of normative integration and allocation of resources under conditions of scarcity … Because there is no stable optimal solution to these contradictory requirements, social life is precarious. Human beings as social agents are always exposed to contingencies, uncertainties and risks …

Turner (1994: 14; 1993: 501) thus identifies a dynamic and dialectical relationship between ontological frailty and social precariousness. The institutions designed to protect humans from the effects of frailty and to enhance life are:

> often precisely those political and social arrangements which threaten human life by the fact that these very institutions often enjoy a monopoly of power. The state is that institution which enjoys a monopoly of violence in a given territory, while the church and similar institutions can be regarded as exercising spiritual violence through symbolic force (Turner, 1994: 14; see also 1993: 502).

The state, therefore, can become as repressive as protective, undermining the original intent of state institutions.

Frailty, precariousness and human rights

To attempt to seek protection from the effects of frailty, human beings are engaged in 'networks of dependency and reciprocity' (such as families and society) for support (Turner, 1994: 13). Given the precariousness of social life and the frailty of humans, humans require social stability through a secure political and social environment (Turner, 1994: 12). This comes in the form of social institutions, customs and networks of dependency. 'Without an agreed set of cultural values and norms', Turner (1994: 12) writes, 'we can expect both social instability and personal anxiety'.

Turner links this ontological frailty with human rights by 'suggesting that human rights are essentially a system of protection for those in a state of dependency or exposure to danger and threat'. He continues: 'Strong institutions', writes Turner (1994: 14), 'require powerful custodians, but who will exercise ultimate custody over these custodians?'. In asking this

question, Turner identifies the need for a system of values which exists above and beyond the state to which people may appeal in times of state oppression. Human rights, therefore, are seen as a way of addressing this issue. Turner (1993: 502) argues that:

> Human rights, insofar as they are extra-political or supra-societal rights which have their legitimacy beyond the state, are crucial in protecting individuals against state violence, or at least providing the normative grounds on which individuals could be protected against state violence.[7]

Sympathy and human rights

There is one additional aspect to Turner's theory of human rights, and it is related to ontological frailty. Turner (1993: 505) concedes that his theory might be considered to endorse a 'survival of the fittest' mentality whereby the needs of especially frail or vulnerable humans may be ignored as they go against the rational interests of the social group as a whole. However, his theory rejects this rationalistic and individualistic view of human which is implied in this scenario and by other theorists (such as Hobbes).[8]

Instead, Turner (1993: 506) emphasises the need for collective sympathy and for humans to be 'other-regarding'. He acknowledges that his own argument assumes that sympathy is a 'consequence of, or a supplement to, human frailty'. He continues (1993: 506):

> Human beings will want their rights to be recognised because they see in the plight of others their own (possible) misery. The strong may have a rational evaluation of the benefits of altruistic behaviour, but the collective imperative for other-regarding must have a compassionate component in order to have any force. The strong can empathise with the weak, because their own ontological condition prepares them for old age and death.[9]

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[7] Turner's words here signal that his view of human rights relies upon normative assumptions. However, as I argue later in this chapter, this normative stance is not clearly articulated in his linkage between frailty and rights.

[8] Turner's rejection of a 'survival of the fittest' rationale is indicative of the implicit philosophical anthropology that connects human frailty with human rights. Implicit in this rejection is a normative stance that states that humans *ought* to feel sympathy for others. This point will be taken up in greater depth later in the chapter.

[9] It is worth noting at this point that Turner's view of sympathy resonates with Rorty's argument for sentimental stories. And similar to criticisms directed at Rorty, the ontological

So it is through recognising the frailty and precariousness of others – characteristics shared by all to a greater or lesser degree – that humans come to regard others as themselves and grant them the same rights as they would wish for themselves.

The context of Turner's argument

Turner (1993: 505; 1994: 16) states that he is 'attempting to outline a minimal, thin theory of human rights, that is a theory which appeals to a minimal criteria of commonality (frailty), and which is thin because it avoids rich theories of human culture, symbolic communication or reason'. However, I argue that his theory is intrinsically intertwined with foundational claims and assumptions. Some of these assumptions are clearly identified by Turner, such as when he acknowledges the origins of this ideas (that is, mostly Hobbes and Gehlen) and the issues to which he is responding. Other assumptions are less overtly recognised by Turner work and therefore invite exploration as, arguably, they undermine his claims to a universal, minimal theory.

Sceptical sociology

The most obvious idea underpinning Turner's approach to human rights is that sociology has traditionally ignored or been unable to propose a theory of rights. As noted in the introduction to this chapter, sociology has tended to have an antagonistic stance towards human rights (Turner, 1993: 495-496, 500; Connell, 1995: 25). This is the main issue to which Turner is responding when he asserts his perspective on human rights. His discipline has remained silent on the matter of rights so that it 'apparently possesses no contemporary theory of rights' (Turner, 1993: 490).

There are many reasons why sociologists have avoided, or have been unable to provide, such theories. One of which is a product of the history of the discipline, particularly the groundbreaking work provided by Durkheim. Influenced by the positivism of medical science, Durkheim conceived that

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fact of precariousness that Turner points to does not necessarily urge everyone in this sympathetic direction.

sociology should primarily be concerned with observation and classification rather than judgement of social norms in term of moral principles. As Turner (1993: 491) identifies, Durkheim asserted that 'sociology was to deal with social facts in the framework of functional analysis rather than with their evaluation. Sociology was to observe social facts as things, not to philosophise over them'. Durkheim's theories sought to define 'the normal' and express it in 'neutral' language in the manner of positivistic science. However, such analysis implicitly involves evaluation and values.

'Strong' social constructionism (Fopp, 2008b: 165) as part of this tradition, tends to avoid providing any foundation for rights and asserts that rights are entirely of human creation which are culturally situated and serve powerful interests. For Turner (1993: 491), relativistic sociology and social constructivism are not amenable to a satisfactory theory of rights because they rob the 'idea of "rights" of an evaluative or normative content' that he considers essential (Turner, 1993: 490). He (1993: 491) writes that social science:

> … which attempts to avoid any engagement with normative debate by aiming at causal analysis or descriptive account of values, is unlikely to approach problems of justice within a framework of human rights discourse.[10]

According to Turner, the sociological scepticism of normative judgement has extended beyond 'classical' theorists and persists today. Turner (1993: 495-496) continues:

> Given the legacy of a relativistic sociology of knowledge, sociology finds it difficult to accept the notion of human rights without also acknowledging a universalistic human ontology. While it rejects an ontological grounding for *human* rights, it may recognise 'rights' merely as claims for services or privileges by social groups involved in competitive struggles.

[10] Put differently, in such a theoretical framework, rights are seen merely as 'social things' which function within a society and are not evaluated as providing a just or moral outcome for the people involved. This, as is noted below, would include some external criteria by which to assess rights, a methodology which Turner argues is not compatible with much of sociological theory.

Similarly, Turner (1997a: 569) argues that social constructionist theories of rights are not amenable to human rights theory. Social constructionism robs any notion of rights of its moral authority:

> social constructionism plays into the hands of naïve relativism, which would suggest that the human rights claims of any particular group have an authority within their particular cultural framework (1997a: 569).

However, Turner (1993: 500) asserts that his theory challenges the 'epistemological validity of social constructionism' by claiming that such an approach fails to provide any evaluative or moral weight to the concept of rights. This is essentially because, in the constructionist view, rights are not seen to correlate to anything beyond themselves – to any metaphysic or universal ontology – but are merely products of social interaction.[11]

So what emerges is a two-fold challenge to the basis of human rights wielded by sceptical sociology: the recognition that human rights (and their legal and political manifestations) are discursive and contingent in character, on the one hand, and the rejection of metaphysics or ontology as a foundation for rights on the other.[12] Turner departs from this framework decrying it as deficient in at least one crucial area:

> sociological explanations, for example of political behaviour, are incomplete without recognition of a *normative account* of laws, rights, entitlements, duties and juridical institutions. Legal institutions are not 'things' in the same sense that tables and chairs are 'things' within a domestic environment, because the functions of law in a society are in part dependent on whether they are just, that is whether their creation and imposition accord with such 'things' as the rule of law (Tuner, 1993: 491; emphasis added).[13]

[11] Compare this view with that or Rorty (chapter 1).

[12] Could it be that legal systems, conceptions of justice, human rights and other 'things' that are the product of discourse and political struggle emanate, to some degree or another, from implicit metaphysical assumptions and beliefs pertaining to a preferred vision of humanity? That is, could it be plausible that human rights and theories of justice can be *simultaneously* discursive and particular *and* derived from metaphysical interpretations of what is desirable in life?

[13] Turner's word's here beg some comparison with Rorty's argument against the intrinsic nature of 'things' with any apparent meaning being extrinsic, or discursive (to use Turner's sociological vocabulary).

Put differently, Turner takes a stance that insists that there be some criteria by which to judge behaviour that justifies human rights. This criteria is still discursive in character, a special variety of discourse: a *moral* discourse.

Turner (1997: 569; Turner & Rojek, 2001: 120) argues that his account of rights 'attempts to provide sociology with a *moral discourse* by which inter-societal comparisons could be made with respect to either the implementation or the abuse of rights' (emphasis added). Turner's inclusion of morality at this point is crucial. It suggests that there is more to his approach to human rights than simply what humans experience as socially situated bodies. The moral discourse is not merely based on a vapid and relativistic social constructionist view of human rights;[14] rather it provides a normative thrust and an evaluative standard which lies behind and propels claims for human rights. And what is more, Turner's conception of morality arguably derives from metaphysical and ontological outlooks. That is, it is founded on two assumptions: that it is *morally right* to protect human life, and that human rights are able to do this to achieve these ends.[15] The discursive and particular context of the moral discourse does not negate my argument that metaphysical perspectives play a crucial role in the formation of what is moral, just and appropriately human. Beliefs that stem from the metaphysical can inform how humans construct institutions and give meaning to relations with others.

Universal human rights through a Sociology of the Body[16]

The previous section explored the theoretical issues to which Turner is responding and which therefore inform his own theory. The following attempts to provide a further analysis of the foundations on which Turner's theory rests. As the above has foreshadowed, in eliciting Turner's work, the

[14] For Turner's views on the pitfalls of relativism see Turner (2000: 481; 1998: 37; 1994b: 36-37) and Turner & Rojek (2001: 109).

[15] However, despite Turner's declaration of the need for moral authority, normative accounts and value judgements, he does not explicitly deploy these concepts when making the connection between human rights and frailty. This is the main critique of Turner's position that I will tackle later in the chapter.

[16] Turner has developed a rather complex and nuanced sociology of the body and sociology of medicine. Many of these details are not strictly relevant to this thesis and can be omitted without disadvantage. Other aspects of these theories are relevant, but are only developed here as much as space and context merits.

twofold character of his work on human rights emerges: that it is underpinned by a universal ontology, and yet mediated through social structures, the uneven distribution of power, and historical circumstances. In this sense, Turner attempts to obey two seemingly incongruent masters, namely the need for a universal grounding for rights, and the relativising thrust of critical sociology that stresses the contingency of narratives.

In order for human rights to have moral weight, political clout and universal acceptance, rights, arguably, need to reflect a commonality among humans. As critics of the dominant Western view of human rights assert, the diverse array of cultural and spiritual practices and the divergent physical environments in which human societies exist gives rise to the notion that there is no such commonality.[17] In other words, according to this criticism, there is no universal basis or foundation from which human rights emanate. Turner (1993: 500) agrees that such diversity undermines the legitimacy of 'universal' human rights. He writes that it 'is not possible to defend the concept of rights from all of these various charges'. So, then, how does Turner ground this theory? It is possible, he (1993: 500) argues:

> to claim that the universality of the concepts of rights can be defended through a sociology of the body. If it is possible to identify such a foundation, then this sociology of the body could function discursively as a substitute for the ancient notion of natural law …. it is possible to underpin the idea of 'human rights' by asserting a *common humanity* across cultures via an appeal to a particular tradition in *philosophical anthropology* (Turner, 1993: 500; emphasis added).

To clarify the point, the universal foundation for human rights, in Turner's view, is the common frailty of human existence. This, as discussed above, is the idea that all humans are vulnerable to suffering, illness, old age and death – although some humans are obviously frailer than others.

Once again, Turner's approach to the sociology of the body deliberately and directly addresses what he considers as the inability of mainstream

[17] See Rorty's thoughts on this point (chapter 1).

sociological theory to provide an adequate sociology of the body. Earlier in his development of a sociology of the body, Turner (1996: 60) argued that sociology has traditionally counted, classified and analysed various types of bodies (for example, by age or socio-economic status) rather than engaged in the relationship between the physical and social dimensions of human bodies. He claims that in much of sociological theory the body is 'absent'. He (1996: 50) writes:

> Contemporary sociology has little to say about the most obvious fact of human existence, namely that human beings have, and to some extent are, bodies. There exists a theoretical prudery with respect to human corporality which constitutes an analytical gap at the core of social enquiry. The collective phenomena of births, aging and mortality have become the academic monopoly of historical and mathematical demography, where the moral and social significance of these events is subdued in favour of exact calculation.

The main reasons for this neglect are two-fold and (once again) stem from the philosophical and epistemological origins of sociology as a discipline. Firstly, sociology is founded on the rejection of the positivism which underpins physical sciences, including biology. Turner (1996: 60) notes that: 'Sociology emerged as a discipline which took the social meaning of human interaction as its principle object of enquiry, claiming that the meaning of social actions can never be reduced to biology or physiology'. The second cause, following from the first, is the assumption that the notion of nature, including the body, is socially constructed and therefore a product of culture, history and context. In Turner's (1996: 61) words, sociological theory has traditionally assumed that:

> … the natural world is socially constituted and transformed by human agency. Human beings do not simply apprehend the natural world as a given, since nature is always mediated by culture …. The external world, including the human body, is not a given, but an historical reality constantly mediated by human labour and interpreted through human culture.

The result has been, until the last 3 to 4 decades, the exclusion of the body from sociological theory. Further, key ideas in sociology, such as 'the self',

are explained in terms of collective and social explanations. 'The self' is socially constructed and not a reflection of any external reality – 'The self is fundamentally sociological, not biological' (Turner, 1996: 62). Thus, the physical nature of the human body is omitted in social theory. Turner (1996: 62) writes:

> the emphasis in sociology on the socially constituted nature of social being resulted in an implicit position that the body of the social actor is a largely inconsequential feature of the self-in-society perspective.

As explored below, it is by challenging this imposed distinction between nature and society which informs Turner's sociology of the body and embodiment.

More recently, Turner (2000) has identified that social theory has included a deeper analysis of the body that has usually focussed on the ways in which the body reflects and reproduces social norms. It has explored, among other aspects, the manner in which the body (and the different meanings attributed to different bodies) is socially constructed. But Turner (2000: 481) asserts that this branch of theory is notably 'decorative' in that it is 'among other things, merely a description of the cultural representation of the body, and as a result it fails to engage with the politics of the body'.

The dominant sociological approach is deemed inadequate by Turner for two reasons. Firstly, it fails to live up to the expectations of sociological theory. Turner (1995: 237) writes: 'Sociology is ultimately not an analysis of representational meanings, but a social science of action and interaction. We need to understand the body in the processes of action and interaction at the level of everyday reciprocities and exchange'. The second inadequacy of more traditional social theory is that it excludes the possibility of a theory of human rights in that it denies the possibility of a universal foundation for rights. It is against this dominant thrust in social theory (Foucault, for example, has been powerfully influential) which Turner seeks to (re-)introduce the body as a corporeal being into sociology, and human rights theory in

particular.[18] He recognises the importance of the reciprocity between the 'sociology and the phenomenology of the "lived body"' (Turner, 2000: 481). In other words, his theory emphasises the experiential, lived experience nature of the body. Such a philosophical alignment relies upon the concept known as *embodiment*.

Embodiment

A central feature of Turner's sociology of the body is his concept of *embodiment*. This idea connects the physical, objective body, with the socially constructed and embodied body. Once again, Turner's proposition is a response to what he perceives as the failure of conventional sociology to properly take account of the dual nature of the body. Humans have a body in an objective sense, but there is also a social component which interacts with it. He (1996: 60; 119) identifies that humans both have, and are, bodies. Bodies exist as both biological organisms and as socially embedded entities, and these dimensions are interdependent. Turner (1996: 119-120) writes:

> Insofar as I have a body, I share a number of characteristics with other primates which can be regarded as biological systems and in this sense my body is a natural environment over which I exercise control, but which also exercises restraints over me. Like other phenomena in the environment, I can touch, feel, smell and see my body. However, I require my body in order to carry out this touching, feeling, smelling and seeing. In exercising control through embodiment, I have immediate and first-order possession over my body in a way which I do not experience with respect to other objects. I possess my body, but there is a sense also in which it possesses me, since the demise of my body is also (at least for all practical purposes) my demise.

This interdependent relationship is explored further by Turner when he explains that common actions are socially situated as well as of biological in origin. He (2000: 489) argues that:

> The notion of embodiment suggests that all of the fundamental processes of conception, perception, evaluation, and judgements are connected to the fact that human beings are embodied social

[18] What can be detected in this analysis of the role of the body in human experience and meaning is an embedded philosophical anthropology that is connected with the normative evaluation of quality of life which in turn gives rise to human rights.

> agents. It is not the case simply that human beings have a body, but they are involved in the development of their bodies over their own life-cycle; in this respect, they are bodies (Turner, 2000: 489).

Turner's definition of embodiment is complex and involves several elements (Turner, 2000: 494). These facets demonstrate the links between the objective body and social agents. Embodiment firstly involves the learning and mastery of a group of corporeal practices – such as walking and eating – which situates bodies within everyday social life. Turner (2000: 494) notes that: 'Embodiment is an accomplishment by which a social actor embraces a set of dispositions, practices, and strategies and, as a result, comfortably occupies a unique habitus'.[19] Put in another way, embodiment begins with the learning of particular socially constructed bodily practices and dispositions which then places the person within a particular position or niche in society. These physical traits are markers of social meaning and are taken-for-granted by the agent. It is useful to stress that the body becomes embedded with social meaning. Turner (1992: 35) argues that:

> As a consequence of their embodiment, all human agents are subject to certain common processes, which, although they have biological, physiological and organic foundations, are necessarily social. These common social processes are related to the conception, gestation, birth, development, death and disintegration of the body.

Once again, the relationship between the body and society is dialectical. Social forces mould bodies in certain ways (by assuming physical actions, dispositions, demeanours) which are appropriate for an agent's social context. But the relationship works in both directions as the body, as part of the social system in which it is embedded, can shape the world which created it.

This leads on to additional dimensions of embodiment. Importantly, Turner (2000: 494) recognises that embodiment does not occur in isolation but is

[19] The term *habitus* originates from French sociologist Pierre Bourdieu. Mills and Gale (2010: 16) define this complex concept as 'the recurring patterns of class outlook – the beliefs, values, conduct, speech, dress and manner – which are inculcated by everyday experiences within the family, the peer group and the school'. It implies 'habit' or 'unthinkingness in actions', and 'operates below the level of calculation and consciousness'.

'located within a social and historical world of interconnected social actors, within a network'. This implies that human action is fundamentally social and that embodiment takes place within a pre-existing social world. This point is crucial to Turner's concept of human sympathy and human rights as it lays the foundation for supposing why humans should regard the rights of others rather than take advantage of others' weakness for their own gain. This is expressed in the following argument from Turner (2000: 494): 'The phenomenology of the lived body is not grounded in any individualistic assumptions; on the contrary, it treats the body as necessarily social'.[20]

The implication from this point is that human rights can be justified in terms of bodily needs, corporeal frailty as much as from social needs and context – which can be thought of as originating from the mind. As both mind and body are interdependent, the needs of one influence the needs of the other.

The idea that humans are simultaneously biological and social (as expressed through the embodiment argument) forms the basis for Turner's theory of human rights. Unlike many other human rights theories, such as those proposed by relativists, postmodernists and anti-foundationalists, Turner, asserts that it is this ontological feature of human existence which provides a foundation for rights. Turner and Rojek (2001: 115) write:

> Our purpose is to make the body, or more specifically embodiment, central or foundational to a theory of human rights and to use embodiment as a critique of the tendency of sociologists and anthropologists to accept relativism as taken-for-granted in contemporary social science. In making this argument, we simultaneously reject the social constructionist view of the body and abandon the professional assumption in sociology about the fact/value distinction.

[20] The social dimension to human bodies is further explored by Turner. For example, an important foundation of Turner's theories of embodiment and human rights is his rejection of the distinction made by philosophers (but originating from Descartes) between the mind and the body. For Turner (2001: 488-489, among others), the objective body, the lived experience of the body and society are intrinsically interwoven. A useful example of this is how a physical ailment can produce different meanings in different contexts (Turner, 1994: 220-223). Another is the difference between pain and suffering, and outlining the interdependence between the physical and social dimensions of illness (Turner & Rojek, 2001: 124-124). These connect the phenomenological experience of pain with socially constructed discourses of health, sickness and the like.

The argument that humans are embodied leads to at least two important implications. The first is that there is some universal, shared 'nature' of humans which exists outside of society. This does not rely on any common metaphysical ground but on ontological commonality (such as the corporeal nature of human existence). The second implication is that as humans are *socially* embedded, there is the foundation for justifying universal human rights. These points will be discussed below.

Ontology

Against the sociological scepticism of a universalist foundation for human rights, Turner bases his own theory of rights in a common or shared ontology. As illustrated earlier in this chapter, this ontology relies upon both human frailty and social precariousness. The former is closely rooted in the shared biology of humans (in that we are all susceptible to ill-health, the effects of aging and death, among others), while the latter is the product of social relations. Turner's focus on common humanity to underpin human rights employs a philosophical anthropology of the type associated with Arnold Gehlen among other philosophers (Turner, 1993: 500).

In short, this view theorises that humans are 'incomplete animals' who need to depend upon society for development and maturation. Humans can thus be noted for their 'world openness' in that they are able to adapt to social institutions in place of their own lack of instincts and natural habitat (Turner, 1993: 501; 1994: 12). The result of such a situation for humans is that they 'require a more secure political and social environment to provide some discipline, if social stability is to be maintained' (Turner, 1993: 501, citing Gehlen). The influence of this philosophical anthropology is that human existence is characterised by frailty and precariousness (Turner, 1993: 501).

The point to stress here is that Turner considers that existence of the body as a biological organism – which can feel, breath, see and is frail – provides a foundational ontology for social theory generally, and human rights in particular. 'The point of the foundationalist ontology', Turner (1997: 566)

writes, ‘is to provide a universal basis for normative evaluation of rights abuse.’

Importantly, a foundationalist ontology does not preclude the effect of social and cultural practices on behaviour generated by human physiology. Turner is not advocating biological determinism, but emphasises the inter-relationship between the corporeal and social nature of humans. He (1996: 565-566) notes that ‘human beings are equipped with foundational capacities, which can nevertheless be developed, modulated and constructed by cultural processes’. For example, walking is a basic human characteristic, but the ways in which we walk, and the meanings we attribute to such walking are ‘products of cultural variation and socialisation’ (Turner, 1997: 566).[21] The goose-step, for example, has different social origins (and different political connotations) than a leisurely stroll, yet they are very similar physical acts. Turner, thus argues that, as is implicit in the concept of embodiment, it is

> perfectly consistent to argue … that human rights can have a foundationalist ontology in the notion that human beings are frail and accept that human rights will be constructed in a contingent and variable way according to the specific characteristics of the societies within which they are developed and as a particular outcome of political struggles and interests.

Arguably, Turner’s words here imply that human rights can vary across cultures and be dependent upon local requirements, customs and traditions, yet still be universal in the sense that they are rooted in human frailty. A shared ontology, rather than particularistic claims to the value of human life (which might be influenced by religion, liberal democracy or any other form of metaphysics) and the rights which people should enjoy as a result, underpin Turner’s notion of human rights. The ontological frailty shared by humans is then used by Turner to justify a theory of human rights. In a nutshell, Turner argues that what he perceives as a universal ontology ought to be the basis, justification and foundation for human rights.

[21] As indeed is pain, as I argued previously in this chapter.

Sympathy

Another implication of embodiment is that it directly supports the notion of collective action, including human rights. In several of his works on human rights (1993: 505-507; others), Turner explores why, if humans are frail and resources are scarce, should humans be 'other-regarding' and respect the rights of others. Turner openly admits that his theory of human rights derives from Hobbes, the philosopher who declared that human life, outside of social constraints, is 'nasty, brutish and short' (in Turner, 2001: 15). Turner defends his theories against potential criticisms that it supports a 'survival of the fittest' regime. He (1993: 505-506) attempts to address questions such as: how can the frailty argument get around the problem of human nastiness? and why should any frail agent be other-regarding?.

As noted above in the section outlining Turner's general theory of human rights, human beings will want their rights respected because they can see their own possible suffering in others (Turner, 1993: 506). However, the explanation goes further than this. Humans as embodied beings are characteristically social. Turner argues that as social life is precarious, humans establish networks of support and dependency to cope. Humans are born into, and help to develop networks of dependency without which human frailty would be much exacerbated. Examples of such networks include welfare systems, health care, a supportive family structure and, Turner argues, human rights. Turner argues that such systems are put in place because humans may be regarded as 'unfinished animals' in that they must depend upon parents for maturation for an extended period, and because humans have no natural environment. It becomes necessary, then, to (socially) construct networks of dependency which serve as a supportive environment and which protect and limit the effects of frailty.

These networks of dependency entail that responses to frailty and precariousness are characterised *compassion*, rather an individualist, 'survival of the fittest' mentality. Turner (2000: 495), notes:

> The argument from ontological frailty might suggest an individualist or even utilitarian paradigm. However, by the notion of interconnectedness it indicates that human beings are always and already social. They are deeply involved socially through language and socialization (2000: 495).

This sentiment emphasises that although humans may be rational, they are also capable of sympathy and compassion toward others and must necessarily rely on each other for survival. However, this argument reaches further by asserting that human *sympathy* and compassion act as additional validation of universal human rights. The importance of compassion and sympathy returns to the shared ontology.

To reiterate, Turner (1993: 503) describes all humans as 'ontologically members of a community of suffering from which they cannot escape'. By recognising the potential suffering and frailty of themselves in others, humans not only act in an altruistic way towards others, but feel compassion towards them. In fact, Turner (1993: 506) argues, compassion is required for other-regarding actions to have force. He writes:

> The strong may have a rational evaluation for the benefits of altruistic behaviour, but the collective imperative for other-regarding actions must have a compassionate component in order to have any force. The strong can empathise with the weak, because their own ontological condition prepares them for old age and death.

Turner (1993: 507) continues:

> … without some notion of collective compassion, moral injunctions would be worthless. We are collectively committed to duties and obligations, not merely out of some rational appraisal of obligation, but because of collective sentiments (compassion) about the moral force of rules. In my argument, it is from a collective held recognition of individual frailty that rights as a system of mutual protection gain their emotive force.

For Turner (2000: 496), sympathy is an important feature of membership in a moral community and is 'the social glue of a society characterized by precariousness'.

Importantly, sympathy and compassion are, for Turner (1993: 506), important foundations for human rights: '…the idea of frailty requires the support of a theory of sympathy to underpin the sociological nature of this argument about the connection between frailty and human rights'. He (2000: 496) goes on to state the relevance of his theory to human rights:

> The point of this neo-Hobbesian theory of rights is to provide a theoretical structure that will connect individual human rights as protective arrangements, the organization of the state as an institution which both guarantees rights but also threatens them, and the notion that sympathy is a major requirement of social relations, along with more traditional categories such as trust.

But despite this explanation, Turner does not address a cluster of more fundamental questions, namely: *why* should humans have sympathy towards each other? *Why* should societies establish these networks of dependency? *Why* should infant humans be sheltered during their extended period of maturation? For Turner, answers to these questions are assumed *a priori* and so are not explored directly. But they do suggest that the foundations on which is theory is built emanates from a deep concern for the human person and an interested in alleviating suffering and enhancing life. Once again, I argue that this philosophical anthropology is rooted in metaphysical beliefs about the world and humans' place in it. Furthermore these foundations are all the more evident when comparing human and animal rights.

Animal vs human rights?

Turner (1993: 505; 1994a: 16) notes that human beings and other animals alike are ontologically frail in the same manner. He (1994a: 16) poses the question: 'since animals, especially those which share common characteristics with humans (namely mammals), are also frail for the same biological and physiological reasons that humans are frail, can one separate animal rights from human rights?'. Such a question might elicit the logical response: 'After all, mammals are also subject to a process of aging, suffer and die in much the same way that human beings do: therefore animal rights cannot be fundamentally separated or distinguished from human rights' (Turner, 1994a: 16). However, he (1993: 505) asserts that 'the idea of *human*

frailty would not automatically imply the importance of animal rights.'[22] Yet Turner does not explain why humans should be accorded different rights to animals given their similar tendency to frailty, pain and death. What is smuggled in here is a normative stance on the inherent value of human being and human life that is not explicitly identified but lies behind the drive towards human rights nonetheless.

On the distinction between animal and human rights, Rorty (1999: 86) offered an incisive observation that helps to illuminate the assumptions embedded in Tuner's approach. Rorty drew attention to this distinction between the values and importance places on *human* suffering as opposed to animal suffering:

> It is not enough to say that we all share a common susceptibility to pain, for there is nothing distinctively human about pain. If pain were all that mattered, it would be as important to protect the rabbits from the foxes as to protect the Jews from the Nazis.

If animals share the same characteristics of frailty as humans, then logically they should be accorded human rights. But Turner does not extend this courtesy to our 'evolutionary impeded' cousins. He does note that respecting animal rights might contribute to human protection (1993: 505) but deliberately wants to avoid discussing whether animal rights are possible. In doing so, Turner makes certain assumptions about the nature of rights and about the status of humans. After all, many of the same criteria for human rights also apply to animals: they are prone to illness, disease and premature death (perhaps even more so than humans); many species are social animals with complex social systems, such as elephants who will mourn the loss of a member of their herd. So why is it that Turner shies away from saying that animals have similar rights to humans? Arguably, he assumes that humans possess a quality which animals do not which makes them worthy of human rights. Similarly, there is the assumption that there is some intrinsic nature to humanity which privileges it above all other forms of life. Granted, Turner does admit that he is outlining a minimalist theory which includes some

[22] Although Turner (1993: 505) does suggest that by respecting animal rights and, by extension, protection of the natural environment, may work together with human rights to achieve better conditions for the human species.

utilitarian assertions (1993: 508). But the assumptions which value human life, and therefore human rights, above all other life are transmitted into his theoretical perspective without explicit acknowledgement. Claims to minimalism or utilitarianism merely disguise these values.

Social precariousness and foundations

The bulk of the chapter has been dedicated to exploring the foundations behind Turner's argument that human frailty is a basis for universal human rights. This has been done through analysis of dimensions of his sociology of the body and particularly the notion of embodiment. Much of Turner's work (for example, 1996, 1995, 1992) explores these foundations without explicit reference to human rights so there is thus more material on the sociology of the body from which to explicate his claims. The effect, however, is that the assumptions behind Turner's other rationale for human rights – social precariousness – have been neglected. These are not issues which Turner develops in much depth but the following points are raised.

Human rights are said to be needed as a defence against abusive state power when institutions become more focussed on self-preservation than the common good. The assumption behind this claim is that human rights emerge as a response to dysfunctional social institutions, that a supra-national code of ethics is required to protect people from state violence and oppression. Within this claim there is the idea that rights are the product of social interaction, or more accurately, social disharmony, rather than as a direct reflection of a metaphysical concept of 'the human'.

Following from this, is the point that social life is risky, that the side-effects of modern societies (for example environmental pollution, the corruption of institutions, the struggle for scarce resources) threaten the well-being and prosperity of humans. Turner (1994: 13; others) invokes the work of German sociologist Ulrich Beck and his concept of a 'risk society'. According to Beck (1992, quoted in Turner, 1994: 13), a risk society is a society:

> … in which the processes of modernisation have not only undermined the environment through massive industrial and biological pollution, but have created a social and political system which is uncertain, unpredictable, contingent and risky.

Thus it is not only the environment which threatens humans, but an unstable political and social context which creates the need for human rights.

Such effects of modernisation are linked with the phenomenon known as globalisation. This has two effects on human rights. First, as implied above, widespread modernisation, in the form of global capitalism, creates the conditions in which *human life* is threatened and the *quality of existence* diminished. Secondly, the increased avenues of communication have meant that human rights as a global discourse has expanded. This has enabled more people to make claims for rights and provided a more effective system of establishing and enforcing widely accepted rights.

Despite the apparent appeal of this approach to human rights, there are additional, taken-for-granted assumptions which inform it and ultimately undermine its persuasiveness. Although Turner attempts to ground his view of human rights in human frailty, there is arguably a step missing in his argument, a step which links frailty to rights. It may be so that human life is characterised by a tendency to age and decay; and it may be that this is universally experienced. But this does not explain why it is undesirable for life to end or for the quality of life to fall.

Turner's theory does not 'explain by what mechanism universal frailty and universal human precariousness translate into human rights' (Langlois, 2001: 96). In other words, there is nothing explicit in Turner's theory which states that frailty and precariousness should be avoided and minimised, and that mechanisms which do so *ought* to be provided as a matter of right (Langlois, 2004: 259). The connection between shared human experience (frailty and precariousness) and human rights is elided as it is *assumed* that humans should have rights because of their frailty. As Langlois (2004: 259) argues, it is not enough that humans will die or suffer if their needs are not met, or if the

consequences of frailty are not minimised. Other life forms have needs and are corporeally frail in a similar manner to humans, but that fact does not imply that they have special rights. As MacDonald (in Plant, 2001: 229) argues, the 'facts' of nature do nothing to explain what humans do in response to them:

> … nature provides no standards or ideals … standards are determined by human choice, not set by nature independently of them. Natural events cannot tell us what we ought to do until we have made certain decisions … natural events themselves have no value and human beings as natural existents have no value either, whether on account of possessing intelligence or have two feet.

Likewise, that humans are prone to disease and illness is insufficient in itself to justify minimising their effects; nor does is enough to provide a basis for human rights. Therefore it is Turner's underlying philosophical anthropology that renders human frailty meaningful in terms of human rights.

The missing link in Tuner's theory – undisclosed and assumed – is, as Langlois (2001: 97) puts it, a 'normative stance with regard to human frailty'. That is to say, implicit in Turner's perspective is the assumption that both frailty and precariousness are not desirable and that its effects should be minimised as much as possible. Additionally, this stance is further underpinned by an 'underlying commitment to the value of the person which makes human frailty more than simply a fact of nature, but something to be fought against' (Langlois, 2001: 97). Thus the connection is made between humans' ontological condition (frailty) and social circumstances, on the one hand, and the normative claim that we should have rights, on the other. Langlois (2001: 97) continues by arguing that Turner's stance on the value of the human person:

> … depends upon certain implicit (metaphysical and teleological) assumptions, which are not made obvious, about the value of human beings. People's needs, it is assumed *should* be met. This imperative cannot be derived from the mere fact that unfed humans will die.

Turner's own value positions make this link implicit and assumed rather than clear and illuminated.

The critique detailed above has at least three implications. Firstly, as I have argued, and as supported by the Langlois quote above, Turner's position relies upon a normative stance which is assumed and *not made obvious* or elucidated. This point further emphasises the argument I have been developing throughout this thesis: namely that pre-existing values and assumptions play a significant role in determining the character and justification of human rights theory. In this case, the notion that human frailty and social precariousness support human rights is presupposed by the implicit value placed upon humans, which in turn is based on a philosophical anthropology which is taken-for-granted and not clearly acknowledged.

A second implication of this critique is spelled out by Langlois (2001: 97-98) and suggests that the basic, universal needs of humans (including the need to reduce the impact of frailty) are only relevant inasmuch as they reinforce a particular notion of the human person and his/her role in the world. The purported need to enhance human life through warding off frailty has 'no particular significance' apart from the doctrine which asserts that human beings are important and valuable (Langlois, 2004: 259). Additionally, this doctrine extends to assumptions about how humans *ought* to live, and that these are the driving force behind claims that certain human needs are universal. As Langlois (2001: 97) writes:

> People have need of subsistence living standards only because we have made certain teleological and axiological assumptions: that the human is purposed to live and develop his or her potential, and that ensuring this happens is good.

Such assumptions are based on *a priori* values about what constitutes a good and worthy life and what is needed to achieve this. And crucially, these foundational values have crept into Turner's human rights theory without acknowledgment or disclosure.

A third implication is that, despite the human frailty approach aiming to avoid controversial metaphysical issues, these concerns are merely elided and obscured from by implicit metaphysical assumptions. As I have argued above (with the help of Langlois), Turner's work relies upon an undeclared normative position regarding human worth and their supposed ideal way of living. So, the metaphysical is necessarily included in the human frailty theory of human rights despite the explicit wish to avoid them. Thus what may be considered an advantage of this approach (to avoid invoking specific metaphysical standpoints), turns out to be a weakness as it fails to avoid them at all. Langlois (2001: 97) asserts that:

> … the attempt to avoid the big philosophical questions by taking a physiological approach that purports to reduce rights to material or naturalistic considerations only avoids the questions inasmuch as it ignores its own assumed answers to them.

What is more, the metaphysical and philosophical anthropological values which are invoked belong to the liberal tradition which is often accused of imposing its own view of human rights on the rest of the world (Langlois, 2001: 98). These critiques are more than mere theoretical distinctions; they reveal shortcomings in the frailty approach which undermines the theory's apparent advantages and persuasiveness. In effect, the critiques presented here (and raised by Langlois) cast doubt upon the viability of a human rights theory founded upon universal ontology of human physiology.

Conclusion

This chapter has presented Turner's theory of human rights and some of the main principles (meta-claims) which underpin it. Turner's work is important to human rights theory in that he is one of the few writers to present a theory from a sociological perspective. Because of the nature of social theory, sociologists tend to be sceptical of claims to the universal principles required for human rights. Instead, sociology has focussed on citizenship rights, rights which are state-based and therefore the product of social and political context. This discursive construction of rights is a common arena for sociological

investigation, and it is against such a dominant thrust that Turner has argued for a sociological theory of rights.

As noted, Turner's approach involves two main dimensions: human frailty, and social precariousness. It is the former aspect which has been the primary focus of this chapter. Turner has asserted that human frailty represents a universal, foundational ontology which justify human rights. In doing so, Turner makes the link between the human body as an objective, biological being and society. This connection is founded upon the sociology of the body which entails exploring aspects such as embodiment. The fact of human frailty also leads to the argument that humans can be (an indeed, need to be) sympathetic and compassionate towards others.

It is clear that Turner has developed a complex and extensive sociology of the body (see for example, 1992, 1994) that underpins his notions of embodiment and the universal ontology which give rise to human rights. In fact, most of his work has been in this area, of which human rights theory is but an extension. However, the second main dimension to his theory – social precariousness – remains relatively un-developed and explored. His references to institutional dysfunction, globalisation and risk – at least as they pertain to human rights – are few. This is why the preceding discussion contains little to address these claims. They are there in Turner's work, to be sure, but he does not clearly articulate or connect them with his human rights theory.

Conversely, the links between human rights and human frailty, on the one hand, with the sociology of the body, on the other, are clear. They illustrate the prior concerns and assumptions which Turner uses to delineate an innovative approach to rights. By arguing that the physical body is inherently connected with the social body and society itself, Turner provides a distinct theory which includes dimensions which are missing in other approaches, such as the attempt to base human rights in a more concrete, perhaps less contentious human nature. By shifting his focus from notions of law or international consensus, Turner is able to justify human rights on the basis of

human ontology, purported to be a universally shared aspect of human nature.

However, I argue that propelling Turner's theory of human rights is his unacknowledged sense of human worth. Ameliorating frailty is only important in the context of these values. Theories of precariousness and frailty are therefore the vehicle for the defence and justification of the underlying concern for human worth.

CHAPTER 5
CAPABILITIES AND ARISTOTELIAN PHILOSOPHY: MARTHA NUSSBAUM

'The idea is that, once we identify the most important functions of human life, we are then in a position to what social and political institutions are doing about them. Are they giving people what they need in order to be capable of functioning in all these human ways?' (Nussbaum, 1993a: S53).

Introduction

The previous chapter explored a theory that claims that the vulnerability and frailty of the human body are suitable and sufficient justifications for universal human rights. Turner's theory of human rights attempted to provide a universal basis for rights by describing dimensions of the human experience that are purported to be universal and constitute uncontroversial human commonality. Despite the undeniable appeal of rooting human rights in a universal ontology, rather than particular customs, traditions, values and political allegiances, this approach is not able to live up to its initial promise. I argued that Turner invokes a theory of human nature, or philosophical anthropology to defend human rights, but that Turner's approach forgoes both any explicit reasoning of why enhancing human life is important and what it is about humans which means they should have rights.

The task now is to respond to questions such as, if frailty alone is not enough to justify human rights, then what additional element might be needed to constitute a more resilient and persuasive theory? Given that Turner's approach inadvertently deployed certain assumptions regarding *why* human suffering *ought* to be minimised, what theory might be employed that is more reflexive of its philosophical origins and practical purposes? What about a theory that provides a similar but more detailed basis for human rights – the purportedly shared ontological needs of humans – while engaging more broadly with the theoretical and philosophical concerns that inform it? One such framework is the 'capabilities approach'.

The capabilities approach to human rights and well-being has been popularised by Martha Nussbaum (born 1947). This perspective asserts that

humans should be provided with the *capacity* to fulfil certain basic needs. Robeyns (2006: 351) notes that:

> The core claim of the capability approach is that assessments of the well-being or quality of life of a person, and judgements about equality or justice, or the level of development of a community or country, should not primarily focus on resources, or on people's mental states, but on the effective opportunities that people have to lead the lives they have reason to value. The core concepts in the capability approach are a person's functionings, which are her beings and doings (for example, being well-fed or literate), and her capabilities (the genuine opportunities or freedoms to realize these functionings).

Nussbaum 'defends a set of standards that she argues are essential to, and should be shared among, human beings in order that they may live a fulfilling life' (Ackerly, 2000: 94). Implicit in this approach is a vision of humanity which relies upon neo-Aristotelian views of 'human nature' (Langlois, 2009: 19). I also argue in the following that despite contending that her theory is universal, Nussbaum's work invokes specific liberal values regarding the value of the human person and the role of the individual in social relations.

According to MacKenzie (2009: 344) Nussbaum is a 'staunch advocate of universalism' in her commitment to 'liberal humanism with universal applicability' and asserts that 'universal normative notions of "social justice and human dignity" are required to enable effective political action'. The argument that universal values are defensible not only underpins Nussbaum's concept of capabilities, but provides important theoretical (and moral) justification for the promotion of universal human rights.

The capabilities approach does not discount ontological issues in the manner displayed by Rorty or Donnelly (Langlois, 2004: 258). It is based on 'practical needs and daily requirements that have to be satisfied in order for us to live human and human lives', and the basis that these needs are 'grounded in empirical facts' about human existence (Langlois, 2004: 258). Despite this apparently firm foundation on which to build human rights theory, I argue in this chapter that a close analysis of Nussbaum's theory and assumptions

reveals that there is a presumed link between human *needs* and human *rights*. As Langlois (2004: 259) asserts, Nussbaum assumes a normative stance towards the value of humans, and takes for granted that basic needs should be provided as a *right*. Additionally, this analysis illustrates that the capabilities approach is based on implicit metaphysical claims pertaining to the special value placed on human life, and that these claims stem from concomitant liberal (in additional to neo-Aristotelian) assumptions. The argument is, then, that despite attempting to provide a universal and metaphysic-free justification of human rights, I claim that Nussbaum's work unintentionally imports undisclosed (and unacknowledged) tacit liberal values which have a significant effect on the resultant theory.

The purpose of this chapter is to expound the particular version of human rights theory developed by Nussbaum and illustrate the prior assumptions and perspectives which inform it. The chapter will demonstrate how Nussbaum incorporates what is known as a capabilities approach into an outlook on rights. Her capabilities theory and her human rights framework overlap to a significant extent; in turn, Nussbaum's capabilities approach relies upon conceptions of human dignity, quality of life and capacity which have explicit roots in Aristotelian philosophy and less overt roots in liberalism. I argue here that these origins have a profound influence on how she views human life and human rights.

In order to preset this argument, the chapter will begin by briefly delineating Nussbaum's view on human rights. Following this is an examination of the theoretical concepts that precede her views on human rights and which demonstrate how a particular theory of human rights depends upon prior fundamental assumptions about the nature of rights, society and the human. In a sense there will an imposed distinction between Nussbaum's position on human rights and some of the underlying frameworks. This is because Nussbaum tends to focus on the capabilities approach while dedicating comparatively little space to human rights *per se*. As I will discuss further below, Nussbaum tends to treat human rights and capabilities as very similar enterprises, and as such she conflates the two to a degree, and in any case

there is much overlap.[1] Nevertheless, in keeping with the other chapters of this thesis the first section of the chapter will deal with her view of human rights and the issues which arise from it. It will then show how Nussbaum relates capabilities and rights.

The bulk of the chapter will then be devoted to exploring the underlying frameworks and assumptions which constitute Nussbaum's human rights theory. It will do this by firstly outlining her capabilities approach and identify this as the main influence. Then the analysis will probe deeper to argue that Aristotelian philosophy – and its associated views of the human – form the foundation for the capabilities theory. For Nussbaum, Aristotelian ethics form the basis of a good human life and what is required to achieve it. The emphasis here will not be to merely describe Nussbaum's theory of capabilities and human rights; rather, it is to analyse the ways in which her theories are informed by philosophical perspectives and assumptions.

Following this, there will be section outlining the critical role played by tacit liberal values which have a substantial (but not explicitly acknowledged by Nussbaum) influence on the theory. Finally, there will be some scope for comparison with other theorists, and this will help to both emphasise Nussbaum's approach and position it in terms of other theories. The discussion now turns to Nussbaum's view of human rights.

Nussbaum and human rights

Direct discussion of human rights constitutes a relatively small amount of her work, which instead focuses on the concepts which underpin and overlap with her conception of rights. There are several dimensions to Nussbaum's view of rights which set it against other theorists' positions on rights. The most notable is Nussbaum's emphasis on what she argues are universal standards by which to assess cultural practices and life quality. On this account, there are external, objective criteria which provide an evaluative framework to

[1] Langlois (2004: 259), however, argues that human needs and human rights are not the same thing and uses this distinction to unpack the assumptions implicit in capabilities theory. I will engage in these assumptions later in this chapter. Freeman (2002: 65) also argues that the link between human needs and human rights is problematic.

assess what is needed for a good life and therefore what might be lacking in the lives of the marginalised.

Nussbaum (1997: 293) advocates the idea that people possess human rights 'just by virtue of being human'. Inherent in this is the view that all humans possess a common character or nature which provides the moral basis to rights claims. It also implies that human rights are fully universal and inalienable simple by virtue of being human. She (1997: 292) understands a:

> human right to involve an especially urgent and morally justified claim that a person has, simply by virtue of being a human adult, and independently of membership in a particular nation, or class, or sex, or ethnic or religious or sexual group.

This quote is a testament to Nussbaum's confidence in the universality of human rights and the shared sense of humanness which underpins it.

Yet, Nussbaum does not believe that this alone is a sufficient basis for human rights. She (1997: 294) argues that people can possess rights in the sense described above but lack the opportunity to express these rights in practice. If a minority group is not afforded the capacity to achieve equality, if legal and constitutional restrictions disallow equality, then their rights are only nominal. Put differently, human rights need to be supported, in Nussbaum's view, by effective state action which guarantees rights and equality universally. She (1997: 294) writes that:

> … women in many nations have a nominal right of political participation without really having this right in the sense of capability: for they are secluded and threatened with violence should they leave the home. This is not what it is to have a right.[2]

So human rights need to exist in a tangible fashion for them to be effective; it is not enough to merely claim that one has an inalienable right if it cannot be realised in practice.

[2] Contrast this with Donnelly's notion of the 'possession paradox' wherein people may theoretically possess a right but are unable to claim them.

So how does Nussbaum justify the universal nature of rights? How can she claim that rights are universal if there are so many disparate world views, conceptions of the human and notions of a good life? Like Charles Taylor, Nussbaum (2006a: 163) believes that an *overlapping consensus* is possible. In this sense, and in common with both Donnelly and Coomaraswamy she (2006a: 163) aligns herself with the creators of the Universal Declaration of Human Rights. On this account, it is possible to arrive at cross-cultural agreement as to what constitutes human rights and why they should be implemented. For Nussbaum this means that Western democratic ideals are not the only ingredients in cross-cultural norms; they should also include diverse, non-Western world views. This can be considered a strength as it enables the inclusion of people who 'hold different comprehensive conceptions of the good life' (2006a: 163). The strength is evident because it strives for universality (through agreement) but does not privilege any one value set over others.[3]

The above points are supplemented by Nussbaum's assertion that there is an intrinsic, identifiable human nature common throughout all cultures. Such human essence forms the basis for human rights in two main ways: firstly, it allows for the possibility of universal human rights as it asserts that there is human commonality which transcends culture; and secondly, it enables the identification of what an adequate life consists of and what is needed to make a life truly human. In other words, Nussbaum's view of human rights insists that there are universal standards of humanness which provide criteria for objectively assessing standards of living and deficiencies of human rights. As Truong (2006: 1262) notes, Nussbaum's theory begins from:

> the idea that it is possible and desirable to find a set of essential characteristics in the human species across time and place, and come to a consensus on common ethical requirements for the achievement of a life of dignity.

[3] Nussbaum's universalism is highlighted in her earlier works (for example, 1992: 204-206) where she attacks the relativism of anthropological theory which holds in abeyance judgement of culture even if that culture includes harmful practices or what is normally considered to be a violation of human rights.

Importantly, these standards are normative and historical, and perceived by Nussbaum as non-metaphysical justifications for rights, points which will be further explored below (Nussbaum, 1992: 223; 1995: 74).[4]

Nussbaum's position is thus at odds with a great deal of intellectual thought on rights which resists universalist theory.[5] As she avers that there are universal standards and, perhaps more importantly, a universal human essence, arguably she is vulnerable to accusations of absolutism, arrogance and a general disregard for cultural diversity. Relativists, postmodernists and sceptical sociologists, among others, would not accept the notion that universal standards, derived from a purported common humanity, can be imposed on cultures with differing value systems. However, as will be illustrated in the following, Nussbaum's approach counters such criticism and establishes a theory that is sensitive to difference and cognisant of the social and historical contexts in which rights are established.

From human rights to capabilities

The previous section briefly outlined Nussbaum's view of human rights, illustrating the most germane dimensions which will enable subsequent exploration of the premises which underpin them. Nussbaum's conception of rights relies heavily on, and is intertwined with, her theory of *human capabilities*. The relationship between rights and capabilities *is* discussed explicitly by Nussbaum (1997; 2000: 96-101) but only briefly when compared with the bulk of her work. The link between human rights and capabilities is not a dominant theme in Nussbaum's work; indeed the link is unclear at best and dubious at worst, and is inherently loaded with certain value assumptions.

Yet Nussbaum (2000: 97) asserts that the connection is evident:

> … capabilities as I conceive them have a very close relationship to human rights, as understood in contemporary international discussions. In effect they cover the terrain covered by both the

[4] Despite the argument that the capabilities approach does not privilege one metaphysical outlook, Langlois (2008: 381) asserts that metaphysical assumptions are implicit and stem from liberalism's concern with human value and individualism.
[5] See Connell (2007, 2006).

> so-called first-generation rights (political and civil liberties) and the so-called second generation rights (economic and social rights). And they play a similar role, providing the philosophical underpinning for basic constitutional principles.

She later (2006a: 284) identifies that both human rights and capabilities are similar; they both provide 'an account of extremely important fundamental entitlements that can be used as a basis both for constitutional thought within a nation and for thinking about international justice'. This is an important point as Nussbaum does not emphasise human rights *per se*, but rather is preoccupied with the assumption that capabilities and human rights can be taken to cover much of the same ground. Thus, Nussbaum does explicitly state her argument for the confluence of rights and capabilities but clearly gives preference to capabilities (2000: 97).

On one level there is an obvious link between human rights and capabilities.[6] On the face of it, capabilities appear almost synonymous with human rights. For Nussbaum, capabilities need to be recognised and codified in constitutions and legislation in order to promote well-being and protect those essential characteristics of humanness.[7] The same may be said of human rights. Or perhaps more accurately, capabilities need to be recognised before human rights can be effective. But herein lies the complexity of the relationship between capabilities and rights: how does the argument that human beings have capabilities justify the endorsement of universal human rights? As I will argue below, this link presumes that: a) humans have certain universal needs and potential (evident in the language of human functioning and capabilities); and b) humans *ought* to be able to have those needs met, and have the opportunity to reach their potential, through basic constitutional guarantees and human rights. But for Nussbaum, the link is commonsense and self-evident; it is assumed that it is right to do so because it protects and enhances what she sees as essential to the human experience.

[6] I will outline what Nussbaum means by capabilities in the following section of this chapter.
[7] See Plant (2001: 227) whose observation seems to describe the intent of Nussbaum's work: '… because humans have certain capacities … then these capacities give them a kind of dignity and worth which deserves respect, and that this respect should be institutionalised in terms of rights'.

Given that capabilities and human rights are thought to be synonymous, Nussbaum maintains that the language of capabilities is preferable to that of human rights. By using the capabilities approach, certain problems associated with rights language can be overcome. These are varied and include the avoidance of vague, controversial and variable notions of rights in favour of an emphasis on evaluating how people are enabled to live (2000: 99; see also 2006a: 284-285). But perhaps most importantly, the approach enables justification of central rights and capabilities without reference to a specific metaphysical framework. It does not, in Nussbaum's (1992: 215) words, 'claim to derive from any source external to the actual self-interpretations and self-evaluations of human beings in history'.[8] Therefore capabilities language can be endorsed from different perspectives without valorising any one of them, including a Western perspective (2000: 99-100). Thus, according to Nussbaum (2000: 100), the language of capabilities is able to bypass controversy over whether rights are a Western construct imposed from without or have local roots.[9] She (2000: 100) continues:

> When we speak simply of what people are actually able to do and to be, we do not give the appearance of privileging a Western idea [of rights]. Ideas of activity and ability are everywhere, and there is no culture in which people do not ask themselves what they are able to do, what opportunities they have for functioning.

So, the capabilities approach is based in human experience, activity and ability, rather than overt 'metaphysical' sources.[10] Thus Nussbaum's capabilities approach is able to cover much of the same territory as rights. However, in contrast to much general human rights theory, Nussbaum offers

[8] Nussbaum's interpretation of what is metaphysical varies from my own. The argument mounted throughout this thesis depends on a definition of 'the metaphysical' that, in broad terms, covers anything that is beyond the physical, and particularly the origins of musings on human nature – what humans are, what they can be, and what they should be allowed to become. This definition by no means excludes socially constructed meanings, values and practices that give shape to human traditions and even necessarily includes them.

[9] The language of capabilities thus avoids the pitfalls associated with human rights language. But in its place is a similar schema of philosophical anthropology that lurks under the surface nomenclature that could attract the same criticism due to its universalism, endorsement of liberal values, and its implicit perspective on what a human life should consist of.

[10] The everyday practices and customs that constitute experience and ability are, arguably, derived from tacit metaphysical assumptions regarding what should be valued as a decent and worthy life, and 'what they are able to do' to use Nussbaum's words.

a greater exploration of the underpinning philosophical anthropology that is often taken-for-granted in simplistic appeals to human rights. Nussbaum also addresses a fundamental concern of human rights theory in general and this thesis in particular, namely: how rights can be regarded as universal while at the same time respecting cultural diversity. This, too, is a central theme of Nussbaum's work.

An advantage of the capabilities framework has over a purely rights-based approach is, according to Nussbaum, that capabilities are a more effective 'broad normative framework for the evaluation and assessment of individual well-being' (Robeyns, 2006: 352). In a scenario where basic rights are denied, it is politically ineffective to say that people 'have' rights in theory even though they cannot exercise them in practice. Here, Nussbaum's concept of *combined capabilities* is brought in to play. This concept links the internal capabilities of individuals with external circumstances. Even though a person or group may possess rights on paper, unless they are capable of exercising them, the people in question do not really have the rights. As Nussbaum (2000: 98) argues: 'they really have this right only if there are effective measures to make people truly capable of political exercise'. She (1997: 293) adds that 'to secure a right to a citizen … is to put them in a position of capability to go ahead with choosing that function if they desire'. So by emphasis on capability, real improvement can be made as it moves beyond conventional rights theories. What capabilities are, and how people can have them is the focus of the next section.

Nussbaum's capabilities approach

Capabilities

Nussbaum's greatest contribution to intellectual thought is in capabilities theory, and it is this approach which forms the basis of her work. Specifically, Nussbaum has devised a list of what she labels 'central capabilities' which she believes should act 'as a foundation for basic political principles that should underwrite constitutional guarantees' (Nussbaum, 2000: 70-71). In other words, they are general guiding principles which underpin and ensure a

basic quality of life for each person (2000: 70-71, 74). To decide on these principles, Nussbaum (1995: 72) poses the question:

> what are the forms of activity, of doing, being, that constitute the human form of life and distinguish it from other actual or imagined forms of life … (which frequently have precisely the function of delimiting the human)?

Put differently, capabilities express a basic threshold below which a life may not be recognised as 'human'. They reflect freedoms and choices to which every human is entitled and should not be denied.

There are a number of iterations of the list of capabilities which Nussbaum deems important and she has revised them over time to reflect changes in her position (for example, 1996: 216-222; 1995: 83-85; 2000: 78-80, the most recent being 2006a: 76-78). Her lists have been detailed extensively in both her own work and other literature, so there is little need to revisit them again here in detail. However it is useful to outline the main capabilities and to identify their basis on what they have in common.

Nussbaum's central human capabilities may be summarised thus (2006a: 76-78):

1. Those concerning the body: these include *life*, *bodily health* and *bodily integrity*.
2. Those concerning the mind: *senses, imagination and thought*; *emotions*; and *practical reason*.
3. Those involving the external environment: *affiliation* with other humans and other species; and *control over one's environment* through political participation and material acquisition.[11]

Nussbaum regards this list as open ended and subject to revision (thus the several versions of the list), but importantly, she regards these capabilities as

[11] For further iterations and interpretations of this list, see MacKenzie (2009: 345), Ilea (2008: 550), Nelson (2008: 95), Knobloch (2002: 13) and Ackerly (2000: 99), among others.

universal in two ways: that they are consistent with cross-cultural norms; and that they apply to each and every person from all nations. Nussbaum (2000: 35) is committed to 'making cross-cultural comparisons and to developing a defensible set of cross-cultural categories'. The most important aspect of Nussbaum's list of capabilities in relation to this thesis, is that she is setting out a set of universal criteria by which to assess the quality of life of people, especially women and those in non-Western countries.

Some implications for the capabilities approach

It is important to emphasise that capabilities do not prescribe how life should be lived, but rather that humans should have the capacity to live as they choose. This is reflected in Nussbaum's (2000: 87) statement that '*Capability, not functioning, is the appropriate political goal*', which implies that efforts to improve the quality of life of humans should emphasise the *capacity* to live a good life, rather than the particular life they may choose to live. This distinction (as will be discussed) is closely linked to Nussbaum's claim to the universality of her theory, on the one hand, and to respect difference and plurality, on the other. It is from this investigation into the basic elements of humanness (removed from biology and the metaphysical) which Nussbaum's lists of particular capabilities emerge. The reduction of humanness to biology or metaphysics is avoided by examining and evaluating the components of life which are required if that life is to be regarded as human. Nussbaum (1995: 74) describes this approach as a 'normative conception'. Yet arguably what is regarded as 'human' can be derived from metaphysical sources.

There is another facet to Nussbaum's account of the human which stresses the normative. She argues that investigating the nature of humanness – as it pertains to capabilities – does not assume either ahistorical or *a priori* truth. What is regarded as human, is derived from a 'very general record of broadly shared experiences of human beings within history' (Nussbaum, 2000: 74). As such, our understanding of the human relies upon 'an especially deep and continuous sort of experiential and historical truth' (Nussbaum, 2000: 74; see also Truong, 2006: 1263). In this sense, notions about what counts as human are said to be removed from specific metaphysical understandings or

accounts of biological commonality and are founded on (generally) shared experiences. However, I contend that the metaphysical is still to be found in historical, contingent notions of human nature, and that the specific character of human self-understandings does not preclude the influence of metaphysical beliefs.

To summarise briefly, Nussbaum's lists of capabilities are based upon what are purported to be common features of the human experience, and elements of life without which humanity is (generally) regarded as absent.

> The list provides the underpinnings of basic political principles that can be embodied in constitutional guarantees. For this purpose, it isolates human capabilities that can be argued to be of central importance in any human life, whatever else the person pursues or chooses (Nussbaum, 2000: 74).

It is evident from Nussbaum's work that her list of capabilities are also established in response to (and as a way of avoiding) hardship and deprivation. Just as certain aspects of daily experience are arguably shared across cultures, so too are those elements which characterise misery, hardship and tragedy. In this sense, humans are bound together by misery, despite cultural diversity. [12] Nussbaum (2000: 74) uses this as a foundation for universal capabilities:

> I believe that we can arrive at an enumeration of central elements of truly human functioning that can command a broad cross-cultural consensus. (One way of seeing this is to think about the ways in which tragic plots cross cultural boundaries: certain deprivations are understood to be terrible, despite differences in metaphysical understandings of the world.)

So, ensuring that capabilities are met is, in Nussbaum's framework, a method of avoiding future deprivations. But, that tragedy is experienced in similar ways the world over is used as the justification for the *universality* of capabilities.

[12] On this point, compare Turner's theory of human frailty (chapter 4).

Although Nussbaum puts forward a comprehensive framework of ideas as a foundation for human rights, these ideas themselves derive from a particular philosophical position and tradition. She relies extensively on philosophical perspectives asserted by Aristotle and these inform her conception of rights and capabilities.

Aristotelian origins

The above points foreshadow exploration of the underlying foundations of Nussbaum's capabilities theory, namely its origins in the works of the philosopher Aristotle. She derives many of her guiding principles from Aristotelian philosophy and ethics, including human dignity, human functioning, the good and essentialism. All of these elements are interwoven and the following attempts to demonstrate how they inform Nussbaum's capabilities framework.

Human dignity

A key dimension to the capabilities approach is that it attributes notions of human dignity and worth in ways which contrast with other social theories and theories of human rights. Traditional liberal theory (such as that of John Rawls[13]) tends to measure the worth of a person in terms of their productivity and their contribution to society (this perspective itself derives from Kant). In this sense, the animal and rational dimensions of human existence are separated.

Nussbaum, however, follows the Aristotelian concept of human dignity. This approach assumes that dignity is inherent in each and every person; it is not bestowed externally, nor is it achieved through action or awarded by merit.[14] She writes that humans 'do not have to win the respect of others by being productive. We have a claim to the support in the dignity of our human need itself' (Nussbaum 2006a: 160). But what defines human dignity, and what

[13] See Rawls (1972); also Langlois (2005: 377-378; 2003: 510).

[14] This is an important, even crucial point, as it implies that rights and capabilities are due to all simply by virtue of being human. It also implies a universal human essence which underpins rights. These are vital points, as most theorists tend to avoid such issues or deny that essentialism is suitable for rights theory.

does it mean to possess it? This view of dignity is characterised by rationality, sociability and bodily vulnerability (that is, dependence on others as a child, and the tendency to old age, illness and death). In the Aristotelian view, these human characteristics give rise to political principles as they acknowledge the human tendency for rational thought, association with others, and temporal, vulnerable bodies (Nussbaum, 2006a: 160). Capabilities reflect this concept of human dignity and embody all the elements required for a life with dignity. They are ways of realising human dignity, yet are valuable in themselves as constitutive elements of dignity, without which a life cannot be deemed human or dignified.

Humans as political in nature

The previous point implies that political association is inherent in humanness and is required for a dignified life which overlaps with the Aristotelian conception of humans as political in nature. In this framework, humans are seen as inherently political, as beings who find 'fulfillment in relations with others' (Nussbaum, 2006a: 85). These political and social dimensions of human existence, on this account, inhere in humans. Nussbaum (2006a: 86) notes:

> The political conception of the person that [the capabilities approach] uses includes the idea of the human being as 'by nature' political, that is, finding deep fulfillment in political relations, including, centrally, relations characterized by the virtue of justice.

Thus she ties to the political characteristics of humanness with human dignity and capabilities. The Aristotelian view states that the good of 'a human being is both social and political' (Nussbaum, 2006a: 86). Nussbaum openly admits that this concept is derived from Aristotle, notably passages such as: 'the human being is a social creature and naturally disposed to live with others' (Aristotle, 1975 [1953]: 9).

This implies that humans have natural pre-disposed to certain forms of social behaviour. Specifically, humans are seen to tend to interact with others, to find meaning and fulfilment in social and political action. Such tendencies, on

this account, are not learnt, but innate and 'natural'. Furthermore, humans tend to behave in ways which develop and reinforce notions of justice. Thus Aristotelian philosophy contends that humans are pre-disposed to justice and that structures which embody justice (such as those promoting capabilities and human rights) are an expression of the human. In other words, it is essentially human to treat one's fellow human with justice and respect.[15] One aspect of Aristotelian philosophy employed by Nussbaum is his account of the human good based on universal characteristics. This, in turn, was used by Aristotle as a yardstick for criticising existing local norms and traditions (Nussbaum, 1993b: 243-244).

Capacity for criticising local norms

Nussbaum does not subscribe to the view that cultural practices and beliefs can be accepted at face value and are above critique. She criticises this relativist perspective by arguing that many traditional ways of life can and do limit the freedom of some people and degrade their quality of life (for example, see Nussbaum, 1993a: S47-S53). The capabilities approach provides a mechanism for both criticising such practices and evaluating standards of living. Nussbaum's outlook here again derives from an Aristotelian view of ethics and morals.

This point can be divided into at least two aspects. Firstly, Aristotle was concerned with criticising 'existing moral traditions' which he saw as 'unjust or repressive, or in other ways incompatible with human flourishing' (Nussbaum, 1993b: 243). Secondly, according to Nussbaum (1993b: 243) Aristotle was a 'defender of a single objective account of the human good, or human flourishing'. The objectivity of the human good is said to emanate from common features of humanness which 'lie beneath all local traditions and are there to be seen whether or not they are in fact recognized in local traditions' (Nussbaum, 1993b: 243). Aristotle thus advocated a universal human essence or commonality that ties together humans regardless of their local

[15] However, one could similarly mount an argument that humans are naturally disposed to devising ever more sophisticated and clever 'ways in which to harm one another' (Kohen, 2007: 64).

culture. He used this (Nussbaum, 1993b: 244) 'ethical objectivity' for 'the criticism of existing local norms' which he regarded as incompatible with human flourishing. Such a perspective is manifest in Nussbaum's approach when she argues for the standards which reflect human commonalty and which can over-ride unjust and traditional practices.

Human functioning and the priority of the good

Nussbaum's notion of functioning stems from that of Aristotle. Aristotle (1976: 75-76) mused on the true function of humans. He distinguished between what constitutes human life and what makes merely existing as a sentient being. He also separated notions of life and a *good* life and included critical evaluation of what constitutes a good life (Nussbaum, 1995: 110). This precedes discussion of 'any detailed discussion of the [good] life's content' (Nussbaum, 1995: 110). So for Aristotle, the notion of a good life is more important than the chosen way of life itself – the way of life is a means to achieving the good. He (1975: 73) wrote:

> What, then, is the good of each particular [activity]? Surely it is that for the sake of which everything is done. In medicine this is health; in strategy, victory; in architecture, a building – different things in different arts, but in every action and pursuit it is the *end*, since it is for the sake of this that everything else is done.

This priority of the good informs Nussbaum's assumption that life must be arranged so as to enhance the capabilities of each citizen. The lives they lead are means of achieving this end. This overlaps with the idea that a plurality of world-views can exist with universal values regarding human life and dignity.

Essentialism without metaphysics

The above facets of Aristotelian philosophy amount to a variety of essentialism which places emphasis on a shared human nature. This is a position which Nussbaum openly endorses in several works (for example, 1992). She mounts the case for this type of essentialism on several grounds. The most significant of which enables Nussbaum to justify her theory of capabilities as suitable for defending human rights. It does this by providing

criteria by which to measure a person's quality of life and whether or not they are allowed the capacity to live a fully human life. The list of capabilities form what is essentially an account of the good – those elements required for proper functioning – and are derived from what is universally required. This notion of the good provides a yardstick, or a set of criteria by which to assess life quality and human rights violations. So the crucial point here is that universal or shared criteria are needed to arbitrate between just and unjust practices, between a good human life and mere existence. Nussbaum (1992: 229) argues that:

> without an account of the good, however vague, that we take to be *shared*, we have no adequate basis for saying what is *missing* from the lives of the poor or marginalized or excluded, no adequate way of justifying the claim that any deeply embedded tradition that we encounter is unjust.

Thus the idea of essential human existence becomes an integral dimension to the capabilities approach, and, derived as it is from Aristotle, provides a solid foundation for criticising harmful practices and for policies which rectify such injustice.

Nussbaum advocates redistributive justice policies that concentrate resources on the disadvantaged in order to improve their quality of life. Such an approach to public policy depends upon the essential and shared characteristics of humans; without which, it would be impossible – or at least much more contentious – to identify the most disadvantaged and justify why policies ought to be directed at aiding them.

A defining difference between the Nussbaum/Aristotelian variety of essentialism and the essentialism attacked by relativists is that the former is not based on a metaphysical understanding of the 'human'. Nussbaum (1992: 223) notes that the list of capabilities 'does not derive from any extrahistorical metaphysical conception, or rely on any form of metaphysical realism'. As noted earlier in the chapter, the list of capabilities assumes a *historical* understanding of humanness, those features which are shared regardless of culture or politics. These include the physical and emotional

needs of humans, the body's vulnerability and tendency to age and decay, and individuality and freedom. Her belief in a human essence has attracted criticism from many theorists, most notably relativists, who are sceptical about any intrinsic form of humanness. Nussbaum counters such criticism by basing her essentialism on different grounds than might be imagined by sceptical relativists.

Nussbaum (1992: 206-207; 1995: 67-70) argues that a metaphysical realist approach is generally untenable in philosophy and inappropriate for human rights. This realist perspective implies that there is an independent, transcendent nature of things which should correspond to humans' descriptions of the world. That is to say, human understanding, knowledge and ways of living are said to correspond to an external reality. This outlook, of course, has implications for how humans view themselves and their place in the universe. This means that 'the way the human being essentially is will be a part of the independent furniture of the universe, something the gods can see and study independently of any experience of human life and history' (Nussbaum, 1992: 206). Nussbaum (1995: 69), however, rejects such as approach as untenable. Rather, she advocates universalism based alone on experience and history. The history or human existence, she argues, tell us something about what humans have in common, dimensions of the human which exist in the 'here and now'. As Nussbaum (1995: 69) notes, 'universal ideas do arise within history and from human experience, and they can ground themselves in experience'.

By conceiving the essence of humanness as free from the metaphysical, the Aristotelian view employed by Nussbaum allows for both plurality and specificity. That is, because no one set metaphysical beliefs are said to be invoked, the capabilities can be applied to a diverse range of cultural contexts, which, notes Nussbaum (1992: 224) 'leaves a great deal of latitude for citizens to specify each of the components more concretely and with much variety, in accordance with local traditions or individual tastes'. At the same time, a non-metaphysical essentialism has the advantage of appealing to all

traditions as no one particular world view is valorised over others.[16] Such an inclusive approach has – because the specific nature of cultural contexts are respected and taken into account – implications for the practical application of rights. What may be a suitable method of encouraging human flourishing in one context may be inappropriate in another, so the Aristotelian view enables both universal standards of capacity to co-exist with local measures of the good (Nussbaum, 1992: 224).

Without such Aristotelian essentialism, there would be no standard by which to evaluate quality of life, nor would there be the framework to respect local context while promoting universal values. Nussbaum's list of capabilities is thus *normative* (in that it derives upon values and norms which emerge from human experience) and not metaphysical (as it is not predicated upon 'any source external to the actual self-interpretations and self-evaluations of human beings in history'; Nussbaum, 1992: 215; Alexander, 2004: 458). So, essentialism is based upon normative values and ideas about human dignity and life that are explicitly historical and contingent. There is no attempt to derive universal values from any external source, any metaphysical account of the universe, or to provide an ahistorical account of humanness. Yet I argue that, her claims to avoid the metaphysical notwithstanding, Nussbaum does muse and reflect upon what it means to be a human, and that these thoughts are informed by metaphysical beliefs. In other words, Nussbaum's work entails a philosophical anthropology that ponders the non-physical meaning of human life.

Neo-Aristotelian principles in practice

The previous section illustrated the sources of certain concepts which Nussbaum employs in her capabilities approach. These Aristotelian ideals have a direct and profound effect on Nussbaum's approach to rights, capabilities and cross-cultural relations not only in a general sense but in specific and tangible ways. The principles expressed by Aristotelian

[16] This is, indeed, point Nussbaum provides for favouring capabilities over rights (which tend to at least imply a specific intellectual and philosophical tradition).

philosophy are evident in her work. This is realised in a number of ways which are elucidated in the following. The first is a belief in universal values.

Defending universal values

As the above has emphasised, Nussbaum's concept of human capabilities rests upon the assumption that they apply to all people equally. That is to say, they are *universal*. In one sense her list of capabilities are sufficiently general so that they account for the diverse ways of living which exist without prescribing a *particular* 'good life' (merely the conditions for people to have *a* 'good life' – see the section detailing Nussbaum's list of capabilities). Nussbaum's claim that the capabilities approach avoids the specific allows her to focus on the universal – that is, what all humans are purported to have in common. But articulating a universal social theory of humans can attract its own share of barriers and criticisms. Nussbaum (1995: 64-67, 1992: 204) provides examples where her own theories have been attacked by relativists (predominately anthropologists) who claim that universal theories are flawed because they fail to respect difference (Nussbaum, 1995: 66). Nussbaum might counter this criticism by insisting that the capabilities framework allows for cultural diversity through reference to universal norms. Furthermore, such relativists eschew universal theories on the basis that there are no grounds to make normative assumptions about the validity of other cultures.[17]

Opposition to this type of relativism has been a central theme in Nussbaum's capabilities framework and reflect Aristotelian values (Jaggar, 2006: 303). A particular reason for opposition is that relativism can inadvertently lead to defending an unjust status quo and the rationalisation of injustice to women (and others) throughout the world. Nussbaum (1992: 204) argues that well-intentioned people employing a relativist stance to culture is:

> an odd phenomenon indeed. Highly intelligent people, people deeply committed to the good of women and men in developing countries, people who think of themselves as progressive and feminist and antiracist, are taking up positions that converge … with positions of reaction, oppression, and sexism. Under their

[17] See Marglin & Marglin (1990).

> radical and politically correct 'antiessentialism' march ancient religious taboos, the luxury of the pampered husband, ill health, ignorance, and death.

These people, Nussbaum claims, are defending unjust and harmful cultural practices on the basis that there are no external criteria to judge them. Nussbaum is therefore driven to attain standards which have cross-cultural appeal and which can eliminate inequality and injustice. She seeks to critique traditional practices by reference to universal criteria and establish policies which improve quality of life for the marginalised. So how, then, does Nussbaum validate universal theories of human capabilities and human rights? A first defence is in the manner in which relativists reject universalism.

Overcoming relativism: Liberalism / universalism

A central aim of Nussbaum's work is to recognise difference, diversity and plurality. Despite this, she (1993a: S54; 1992: 215) has emphasised the universal nature of her theories, much to the disdain of relativist theorists who hold that sufficient recognition of difference and universal concepts are mutually exclusive (1993a: S47-S49; 1992: 203-204). However, it is this very desire to promote difference and autonomy which informs the nature of her capabilities approach. As foreshadowed earlier in this chapter, the capabilities approach is concerned with evaluating and improving quality of life amongst disadvantaged peoples (particularly women of non-Western nations). The approach emphasises the opportunities people have to lead a 'good' life and one which they choose (as opposed to a life imposed by cultural traditions which leaves little if any scope for pursuing alternatives). On the face of it, Nussbaum's theory appears to be promoting a specific style of living, one which derives from Western, liberal concepts. However, this argument cannot be sustained.

A pivotal element in Nussbaum's capabilities approach – shaped as it is by a neo-Aristotelian preference of the good over the right – is that it does not prescribe any particular life style. By emphasising that capabilities are central characteristics which need to be guaranteed in constitutions and law, Nussbaum is only arguing that such capabilities need to be present so that

people or nations have the *capacity to choose* which life they live; fostering universal capabilities allows for a plethora of preferences rather than prescribing which lives to live. This point draws the distinction between capabilities and functioning. Although Nussbaum (2000: 87) recognises that the functioning of human life is vitally important, for the purposes of her theory she argues that fostering capabilities should be the political goal; emphasising a certain range of functioning, by its very nature, precludes other types of functioning and therefore limits choice and potentially violates rights. In contrast, Nussbaum's neo-Aristotelian view (also paralleled by aspects of liberal theory) stresses opportunity and choice rather than coercion. This translates into her preference for promoting capabilities over functioning. She (2000: 87-88) writes that:

> … for political purposes it is appropriate that we shoot for capabilities, and those alone. Citizens must be left free to determine their own course after that. The person with plenty of food may always choose to fast, but there is a great difference between fasting and starving, and it is this difference that I wish to capture …. I am not pushing individuals into the function: once the stage is fully set, the choice is up to them.

As was noted earlier, this theory places an emphasis on the *good* rather than the *right*. The universal capabilities 'can be realized in different ways according to individual tastes and local traditions' (Jaggar, 2006: 304). Again, this emanates from Aristotelian philosophy.

Other foundations: liberal and non-liberal roots; Aristotelian foundations in practice

Such an emphasis on opportunity and choice (Jaggar, 2006: 304) is indicative of Aristotelian philosophy and, arguably, typical of Western liberal political theories in several respects. Firstly, it, in opposition to harmful traditional cultural practices, includes respect for people and their choices. With capabilities as a goal, *individuals* are granted latitude to choose their own life path without coercion or restriction. Secondly, it places the autonomous, rational, individual at the centre of the political world. Nothing is valued above the *individual*; not tradition, religion, family ties or any other social force which

may proscribe certain behaviour. Individuals may *choose* to conform to these forces, but that conformity should not be imposed.[18]

Again, the individual is the locus of such dignity and freedom. Other social forces and structures do not attract the same importance for Nussbaum. She (2000: 74) writes that:

> the capabilities sought are sought for *each and every person*, not, in the first instance for groups of families or states or other corporate bodies. Such bodies may be extremely important in promoting human capabilities … but it is because of what they do for people that they are so worthy, and the ultimate political goal is always the promotion of the capabilities of *each person*.

This approach not only reflects the primacy of the individual in Western liberal political philosophies, but also enables individuals to free themselves from any constraining or repressive force which may inhere in the corporate bodies identified by Nussbaum (for example, traditional family structures which limit or prescribe choice of spouse).[19]

Distributive justice

There is a further dimension to Nussbaum's work which reflects Aristotelian origins and which is set in opposition to more traditional liberal theories (such as those of John Rawls). Although Nussbaum clearly advocates individual choice and freedom, her Aristotelian leanings have significant influence on the rationale she provides for the superiority of the capabilities approach of measuring quality of life over other methods. This point is addressed throughout her work (for example, 2000: 59-62). The most essential aspect of Nussbaum's preference for the capabilities approach is that it is able to

[18] However, as Charles Taylor (1995) notes, good social theory should not take at face value agents' self-understanding, as there is often more factors at play than an 'individual' or 'autonomous' person may appreciate (see chapter 6 of this thesis).

[19] A third and contentious point is that the emphasis on individuality and choice may also imply negative connotations. Although this approach is intended to maximise quality of life, it also allows for the possibility of deficit theories which blame individuals for their misfortunes. That is, if it is up to the individual to make the best of their opportunities, then it might be argued that a lower quality of life, inequality, poverty or discrimination are also due to individual choice. This is not a point I endorse, nor one intended by Nussbaum, as capabilities theory places the onus on states and institutions, rather than individuals, if basic needs are not met. It is, however, a potential flaw in the theory, and one which is in conflict with the spirit of both human rights generally and Nussbaum's work in particular.

evaluate quality of life and detect inequality in ways that other methods cannot. For example, the measure of a nation's wealth by determining the Gross National Product (GNP) per capita may provide a general impression of how people are faring, but it ignores the *distribution* of wealth (Nussbaum, 2000: 60; Robeyns, 2006: 361). Nations with comparable GNP can display great distributional diversity with regards to income and wealth. Additionally, such figures reveal little or nothing about literacy rates, denial of freedom, gender inequality or other important indicators of life quality.

This is where an Aristotelian/capabilities approach is useful. By employing capabilities as a tool for measuring what is lacking in life (and, importantly, who is lacking it), Nussbaum's approach is more effective in evaluating quality of life – capabilities represent basic, minimal requirements for life to be regarded as good or human. Nussbaum's theory focuses on the most marginalised, those for whom inequality, discrimination, poverty and lack of freedom are commonplace, rather than the national average or overall picture.

This enables Nussbaum's approach to identify those groups and individuals whose lives are missing the elements required for a good life and what is needed to rectify this imbalance. This has at least two significant policy implications. Firstly, because, unlike a liberal (Rawlsian/Dworkin[20]) framework which aims at 'equal allotment of certain basic resources', it relies upon a sense of 'distributive justice'.[21] Put differently, in a liberal society, resources are allocated equally on the assumption that people should make the most of them based upon their own rationality or judgement. The capabilities approach, as foreshadowed by its Aristotelian origins, avers that disadvantaged people are not always in a position to utilise their given resources most effectively. More to the point, such people require additional support and a greater proportion of resources to attain the capacity to function adequately. Nussbaum (1992: 231-232) writes the 'Aristotelian fundamental commitment' is to:

[20] See, Rawls (1971), and Dworkin (1978).
[21] See Gale & Densmore (2000) for more developed and nuanced notions of social justice.

> bring each and every person across the threshold into capability for good functioning. This means devoting resources to getting everyone across before any more is given to those who are already capable of functioning at some basic level. If all cannot be brought across the threshold, to this extent the ends of public policy have not been meet.

From this there is the policy implication that programs should focus in improving the quality of life of the most marginalised so that their capabilities are realised.[22]

The Aristotelian origins have two dimensions: firstly, the Aristotelian-derived conception of the human, and secondly the idea that *all* capabilities are equally important. Let us explore the second point first. For Nussbaum, the various capabilities described throughout her work are intended as separate components which are irreducible. 'All [capabilities] are of central importance and distinct in quality' (2000: 81) she writes. This means that all capabilities need to be present for a life to be considered human; one can neither argue that a life is 'good enough' if most of these components are evident, nor can capabilities be traded off against each other. 'One should not suppose', Nussbaum (2000: 81) continues, 'that the absence of political liberties would be made up for by tremendous economic growth'. Nor can capabilities be traded away for greater wealth and affluence, nor be attributed a monetary value. Such a view is 'especially repellant' to the Aristotelian (Nussbaum, 1992: 231). Thus it is the *totality* of capabilities which defines a good life, and deficiency in any one area cannot be compensated for in others. Without all of these capabilities, it is implied that a person cannot be a *complete* human. Further, capabilities are ends in themselves with intrinsic, non-monetary value.

This mirrors the foundations of the first point identified above. In outlining the justification for the capabilities approach, Nussbaum contrasts it with more traditional measures of life quality and political theories. For example,

[22] The second policy implication stems from capabilities theory's recognition of the 'essential characteristics' of humans required for a life of dignity. By doing so, polices can be directed at enhancing and realising both capabilities and dignity, especially for societies in which these virtues may be lacking.

economic utilitarianism, tends to view the 'aggregation of satisfactions' of primary importance (Nussbaum, 1992: 231). In other words, it measures the overall picture of well-being and wealth in a society without special reference to particular groups or individuals. On Nussbaum's account (1992: 231), the utilitarian approach is not above 'purchasing one person's satisfaction at the price of another's misery'. She continues: 'the utilitarian is frequently willing to tolerate huge inequities for the sake of a larger total or average sum'.

In response to the utilitarian approach, Nussbaum (1992: 231) writes that the 'Aristotelian's fundamental commitment, by contrast, is to bring each and every person across the threshold into capability for good functioning'. The premise here is that no amount of disadvantage or misery is acceptable in the name of the common good, but rather the well-being and quality of life of *each and every person* is paramount. This again rests upon Aristotelian foundations which are similar to the liberal tradition, but have a greater emphasis on redistributive justice and social equity. More specifically, it emerges from a general Aristotelian approach to ethics and justice.

Educing and amplifying tacit assumptions

There are numerous works which address various aspects of the capabilities theory, including Nussbaum's work. These include Nelson (2008), Jaggar (2006), Alexander (2004) and Truong (2004) who provide a critique on various grounds. However, the criticism that is most germane to the aims of this thesis once again comes from Langlois (2004). The grounds for his criticism have been foreshadowed at the outset of this chapter and elsewhere throughout the thesis. There are two main dimensions to this: firstly, there is the underlying 'post-metaphysical' and 'deontic' context in which much Western (human rights) theory is developed (Langlois, 2004, 257, 260; 2003: 511). This context seeks to avoid metaphysical explanations for beliefs and phenomena, including human rights. Thus, Nussbaum's approach seeks to provide justification in universal, verifiable and empirical 'facts' about the human condition (that humans have basic needs which ought to be met). It is this basis, presumed to be neutral and universal, that is employed in

capabilities theory to justify human rights. However, further analysis suggests that additional values are involved.

Langlois (2004: 259) contends that, despite Nussbaum's claims, human rights and capabilities are not equivalent or interchangeable. As I argued in chapter 4 in relation to Turner, just because humans have certain needs, that does not automatically entail that they *ought* – or have a right – to have those needs met. Other life forms have similar needs – such as the need for food – but the right to such food is not assumed in the same manner as human rights are assumed (animal rights notwithstanding). According to Langlois (2004: 259) there is an implicit value which is placed on humans which is not disclosed in arguments for human rights based on needs and flourishing. Here is the crux of Langlois' argument and central point of this chapter. There is an assumed 'normative stance … with respect to human persons – a normative stance implicit in the view that we hold that basic rights *ought to be* provided' (Langlois (2004: 259):

> The mere fact that humans deprived of food will die is not alone sufficient to provide them with a right to food. What provides this right is a certain set of normative beliefs we have about the human person. And so here we see that for the proponent of the needs-flourishing arguments, the proper ontology of human rights is not that human rights are either basic needs or an environment conducive to flourishing. Rather, human rights are a doctrine about the special nature and value of human persons. It is this doctrine which makes basic needs and flourishing something about which we should be concerned (Langlois, 2004: 259).

In other words, there is a theory of human worth embedded in talk of capabilities and rights. In Langlois' language there is a high philosophical anthropology inherent in Nussbaum's approach, and which is obscured by her justification of rights based in universal need.[23] Importantly, Nussbaum (2006a: 159-161) identifies *human dignity* as a basis for capabilities and justice in a manner absent from Turner's work. Nonetheless, the notion of

[23] What is more, this philosophical anthropology arrives with its own metaphysical baggage, flying in the face of Nussbaum's claims (for example, 1992: 215) that she does not invoke any particular metaphysical tradition. Rather, Rawlsian-liberal valued are projected on her theory, values which emphasise individuals as the basic unit of society and thus as having individual rights. See next chapter for more.

dignity itself, and why humans should and do posses it, is somewhat more ambiguous in Nussbaum's work. So she goes further than Turner when she links the need for human capabilities with maintaining dignity. However, clear articulation of why human dignity is so important is noticeably missing from Nussbaum's approach; rather it is *presumed* and taken-for-granted that enhancing human dignity is preferable. Yet it is fundamental to her argument and begs the question: what is it about being human beings that specifically privileges them to have the goal of flourishing capabilities as a *sine qua non* of their human rights? Once again, aspects of an implicit philosophical anthropology come to light.

Although Nussbaum argues that capabilities do not appeal to a higher, transcendent source and is thus not metaphysical, I argue that capabilities doe indeed rely upon certain metaphysical beliefs. A philosophical anthropology is manifest in Nussbaum's approach to capabilities and human rights. Most of her work is devoted to exploring what humans ought to have to lead a fulfilling life and the policies that are informed by this investigation. However, Nussbaum goes no further in the sense that she declines to ask *why* humans need rights and how they are related to capabilities. But these questions remain unanswered. Arguably Nussbaum bases her claims on the metaphysically-derived view that human life is valuable and ought to be protected and enhanced as much as possible. Furthermore, these values align with Western liberal assumptions regarding autonomous individuals, thus questioning Nussbaum's claim to the universality of capabilities.

The implications for this critique are three-fold: firstly, the capabilities approach to human rights is not as unproblematic as it might seem as, rather than having universal application, it deploys specific Western-liberal values; secondly, the critique highlights the role of tacit assumptions (including metaphysical assumptions) in formulating a theory of rights; thirdly, it highlights the possibility (identified in previous chapters) that the metaphysical issues cannot be evaded as they are always present regardless of being unacknowledged or unintended by the author (Langlois 2005a: 8).

Further thoughts and comparisons

Over the course of this chapter, there have emerged several important issues which allow some comparison with other human rights theorists. Although these points will be discussed more fully later in the thesis, there is scope to touch on them here. A first point of comparison can be made with Richard Rorty. Rorty's position was detailed earlier in this thesis, and it was noted that he defended human rights very loosely. His main justification for human rights is that they are an 'historical fact' which benefit humans. The assumption here is that a practice or attitude can be defended merely on the grounds that it exists and has become embedded in our daily lives and general outlook.

By contrast, Nussbaum argues that practices *cannot* be defended on these grounds, especially if said traditions are harmful to people or are unjust. The subservience of women is a common feature of many cultures (including but not limited to non-Western cultures) which has existed for centuries. In those cultures, the role of women and their subsequent marginalisation have become a 'fact' of life, part of everyday experience. Their disadvantage provides advantages for men, so for them the oppression of women is an embedded tradition which is beneficial. By Rorty's standards, such traditions are justified as they exist and are advantageous (at least to the powerful). Nussbaum, however, rebukes such a validation, and employs the list of capabilities to assess which practices are just and which are unjust. Rorty, however, does not provide, nor believe in any such criteria.

A further point of comparison with Rorty is in the area of metaphysics and human essence. Both Rorty and Nussbaum agree that it is not useful to justify human rights by reference to a specific metaphysical outlook. For Rorty, this stems from the belief that there this no non-human realm which human rights reflect, or at least that is point is irrelevant and not worth pursuing. Nussbaum acknowledges that different world views exist and should be respected and allowed to flourish as they provide meaning and structure for people. Capabilities exist to enable people to pursue whichever metaphysical beliefs they choose.

Similarly, Rorty denies that there is an ahistorical human essence, or at least nothing intrinsic about humans which influences moral choices. Additionally, he insists that species membership does not entail specific rights. However, Nussbaum argues the opposite position – dignity and the right to choose one's path in life are *inherent*. Put differently, humans have rights simply virtue of being human. It is this premise which enables Nussbaum to pursue a philosophical framework which supports the protection and implementation of rights through capabilities. Rorty's position, by contrast, does not reason why humans should have rights.

Of course many other comparisons may be made between the theorists analysed in this thesis. But the contrast between two vastly different approaches highlights both the main dimensions of Nussbaum's theory, and the terrain covered by this thesis to date. In light of these contrasts, the distinctive elements of Nussbaum's approach become all the more apparent. It is therefore arguable that the neo-Aristotelian approach she employs a comprehensive justification for rights and greater explanation of why it is a useful theory of rights. The contrast also demonstrates that to provide a more plausible and defensible conception of human rights, the assumptions and methods which inform it must be thoroughly and clearly articulated. Nussbaum's approach addressed these issue more directly (although imperfectly, as I have argued), while Rorty was much more reluctant to reveal and explore his own assumptions.

Conclusion

The chapter has argued that Nussbaum's view of human rights derives from her capabilities approach which is, in turn, reliant upon a number of deeper philosophical foundations, mainly related to Aristotelian philosophy. The argument has stressed that Nussbaum has incorporated several key aspects of Aristotelian philosophy and ethics which are intrinsically related to her view on human rights. These begin with a particular view of the human, a view that contends that humans are by nature political animals who are inherently dignified and thus deserve the opportunity to flourish. The universal human

essence identified by Aristotle and Nussbaum is both derived from a shared human experience and yet transcends any particular culture or context. This essentialism forms the basis by which human life can be evaluated and traditions identified as either just or unjust. Alexander (2004: 458) summarises Nussbaum's position thus:

> By using the Aristotelian conception of 'truly human functioning' and by focusing on the central notion of what it means to live a life with 'human dignity', Nussbaum enumerates a set of entitlements that every society should strive to guarantee to its members.

Further, the chapter has argued that Nussbaum's capabilities approach rests upon assumptions about how humans should live and be treated which overlap with traditional liberal philosophy. For example, she actively promotes respect of difference and the autonomy of the individual. In fact, the autonomous individual is the most important part of society, taking precedence over families, religions and other social groups and institutions. It is *individual* well-being which is of primary importance. Similarly, Nussbaum emphasises that individual freedom must be maintained via promoting capabilities rather than functioning. It is up to the individual citizen to make the most of his/her situation once they have been provided with the opportunity to flourish. There is no sense in which individuals are coerced into living a particular good life. It has been argued that this point stems from the Aristotelian and liberal views that the good takes precedence over the right. Yet there is also a sense in which the capabilities approach is somewhat prescriptive in stating what is required for an adequate human life, albeit expressed in general terms.

In developing the argument identified above, this chapter has performed an additional function. It has outlined Nussbaum's capabilities approach to human rights, arguing that this framework is distinct among human rights theories in that it presents a coherent theory of the main issues addressed in this thesis. Notably, Nussbaum's work specifies areas in which capabilities should be promoted, which although admittedly and deliberately vague and general, provide more specificity than other approaches. The chapter argued

that Nussbaum has attempted to defend both universal values and cultural pluralism, and as such provides a useful and powerful defence of universal human rights. Her position is contrary to dominant relativist accounts of culture and cross-cultural understanding. Nussbaum's theory is partly predicated on the notion that traditional practices can be inherently harmful and unjust, and that there are criteria by which cultures can be evaluated. This concept therefore justifies intervention in areas which might otherwise be condemned by well meaning relativists or advocates of diversity and autonomy.

Despite these merits, I argued that although the capabilities approach aims to be universal and metaphysics-free, these goals are compromised. As Langlois (2004: 259) has argued, there is nothing inherent in the theory to translate human needs into human rights. Rather, it is the normative view that human beings have value and should have rights which is present in Nussbaum's work but not made overt. In highlighting that such critical values can be (unknowingly) imported into a theory, further illustrates the role of foundations in contributing to the character of that theory. What is more, I have raised the point that metaphysical concerns are both present (even if not acknowledged) in theory and need to be addressed and made visible for a theory to have more explanatory power.

Arguably Nussbaum's goal has been to devise an outline of human rights that on the one hand is not derived from one particular metaphysical outlook, yet on the other can be endorsed by any cultural tradition. This has lead her to focus on what is purportedly universal in the human experience – the need for food, shelter, fulfilling relationships with others, and so on – as the basis for her claims about human rights. This framing of human nature is limited to what can be 'sought out by positivistic empirical investigations of what all human persons have in common in the way of basic capabilities, functions, frailties and moral responses' (Langlois, 2005b: 381). In other words, Nussbaum's desire to avoid metaphysical explanations for human rights underpins and gives rise to the capabilities approach that emphasises these 'objectively verifiable' (Langlois, 2005b: 381) dimensions of human nature.

The capabilities approach overtly and deliberately excludes exploring those issues and concepts that might be called ‘metaphysical’, that is that which goes beyond the physical, including reflections upon what it means to be human and the worth of human life. Yet, as I argued in this chapter, Nussbaum implicitly deploys these concepts by eliding the link between capabilities and human rights. The metaphysical components are there, lurking within the theory, but they are not acknowledged, explored or theorised, despite the influence they wield. There is thus the need for a framework of right that *does* engage in a wider range of issues – including the metaphysical – in order to be in a better position to justify human rights. For this contribution, I turn to Charles Taylor.

CHAPTER 6
UNFORCED CONSENSUS, CROSS-CULTURAL UNDERSTANDING AND RECOGNITION: CHARLES TAYLOR

'… different groups … although holding incompatible fundamental views on theology, metaphysics, human nature, and so on would come to an agreement on certain norms that ought to govern human behavior. Each would have its own way of justifying this from out of its profound background conception. We would agree on the norms while disagreeing on why they are the right norms.' (Taylor, 1996: 15)

The previous chapter analysed a position on human rights which is founded on a particular conception of human experience. Nussbaum's capabilities approach to human rights makes overt assertions regarding what a human life should be, and how such a life might be realised in practice. It bases these concepts on a neo-Aristotelian reasoning of human 'nature'. At this level, the capabilities approach depends upon foundations which are theorised and made explicit, but only to a certain critical point beyond which they are assumed and unacknowledged. Nussbaum's work aims to be universal as it eschews reliance on metaphysics, and thus allows scope for endorsement from a variety of metaphysical positions. Its universality is justified through what Nussbaum perceives as shared human needs rather than via political, social, cultural, theological or metaphysical underpinnings. Yet this approach still begs some crucial questions. For example, as I argued in the previous chapter, the capabilities approach implicitly endorses Western-liberal views of society and the individual, and as such cannot legitimately claim universality.

Having argued that theories of rights that are based on a presumed universal human ontology (such as purveyed by both Nussbaum and Turner) do not attain their intended levels of universality, this thesis now turns to a different approach. The problem diagnosed in the previous chapter is that Nussbaum is reluctant to engage with the specific metaphysical concepts that underpin, and form the foundations of, her capabilities thesis. As discussed, her approach strives to be universal through explicit avoidance of metaphysical explanations for capabilities and human rights. It inadvertently, however, deploys specific neo-Aristotelian concepts of the human person that are inherently metaphysical in character; and in so doing, Nussbaum manages to

undermine her own claims to universality. Her approach is noticeably different to Turner's in that she is willing to explore aspects of philosophical anthropology to support her position. Despite this, I argue that her position does not sufficiently identify and account for the influence and role of metaphysical assumptions in human rights theory.

The work of Charles Taylor provides some responses to the short-comings identified above. Employing Taylor at this point of the thesis represents another separation between the theorists who went before and the terrain to be covered ahead. This is because Taylor's work is more openly willing to explore and account for metaphysical issues than theorists such as Rorty and Nussbaum who actively avoid them. Taylor openly explores at length what others (Hjort, 1994: 121; Smith, 2002: 7-8, 237) have labelled 'philosophical anthropology' and an ontology of the human. Given the argument of this thesis, Taylor's embrace of these issues arguably sets him apart from other theorists who baulk at exploring the metaphysical. His work also develops Nussbaum's assertion that human rights can be interpreted and justified by local customs and norms by illustrating that particularist conceptions of humanity can be used to achieve universal norms of behaviour.

Taylor (born 1931) is a Canadian philosopher who has contributed a great deal to academic writing and to public debate on a diverse range of topics. He has written books on Hegel (Taylor, 1975, 1979), discussed (at length) issues relating to diversity, multiculturalism, cross-cultural understanding (1983, 1994a, 2002a, 2001b) and democracy, and has weighed in to the public debate on the identity and rights of Quebecers in Canada (1994a). He has published a substantial volume on the nature of modern identity (*Sources of the Self*, 1985), the implications of which are still felt today. Taylor's recent works relate to religion and society as well as his ongoing concern with the nature of identity in modern society (*Modern Social Imaginaries*, 2005; Smith, 2002: 1). More recently Taylor has been interested in exploring secularisation and its social, political and ethical implications (*A Secular Age*, 2007; also Taylor, 2010).

Like Richard Rorty, Taylor has written comparatively little on issues directly related to human rights in the context of his overall output. In this sense Taylor's contribution to human rights is relatively limited to a few articles and chapters, (Taylor, 1999, 1996 and 1986). Despite this, Taylor's efforts on the subject embody a range of foundational claims about the nature of rights, human nature and the future of human rights as a global, cross-cultural proposition. As Baker (2007: 106; see also Smith 2002) notes, 'the wide range of Taylor's philosophy, for all its diversity, is nonetheless a unified philosophical project'.

Taylor's diverse philosophical enterprise encompasses the defence of human rights in theory and practice. Despite the threats to human rights from apparently 'unstoppable diversity', relativism, global terrorism and Western governments responses to it (Dunne, 2007: 270) Taylor maintains a degree of optimism about reaching a workable, unforced consensus on human rights across cultures which hold fundamentally different world views (Taylor, 2002a: 186; 1983: 44; 1999). In keeping with the procedures of the preceding chapters, Taylor's broader work will be called upon to explore and tease out the foundations that underpin his views on human rights. However, this chapter will begin by outlining Taylor's view of human rights drawing predominantly from his 1996 and 1999 papers (with reference to other works). From the position outlined in these papers, it is possible to extract Taylor's broader assumptions on rights and related topics. The works in question deal with what Taylor considers the necessary conditions required to reach an 'unforced consensus' on human rights across cultures.

Taylor on Human Rights

Taylor endorses the view that human rights can and have enriched the lives of many around the world through the values and norms of conduct they have brought. He (1992: 8) also recognises the normative value of human rights: 'The average person needs to do very little thinking about the bases of universal respect, because just about everyone accepts this as an axiom today'. However, Taylor is reluctant to make any claim to the universality of the values and structures which underpin human rights as they are

understood in the West. Although the manner in which human rights are discussed in global politics has become universal in application, Taylor is acutely aware of the specific origin of such rights. Additionally, Taylor's willingness to engage with metaphysical issues may be taken to imply that he endorses a singular metaphysical approach to human rights. This is not the case. One of the first steps in his 1999 paper is to historicise and particularise human rights by stressing their Western origin.

Human rights as Western in origin

Germane to Taylor's conception of human rights is what he identifies as 'rights talk' (1999: 126-129; 1996: 15-16). He asserts, as many commentators do, that the language of rights as understood in terms of 'universal human rights' is a particularly Western concept.[1] This concept rests on a more general conception of human nature and the rights attributed to individuals. In short, these personal or subjective rights (Taylor, 1986; 1999: 127) entail general freedoms extended to individuals which provide them 'the right to consent to the arrangements under which they live' (Taylor, 1999: 127). According to Taylor (1986: 53), the idea of positive rights in the Western philosophical tradition 'rests on a set of deep-rooted moral beliefs concerning the human person and the dignity and liberty of what we must accord that person'. Importantly, such rights emphasise the role of the individual in society and their role in enforcing rights on those who threaten them.

Such a notion of rights provides two elements: 1) a 'master image for the philosophy of human nature' (Taylor, 1999: 127); and 2) the legal powers required to assert and enforce such rights. In practice, these correlate to a vision of society that emphasises individuals' rights and which are protected in specific legal structures (including courts of law and democratic processes). These tangible manifestations of rights are specifically Western which, despite claims to universality, do not translate to other cultures unproblematically.

[1] Contrast this with Donnelly's contentious claim that human rights are not particularly Western despite their Western origin (see chapter 3).

Consensus on human rights

Despite his recognition of the particularity of human rights, Taylor (1999, 1996) asserts that it is possible to reach what he calls an 'unforced consensus'. That is to say, the goal of achieving universal standards of human conduct is attainable despite the extent of cultural diversity evident in the world. Furthermore, Taylor argues that consensus is possible despite the particularly Western character of 'universal' human rights. In this view, human rights standards are not imposed from the outside. It is not a case of powerful nations imposing the dominant, Western view of human rights – including the implicit philosophical basis for such rights – on non-Western nations whose seemingly 'outdated' and 'morally indefensible' abuses of human rights prevail. Nor does such a process involve forced 'democratisation' in an attempt to impose 'universal' Western-style rights on unsuspecting countries. Taylor's conception of a consensus involves local and culturally specific values and social systems to promote and enforce internationally agreed upon norms of conduct. Such a process is achieved in several ways, which, importantly, recognise and respect cultural difference.

According to Taylor (1999: 125), consensus is attainable concentrating on universal 'norms of conduct' rather than on other aspects of human rights. These other aspects include, on the one hand, the underlying principles of rights (those theories and concepts of the individual and society), and the legal forms which articulate them (the laws which protect and the institutions which enforce rights), on the other. These two layers are closely related as the legal structures of human rights are an expression of their underlying ideas. Taylor asserts that these elements need to be separated in order to reach agreement on human rights which extend beyond the boundaries of the West. As Taylor (1999: 126) writes:

> Perhaps, in fact, the legal culture could 'travel' better, if it could be separated from some of its underlying justifications. Or perhaps the reverse is true, that the underlying picture of human life might look less frightening if it could find expression in a different legal culture. Or maybe neither of these simple solutions will work…but modifications need to be made to both; however, distinguishing this

> level still helps, because the modifications are different on each level.

Importantly, it is through these two facets of Western-style rights identified above (justification and legal norms) that Taylor suggests a consensus may be achieved. He does so by reference to Thailand.

Human rights consensus: the Thai example

On the level of philosophical foundations, Taylor draws parallels between the Western view of human rights and values within the Thai Confucian tradition. The former places value on human dignity and the right to life, while the latter relies on a 'doctrine of non-violence', defined by Taylor (1999: 134) as 'respect for the autonomy of each person, demanding in effect a minimal use of coercion in human affairs'. In Thailand, the Confucian tradition emphasises a people-centred and ecologically sustainable approach to human relations that is in keeping with the principles of democratisation and decentralisation of government:

> There is an outlook here that converges on a policy of defense of human rights and democratic development but that is rather different from the standard Western justifications of these. It isn't grounded on a doctrine of the dignity of human beings as something commanding respect. The injunction to respect comes rather as a consequence of the fundamental value of non-violence, which also generates a whole host of other consequences …. A rather different route has been traveled to a similar goal (Taylor, 1999: 134-135).

In other words, by using concepts and values which already exist within a culture, a convergence of norms of action can be achieved which melds local values with 'universal' human rights.

For Taylor, it is less important that the underlying justification of such norms be consistent between cultures than a consensus on acceptable behaviour be reached.[2] As he (1999: 124; 1996: 15) says, an unforced consensus on

[2] In fact, it is arguable that relying on differing justifications can be more culturally sensitive and avoid the pitfalls of ethnocentrism.

human rights would mean that although different peoples across the world hold:

> incompatible fundamental views on theology, metaphysics, human nature, and so on [they] would come to an agreement on certain norms that ought to govern human behavior. Each would have its own way of justifying this from out of its profound background conception. We would agree on the norms while disagreeing on why they are the right norms …

Taylor develops his argument further by reference to alternative legal forms in different cultures. He (1999: 131-32) draws a parallel between the highly respected and prestigious judges and judicial process in Western cultures and 'offices and institutions which enjoy the highest moral prestige' in Thailand. Taylor suggests that the Thai monarchy has been traditionally well placed to set standards of moral and political conduct. The implication for re-asserting human rights in Thailand (after years of neglect) is that the monarchy may be able to use its position of respect and merit in society to rally support for human rights. Taylor (1999: 133) argues that this approach may differ from the 'Western model of judicial review' but that is less important than 'the fact that it protects human beings from violence and oppression'. The result is a 'convergence on the *substance* of human rights, in spite of differences in *form*' (Taylor, 1999: 133, emphasis added). After this (brief) outline of Taylor's concept of human rights, this chapter will now turn to the foundations which underpin it. A central preoccupation in much of Taylor's work is cross-cultural understanding.

Foundations: Cross-cultural Understanding

Taylor's idea of consensus on human rights relies upon a number of important assumptions and manifest foundations that stem from his broader theorisation about cross-cultural understanding. Consensus involves, among other factors, respect for other cultures, particularly those which we do not readily understand. Furthermore, it implies that some level of inter-cultural comprehension *is* possible, and that the differences which appear to divide cultures are not insurmountable (Fopp, 2008a). There are several concepts discussed by Taylor when dealing with understanding the 'other'. These

include the 'politics of recognition' (Taylor, 1994a), the 'fusion of horizons' (2002b; 1994a) and theorising a method of social enquiry that facilitates cross-cultural understanding (1985/1983). The common feature in each is a desire to understand different people and different cultures so we might know more about ourselves and the world around us.

Knowing versus understanding

Taylor identifies a number of issues when discussing the appropriate methods of understanding others. In a paper discussing the work of Gadamer, Taylor (2002b) illustrates two dominant theoretical approaches: of 'knowing' an object, and of 'understanding' another person. The first approach is linked to scientific enquiry and seeks to obtain 'objective' knowledge about the physical world. The goal is to attain a 'finally adequate explanatory knowledge' which will 'exclude all future surprises' (Taylor, 2002b: 280). The nature of the knowledge is unilateral in that it does not depend upon the object knowing the examiner. The examiner seeks to know the world ('the rock, the solar system'[3]) but the world does not need to know the examiner (Taylor, 2002b: 280; Abbey, 2000: 154). Further, the goal of knowledge includes a desire for 'full intellectual control over the object' so that all future surprises and variations can be accounted for ahead of time (Taylor, 2002b: 280-281). Taylor (2002b: 281) notes that this may require a constant revision of one's theories in order to achieve that control, but the control remains the goal nonetheless.

In contrast, Taylor asserts that *understanding* is 'party-dependent' in that it involves the interests and perspective of an interlocutor. The finality evident in 'knowing' is not possible, or desirable, in 'understanding' as both parties are continually changing in their goals, situations and perspectives. Agreements made between parties are not forever binding, nor do they attempt to control or provide for all future contingencies. There is the recognition that what 'constitutes perfect and unconstrained mutual understanding at one time may no longer hold good later' (Taylor, 2002b: 280). Rather than control and

[3] Taylor's phrase here begs comparisons with Rorty's claim that similar objects to those mentioned have no intrinsic value (chapter 1).

mastery, ‘understanding’ aims to function with a partner in a manner which both appreciates the other’s perspective and may ‘require that I redefine what I am aiming at’ (2002b: 281).

For Taylor, knowing and understanding are two different enterprises suited for different tasks. He (2002b: 281) notes that the:

> content of knowledge should not vary with the person who is seeking it; it can’t be party-dependent. And the true seeker after knowledge never varies in her goal; there is no question of compromise here. Party-dependence and altered goals are appropriate to understanding because they represent something quite different from knowledge; deal cutting and learning the truth are quite distinct enterprises, and one should never mix the two on pain of degrading the scientific enterprise.

Abbey (2000: 155) elaborates on this concept of party-dependent understanding by noting that for Taylor ‘humans can never be fully or finally understood; as self interpretations change, so theories of human behaviour must alter to accommodate this.’

So, then, are two methods of comprehending the world. One – knowledge – involves attaining a complete and final picture of an object which cannot ‘talk back’. The second – understanding – requires an ongoing dialogue with an interlocutor which is never complete and ever changing. The two approaches, Abbey (2000: 154) implies, rely on differing *ontological* conceptions of the objects under study. That humans are able to ‘speak back’ to those who seek to understand them characterises them as fundamentally different from the rocks and planets investigated in the natural sciences. This point will be developed more fully below, but for now it is sufficient to note that for Taylor, it is clear which approach is needed for cross-cultural understanding, and indeed a consensus on human rights – understanding. However, as he (1985) has argued, the ‘attaining knowledge’ approach – related as it is to the scientific method – has been used for precisely this purpose, with distorted results.

Understanding: further unpacking

Taylor's work on the principles on understanding the 'other' get to the heart of cross-cultural studies generally and human rights in particular and is fundamentally epistemological in character (Abbey, 2000: 151). Again, he distinguishes between a scientific method of understanding and an arguably better suited approach, what Taylor calls the 'interpretive' view. The first perspective originates from the assumption that we analyse and come to conclusions about another culture from pre-existing paradigms of our own. This dominant paradigm in Western culture is linked with the scientific method (an approach which, arguably, many in the social, or human sciences, seek to emulate).[4] Taylor (1985: 124) notes that social science 'aspires not just to understand a single society, but to be universal'.[5]

Approaches to understanding others through our own cultural lenses have invariably produced distorted and ethnocentric readings. Taylor (1985: 121) illustrates this point by showing how the use of functionalist theory (the theory which says that the various components of a society work together to provide social cohesion) can lead to viewing other cultures in terms which are not applicable. He (1985: 121) argues that a functionalist approach may tend to view certain practices – specifically what we might identify as 'religious' practices – in terms not applicable to the subject of understanding:

> We come at the society in question with some general thesis about religion, that religious practices perform certain functions in society e.g., that they contribute to social integration. On the strength of this principle, we can perhaps dispense with an understanding of what the priest or medicine man is doing in the terms of his own society. One identification we have of this is that it is part of a process which contributes to social integration. This may allow us to explain what is going on, for instance, why rituals happen when they do, or more frequently in periods of stress etc (Taylor, 1985: 121).

[4] For analysis of this issue, see Fopp (2008: 65-100).

[5] On this point, see Connell's (2007) argument that much of social theory originates from dominant Western nations yet seeks to speak for humanity as a whole through its claims to the production of 'universal' theory. Connell's point applies equally to human rights theorists who openly espouse universal theories of rights (c.f. Donnelly, 2003).

The implications from this are at least two fold. Firstly, that concepts are used that are not known to the society under scrutiny. And second, that the self-understanding of people within these cultures – what *they* believe is happening in a given social context – is disregarded in favour of a 'superior' scientific explanation.

The first point has been partially dealt with but some further investigation may be necessary to separate the point from the use of functionalism (which Taylor only uses as an example). Taylor (1985: 120) highlights that concepts used and taken-for-granted in Western societies – and, by extension, some social scientific theories – are culturally specific and not, as they may assume, applicable to other cultures. What we view as 'religious' or 'spiritual' practices, for example may have no equivalent in another culture. In Taylor's (1985: 120) words, the 'values of one culture are frequently not replicable in another; we can find nothing exactly corresponding to them'.

Furthermore, this incompatibility of concepts extends beyond obvious social structures and 'cultural' practices – such as religion and public policy – to permeate everyday life. The values embedded in a dominant 'way of life' may not be (and usually are not) transferable to other cultures. What Taylor (1985: 119) labels 'desirability characterizations', the categories used to identify preferred ways of living and desirable attributes, are culturally specific. These include terms that:

> we attach to actions to make ourselves more understandable, such as 'just', 'charitable', 'generous'; and those we apply to ways of life, such as 'integrated', 'fulfilled', 'dedicated' 'free from illusion'; and also negative ones, like 'fragmented', 'false', 'hollow', 'shallow' etc. (Taylor, 1985: 119).

Such concepts are not universally applicable but depend on cultural and social context. This is illustrated by the view that 'there are certain moral pre-conditions, certain pre-conditions of character, for the successful discernment of these properties' (Taylor, 1985: 119). Or put differently, the qualities can only be attained through fulfilling other culturally specific norms and only detected in the context of that society. In essence, the ideas, categories

classifications, preferred ways of living and world views of one society are not necessarily (and usually are not) transferable to another culture. Importantly, this implies that the dominant, Western view of human rights – and its underlying principles such as the ideal role of the individual and the state – is not universally applicable. What is regarded as universal and axiomatic – even inevitable – cannot be imposed on another culture wholesale, human rights included.

The second implication is that analysing other cultures in this way will disregard the agent's own self-understandings – that is what people themselves think they are doing. As outlined above, using concepts from our own culture to understand 'others' imposes a view onto that culture which is not necessarily accurate or appropriate. The result is that agents' own understanding of their culture and action are over-ridden in favour of an externally derived theory. In many cases this is based on a scientific view which assumes the superiority of science-based methods of analysis over others. Not only are the self-understandings of other discounted, in such an approach, they are, implicitly or explicitly, portrayed as flawed, wrong, backward, blinded by 'ideology', 'magical', unscientific, or merely symbolic (Fopp, 2008a: 274-276). Taylor (1985: 124) notes that 'social theory in general, and political theory especially is very much in the business of correcting common-sense understandings'. In doing so it privileges certain knowledges and epistemologies. And traditionally, social theories have tended to be ethnocentric because of this interpreting others in terms of ourselves, our values and prejudices. Taylor (1985: 124) portrays this scenario as

> correcting everyday understanding [by inviting] scientists of a dominant culture to 'correct' the self-understandings of the less dominant ones by substituting their own. What is really going on simply becomes what *we* can recognise in our own terms; and their self-descriptions are wrong to the extent that they deviate from ours.

A practical example of this is seen in the judgments people (not just social scientists) make of other cultures. In particular, it provides a theoretical

explanation for criticisms made by the West of governments and peoples who are seen to violate human rights. We in the West see such abuses as self-evidently wrong despite the reasoning a person or culture may have for those practices. We do not accept the 'cultural' reasons given (or in Taylor's terms, their self-understanding) as valid, and substitute our own perspective – that the abusers of human rights do not value life and human dignity the way they should and should therefore follow our supposedly morally superior example.

Taylor and the rejection of the 'incorrigibility thesis'

The approach outlined above has the potential to lead to ethnocentric and distorted views of another culture. Although this method is less prevalent in social science, arguably, the conclusion remains a key assumption for many human rights activists. However, Taylor also warns of taking the opposite approach, that of taking the agents' self-understandings at face value and not criticising them. This method implicitly depends upon the notion that all cultures are morally equivalent, and that, as there is no external criteria by which to measure them, we cannot (indeed, should not) judge them at all but explain them in their own terms. This relativistic stance is what Taylor (1985: 123) terms the 'incorrigibility thesis' in that it views the agents' self-understanding as inherently valid – a view that Taylor rejects.

Despite the apparent guarantee 'against ethnocentricity' (Taylor, 1985: 125) of the incorrigibility thesis, Taylor does not consider that it can be 'adequately validated' (Taylor, 1985: 123). This is because, firstly, it fails to explain anything (and in fact may lead to tautological theories) and secondly, it excludes, *a priori*, any criticism of a culture. In Taylor's (1985: 123) words, 'it rules out an account which shows them up as wrong, confused or deluded'. Brian Fay (1996: 127) makes a similar point:

> Even ideal members of a society may systematically misunderstand their own motives, wants, values and actions, as well as the nature of their social order, and these misunderstandings may underlie and sustain irrational forms of social interaction … In these cases even ideal agents' self-understandings may mask social reality as much as reveal it. Social scientists thus cannot confine themselves to explicating

> even ideal agents' concepts and self-understandings because these may be essentially confused. Sometimes social scientific explanation requires identifying this confusion and its results; in these cases social scientists must go beyond the scheme of meaning operative in a given culture.

The issues raised here are germane to human rights theory. Firstly, they address the spectre of relativism by claiming that an agent's or culture's own interpretation of its values, beliefs and practices is not necessarily beyond reproach; that traditions and practices (including those that may be considered violations of human rights) cannot be justified simply in terms of the internal logic of the value system itself. Therefore there *are* grounds on which to criticise others and to defend human rights standards. By the same token, how do we condemn these violations without enforcing an ethnocentric judgement on others?[6] Taylor offers further suggestions for this.

Taylor suggests that a mutual understanding of other cultures is required so that both parties can become more sensitive to the other's values and preferred modes of living. This point returns to the distinction made earlier between 'knowing' and 'understanding'. To recapitulate, understanding requires a willingness to change our own goals and of understanding of ourselves. This issue is addressed by Taylor when he discusses two inter-related concepts: the 'interpretive' approach to inter-cultural relations, and the 'fusion of horizons'.

Taylor's 'interpretive' approach and the 'fusion of horizons'

Taylor's 'interpretive' approach (or *verstehen* view) aims to avoid the misconception that 'the language of a cross-cultural theory has to be either theirs or ours' (Taylor, 1985: 125; Fopp, 2008a: 271). That is, this method rejects both ethnocentricity and incorrigibility as mutually exclusive bases for cross-cultural understanding. Rather than this 'either/or' approach, the interpretive perspective relies on the premise that criticism of others *is*

[6] There is the implication that violation of human rights can be described as 'irrational' and thus human rights themselves as 'rational'. This distinction also points to the historical and philosophical specificity of the human rights tradition as part of the rise of rationality of the Enlightenment. However, the rationality of human rights, among other features of contemporary world politics can be somewhat questionable.

possible; that we are able to point out the inconsistencies, flaws and confusions of others without being regarded as arrogantly ethnocentric (Abbey, 2000: 154, 161). As Fopp (2008a: 271) indicates, we want to understand another culture, or 'penetrate the depths of what must be explained', then listening to their perspective is essential:

> … it is imperative to approach the agent sympathetically and to sense their own understanding as they express it. But taking the agent's account seriously does not mean we must formulate our account in the agent's language and terms. It does not necessitate using the same account, the same explanations …

This implies that the language most appropriate for understanding another culture would not, for Taylor, be a choice between 'theirs' or 'ours', but a language of 'perspicuous contrast' (1985: 125). Such a language would:

> formulate both their way of life and ours as alternative possibilities in relation to some human constants at work in both. It would be a language in which the possible human variations would be so formulated that both our form of life and theirs could be perspicuously described as alternative such variations. Such a language of contrasts might show their language of understanding to be distorted or inadequate in some respects, or it might show ours to be…or it might show both to be so (Taylor, 1985: 125-126).

Thus we can see an approach that allows for criticism, not only of others, but of ourselves, which, importantly can lead to an alteration of our own self-understanding. It highlights the strengths and weakness of both cultures; accepts the value of the other without falling into the incorrigibility trap; and provides critique without ethnocentrism. Taylor insists that we go further than this to challenge *our own* self-understandings and not just that of contrasting cultures. He (1985: 125) writes that 'there are times when we cannot question the one without also questioning the other'.

This melding of cultural contrast is linked to Gadamer's concept of a *fusion of horizons*, a concept endorsed by Taylor (2002: 287-290; Abbey, 2000: 161-163). As the phrase suggests, a fusion of horizons involves meshing the outlook of two different positions. Horizons, in this context, are conceptualised as perspectives which are initially distinct entities but can

undergo change (Taylor, 2002b: 288). They are not seen as unmovable objects which cannot evolve. As Taylor (2002b: 290) writes, 'there is no such thing as a fixed horizon'. In Gadamer's words (quoted in Taylor, 2002b: 290) a horizon is 'something into which we move and that moves with us. Horizons change for a person who is moving'. Therefore the movement of horizons towards other horizons depends upon the person seeking to understand the other.

The fusion of horizons is achieved when the horizon (or perspective) 'is extended so as to make room for the object that before did not fit within it' (Taylor, 2002b: 287; Abbey, 2000: 162). Perspectives are expanded to include different views that had previously been ignored, marginalised or silenced. We can therefore, writes Taylor (2002b: 287) 'accommodate the beliefs of a quite different culture. Our horizon is extended to take in this possibility, which was beyond its limit before.' Similarly, 'my understanding of myself and my world has been shifted through an engagement with a different one' (Abbey, 2000: 163). The result is a language which places our own ways of believing alongside those of other cultures as alternative perspectives. This shifts both our own and our interlocutor's horizons beyond their original positions, 'in a sense combining them' (Taylor, 2002b: 287). The effect is increased mutual comprehensibility, and arguably lays the foundations for human rights.

Although Taylor argues that this approach is useful for non-party dependant studies such as historiography, its application to live interlocutors (people) is equally relevant to both human rights and cross-cultural understanding. For to understand a culture means the fusion of our horizon with theirs, then there will be a shift in our understanding, not only of the culture in question, but of ourselves. Taylor (2002b: 295) writes that 'taking in the other will involve an identity shift in us. That is why it is so often resisted and rejected. We often have a deep identity investment in the distorted images we cherish of others'. Such a transformation may include being less likely to jump to judgement of cultural others who we do not readily understand; while also being more aware of our own biases, contradictions and beliefs while additionally

increasing our openness to alternative modes of living and cosmologies. It can also make us more alert to the power structures and social relations that characterise and maintain the dominance of some worldviews over others.

The notion of a 'fusion of horizons' is thus essential for a consensus on human rights. Rather than conceiving the dominant Western view of rights (including its underlying values and legal structures) as the most desirable approach, the fusion of horizons approach entails firstly that we take into consideration other points of view. These may include different conceptions of the individual in society (as in Taylor's Thai example) or the different institutions within a culture. Secondly, we can see such differences as 'alternative possibilities' alongside our own views and which can lead to subtle change in our own understanding of human rights. Without the shifting of our own perspective and without us taking seriously certain elements of others' view of human rights, a consensus is not possible.[7] However, Taylor goes further to assert that before we can fuse horizons with cultural others, we need to identify, recognise and respect difference. This is a fundamental step, without which no agreement on human rights would be possible.

There is an additional point to be made in relation to the value of incorporating agents' self-understandings, and it underpins Taylor's broader philosophical anthropology. Ruth Abbey (2000: 154) identifies that for Taylor, 'how humans understand themselves and experience their world is an *essential or primary property of their existence*,' and thus cannot be 'bracketed out in the quest to explain them' (emphasis added). What can be detected here is an intimation of Taylor's conception of the ontological and metaphysical nature of humans. Identify, self, self-awareness and the opportunity to express these are, for Taylor, inherent aspects of humanity which must inform social science research and, crucially, how diverse humans interact. These aspects also inform Taylor's view of human rights. The need to give voice to what Taylor

[7] Compare this view to Donnelly's universalist stance and his argument that non-Western versions of dignity and rights are not commensurate with human rights (see chapter 3). His work demonstrates an unwillingness to fuse horizons with other, alternative voices and reach consensus based on something more than Eurocentric conceptions of rights, dignity and a good human life.

sees as the essential human traits of humanity is developed below in his work on the politics of recognition.

Multiculturalism and the politics of recognition

In order to value and preserve the human rights of others – particularly of those who differ from us in significant cultural forms – it is necessary to recognise the legitimacy of cultural others. Taylor's 'path-breaking concept of 'recognition'' has been described (Appadurai, 2004: 62) as 'his key contribution to the debate on the ethical foundations of multiculturalism'. This concept is applicable to both minority groups within cultures and what we might view as 'alien' cultures from other nations, as Taylor asserts that each deserves human rights.

For Taylor (1994a: 26), recognition of people is 'not just a courtesy we owe people. It is a vital *human* need' (emphasis added). Appadurai (2004: 62) highlights that such recognition is an:

> *ethical obligation* to extend a sort of moral cognizance to persons who shared worldviews deeply different from our own. This [is] an important move, which gives the idea of tolerance some political teeth, makes intercultural understanding *an obligation, not an option*, and recognizes the independent value of dignity in cross-cultural transactions apart from issues of redistribution (emphasis added).

The issues at stake here cut to the heart of two important dimensions of Taylor's theory of human rights. Firstly, recognition is necessary for respect, and respect for cross-cultural dialogue and understanding. For lack of recognition or misrecognition expresses not only a lack of respect but can be profoundly damaging. It leads to a distorted, or even non-existent, image of the group in question by the dominant group. This can manifest in mistreatment, persecution and discrimination. As Taylor (1994a: 25) writes, '[n]onrecogntion or misrecognition can inflict harm, can be a form of

oppression, imprisoning someone in a false, distorted and reduced mode of being.'[8]

The second connection to human rights is the implications recognition has for conceptions of human beings. Taylor's recognition is based on specific views regarding the value of human life and what is needed for a good life. For Taylor (1994a) due recognition relies upon the concept of *universal human dignity* which in turn underpins much of contemporary society. This concept is much more democratic and egalitarian than the idea of 'honor' which previously formed the basis of social relations throughout Europe[9] and elsewhere for centuries until relatively recently. But the more modern concept of dignity emerges as an idea which can provide a philosophical justification for a range of values and practices, including tolerance and human rights. Under such a theoretical framework, it is asserted that dignity be respected *universally* and attributed to persons regardless of their actions, values or culture. Rather, it is based on their potential. As Taylor (1994a: 41-42) notes:

> what is picked out here is a *universal human potential*, a capacity that all humans share. This potential, rather than anything a person may have made of it, is what ensures that each person deserves respect. Indeed, our sense of the importance of potentiality reaches so far that we extend this protection to people who through some circumstance that has befallen them are incapable of realizing their potential in the normal way – handicapped people, or those in a coma, for instance.

The importance given to human *potential* effectively makes the politics of equal dignity 'difference-blind' as dignity is accorded to a person regardless of

[8] Additionally, the group in question may come to see itself as inferior and accept the dominant, distorted image of itself. Taylor illustrates this point by noting that many women and many African Americans can be seen as adopting a 'depreciatory image of themselves' and have 'internalized a picture of their own inferiority' (Taylor, 1994a: 25). Such a self-image becomes 'one of the most potent instruments of their own oppression' which prevents them from moving on to an equal footing with others even when genuine, tangible opportunities are evident (Taylor, 1994a: 26, 25). Thus it becomes apparent that the reconstituting of identity is necessary to adequately recognise people for their worth.

[9] At this point it is instructive to highlight that the sources of Taylor's politics of recognition are arguably uniquely Western (European, Canadian) and do not include non-Western perspectives. In this sense Taylor is open to similar criticisms I direct at other theorist – that a distinctly Western perspective is universalised and utilised as the basis for human rights.

who they are.[10] Emphasis on presumed innate human potential in Taylor's words here illustrates his concern with what constitutes a human being (in the moral and social sense).

Taylor (1992: 12) makes the explicit connection between dignity and human rights in a manner which illustrates his own implied philosophical anthropology:

> To talk of universal, natural or human rights is to connect respect for human life and integrity with the notion of autonomy. It is to conceive people as active cooperators in establishing and ensuring the respect which is due to them.

Taylor's consensus view of human rights arguably is derived from this position, as the consensus approach explicitly states that divergent metaphysical justifications can be employed to arrive at the same conclusion. Yet this position is not reached through access to a transcendent, universal truth, but rather as a consequence of the history of philosophy and political thought.

Taylor's argument in favour of taking seriously agents' self-understandings, and acknowledging the importance of metaphysical views is germane to another dimension in his work. Taylor asserts that it is necessary – indeed, many social groups demand that it is so – that the *particularity* of difference be recognised. Rather than differences being brushed aside and rendered invisible or irrelevant in the universalist thrust of equality of dignity, differences should be *recognised* and valued for the alternate perspectives they bring. Put differently, while the principle of equal respect and dignity 'focuses in what is the same in all', the politics of difference emphasises the need to recognise and foster particularity (Taylor, 1994a: 43).

The overlap between the politics of dignity and the politics of difference is that all peoples should be respected and regarded as possessing equal dignity.

[10] Compare this view with Donnelly's point regarding humans' *potential* for to lead better lives through human rights.

But the politics of difference goes beyond potential to place stress on the value of difference *as it exists in reality*. In practice this may mean that we not only respect a culture's potential to produce, for example, great works of literature, but that we value its current contribution to our understanding of the human experience (Taylor, 1994a: 42).

Taylor draws some implications here which are relevant to the politics of human rights. He notes that the difference-blind nature of equal dignity and respect can be seen oppressive and a denial of identity. As noted above, the notion of equal dignity emphasises what is common among humans – namely our right to respect and dignity. This places individual and cultural differences of lesser importance – or even of no importance at all. In projecting this view on the world – especially from the vantage point of Western liberal societies – particular cultural values are pushed to the margins while liberal ideals take precedence. Particularity and difference are subsumed under a set of values that purport to be neutral. The effect is the oppression of identity, notably identities which need to be recognised. As Taylor (1994a: 43) notes:

> The claim that a supposedly neutral set of difference-blind principles of the politics of equal dignity is in fact a reflection of one hegemonic culture. As it turns out, then, only the minority or suppressed cultures are being forced to take alien form. Consequently, the supposedly fair and difference blind society is not only inhuman (because suppressing identities) but also, in a subtle and unconscious way, itself highly discriminatory.

Thus, Taylor makes that case for recognising difference so that the human rights of *all* may be respected.

In practice, Taylor suggests that this may often mean that certain, specific rights of minority groups can sometimes justifiably be accorded special status in what may seem to contradict the principles behind the rights. In order to protect the distinctness of certain peoples within a society, or to enhance their social inclusion, Taylor (1994a: 52) notes that certain rights of individual groups have sometimes taken precedence over others. In order to enhance

autonomy,[11] self-government, and in some cases, survival (elements necessary for recognition), specific provisions are made which might otherwise go against the rights of the society as a whole. They may also seem to threaten the privileges of the dominant groups as their prestige, status and social position is perceived to be eroded by the focus on including the previously excluded.

Taylor (1994a: 41) writes that:

> The politics of equal dignity is based on the idea that all humans are equally worthy of respect. It is underpinned by a notion of what in human beings commands respect, however we may try to shy away from this 'metaphysical' background.[12]

Thus recognition in this sense consists of universally recognising the assumed dignity of all human. Taylor's words here highlight that justifications for human rights are essentially metaphysical in character, in that they (implicitly or explicitly) depend upon conceptions of human being and human worth. The metaphysical source may vary, but the underlying, unifying component is the inherent philosophical anthropology.

Taylor's theory of identity extends beyond the politics of group identity and explores the nature of individual identity and the self, recognition of which is equally necessary for the observation of human rights. This also suggests that Taylor is embracing, rather than eschewing, the metaphysical in his analysis.

The self, authenticity and identity

Taylor has written much about the nature of the self and modern identity (for example, 1992, 1991). Although the issues raised in such works may appear to have little direct relation to human rights, Taylor's theories lay the basis for providing a defence of human rights. As intimated above, for Taylor, the

[11] Taylor's concern with autonomy here resonates with similar issues raised by Coomaraswamy in chapter 2.

[12] In the following quote it is worth bearing in mind the ideas of Rorty, Nussbaum and other theorists who argue that justifications of human rights should avoid metaphysics.

identity of groups or individual people needs to be recognised as part of their due as humans. However, Taylor has developed this theory further to encompass all forms of identity (and its array of diversity). Furthermore, the philosophical environment that helps to foster such identities also provides a context in which recognition of identity is not only demanded, but linked to universal dignity, respect and rights.

Taylor outlines that the development of an individualistic notion of identity and the self is a defining feature of contemporary Western society. This idea of identity has developed out of what Taylor (1991a: 46) labels 'the collapse of social hierarchies which used to be the basis for honor'. As noted earlier in this chapter, honour in this sense is the socially accredited status accorded to some members of society and not others. Such status attributes value and worth to particular people and groups at the expense of others. By its very nature, honour must be unevenly distributed for it to have meaning. In its place, the notion of universal dignity has emerged, which implies the inherent worth of people regardless of their social, economic or political status. Under such a concept, all people are accorded dignity and respect, and their values are recognised as valid.

Allied to this has been the growth of the idea that one's identity should not be shaped purely by one's place in society. Rather than identity being externally imposed from existing coercive social structures, Taylor argues that identity is increasingly developed from within. Taylor (1991a: 47) writes that this 'calls on me to discover my own original way of being. By definition, this cannot be socially derived but must be inwardly generated' and is arguably metaphysical in character. Taylor does not uncritically accept that such identity can ever be truly derived without reference to other social 'horizons' but requires an ongoing dialogical approach.[13] However, the point here is that there is an increased emphasis on inwardly derived identity rather than a socially

[13] Although the ideal of authenticity asserts that true identity is developed in isolation, Taylor argues that this is impossible. Identity is unavoidably created within social context and in dialogue with significant others.

imposed one. In Taylor's (1992: 3) words, he explores 'our modern notion of what it is to be a human agent, a person or a self'.

Further, such inward identity is ideally a reflection of one's 'true' inner 'self', a self which exists separate from society. As such, this inner identity is labelled 'authenticity' (Taylor, 1991a). Finding one's authentic self is considered essential to full being. As Taylor (1991a: 28-29) puts it:

> There is a certain way of being human that is *my* way. I am called upon to live my life in this way, and not in imitation of anyone else's. But this gives a new importance to being true to myself. If I am not, I miss the point of my life, I miss what being human is for *me*.

Further, he (1991a: 29) writes:

> Being true to myself means being true to my own originality, and that is something only I can articulate and discover. In articulating it, I am also defining myself. I am realizing a potentiality that is properly my own.

Taylor (1991a: 26) notes that this 'is part of the massive subjective turn in modern culture, a new form of inwardness, in which we come to think of ourselves as beings with inner depths'. Thus attaining an authentic identity consists of at least three elements: casting off externally imposed identities, ways of being and outward conformity; looking deep *within oneself* to find an authentic self; and recognising that self-fulfilment and self-realisation requires that we find a true, original identity. According to Parekh (2008: 152):

> Without this kind of authenticity, life is thought to be lacking something essential and human fulfillment becomes impossible. The key is that the way I find my originality or uniqueness is by listening to my inner voice. Being 'true to myself' means being able to have a relationship to myself, being able to listen to my self. Thus morality has a strongly subjective basis. In other words, I discover my moral obligations by looking within, and not simply by following an external code or law.

These words flag the subjective nature of morality in the modern era, of which human rights is a part. Thus, as Parekh (2008: 152) points out, Taylor's work

argues that 'having a subjective foundation of human rights is even more necessary in the modern era.'

Taylor has several concerns with some of the implications of this culture of authenticity which are not strictly relevant here and beyond the scope of the thesis. But on the whole, he identifies that the transformation of identity from something generated externally to an inward enterprise is a key feature of contemporary society. One of the implications of the culture of authenticity is the emergent view (labelled by Taylor as derived from 'soft relativism' that 'no one has the right to criticize another's values' (Taylor, 1991a: 45).[14] This stems from the assumed 'universal right … [that] everyone should have the right and capacity to be themselves' (Taylor, 1991a: 45).[15] This is an important facet to the culture of authenticity as it relates to human rights because it recognises that developing an inwardly generated identity (regardless of the nature of that identity) is a right that cannot be denied.

Another implication stems from the first. It overlaps with the notion of recognition discussed above. If the search for an internal identity is essential to being a fully realised human, then the resultant identity must be *recognised* as having intrinsic value and merit. Arguably, withholding that recognition can have damaging effects on groups whose identity is denied. Therefore, recognition of people's identity – whether it be an individual's identity of his/her own devising, or of a cultural group which is not in the mainstream of a society – is crucial to observing human rights.

To reiterate, Taylor's notion of the authentic self states that moral authority emerges from within individuals in contemporary society. It is *subjective* in this sense but has concrete ontological implications in that it affects how

[14] Taylor (in Braman, 2008: 34) describes soft relativism as the view that 'everybody has his or her own values, and about these it is impossible to argue' and implying that 'moral positions are not in any way grounded in reason or the nature of things but are ultimately just adopted by each of us because we find ourselves drawn to them'.

[15] This notion is in tension with Taylor's incorrigibility thesis. Soft relativism does not provide grounds for criticism but presupposes the inherent merit of a value system by virtue of its existence. However, it does identify an important concept: that people's identity needs to be respected in order to enable one's rights as a human.

people interact. This subjective source of morality and ethics in congruent with Taylor's conception of human rights consensus. Divergent, potentially incompatible world views that emerge in diverse contexts can come together and form the basis for agreement.

Theism and religion

The aspects of Taylor's work outlined above have even deeper roots. Several commentators (for example, Fraser, 2005, 2007, Abbey, 2006) have noted that Taylor's work has become increasingly theistic and religious in tenor. Although this dimension was latent in earlier works such as *Sources of the Self*, it has become overt more recently with *A Catholic Modernity?* and *Varieties of Religion Today*. What this highlights for an analysis of Taylor is that there is an openly metaphysical and theistic underpinning to his work. This embrace of the metaphysical aspects of everyday meaning, interpretation and morality distinguish Taylor as being prepared to venture beyond the self-imposed limits of other human rights theorists. Taylor is also prepared to go even further and consider spirituality, theism, secularity and religion, topics normally considered to be the remit of theologians, not social theorists.

Taylor's theism is part and parcel of his view that humans have an essential essence. As Sir Isaiah Berlin (1994: 1) has written, Taylor is 'basically a teleologist'.

> He truly believes, as so many in the history of thought have done and still do, that human beings, and perhaps the entire universe, have a basic purpose – whether created by God, as religious Christians and Jews believe, or by nature, as Aristotle and his followers … have taught. Consequently, everything that he has written is concerned with what people have believed, strived after, developed into, lived in the light of, and, finally, the ultimate goals towards which human beings as such are by their very natures determined to move.

There are at least three implications to be taken from this quote. The first is that Taylor is of the view that there *is* such a thing as a human essence, albeit one that has current relevance but is not ahistorical (2010: 300). This he has

in common with Nussbaum and Turner; but unlike Turner, and to a lesser degree Nussbaum, Taylor is relatively open about the role and influence of views of human being and their metaphysical sources. The second implication is that this essence can be derived from a multitude of sources whether it be religion, secular philosophy or general everyday, 'commonsense' understandings. This apparent tension between the universal human essence and human diversity is encapsulated by Taylor thus:[16]

> I believe that what were are as human agents is profoundly interpretation-dependent, that human beings in different cultures can be radically diverse, in keeping with their fundamentally different self-understandings. But I think that a constant is to be found in the shape of the questions that all cultures must address (Taylor 1988, quoted in Abbey, 2000: 56).

So what is universal is not the specific content of human meaning, but the intent – that is, human beings will always question or ponder what it is that constitutes a human life, issues that I argue are necessarily metaphysical.

A third implication is that in Taylor's philosophical world there is an emphasis in modern contemporary society on subjectivism and inwardness as a source of meaning and identity. This is reflected in several strands of his theory including his work on 'the self', the ethics of authenticity and the need for recognition. Subjective and inward interpretations are a substantial dimension to the constitution of the modern self. And what is more, subjectivism is key to becoming truly human and a crucial goal for living as a human. To repeat Taylor's (1991a: 28-29) words, 'If I am not [true to myself], I miss the point of my life, I miss what being human is for *me*'. Parekh (2008: 152) similarly notes that 'Without this kind of authenticity, life is thought to be lacking something essential and human fulfillment becomes impossible.'

The point here is that a truly human life is dependant (although not exclusively) on an inwardly-derived subjective sense of one's self, rather than

[16] See for example his words regarding human rights consensus being based on 'incompatible fundamental views on theology, metaphysics, human nature' (1999: 124).

originating from out-dated traditionally ascribed social roles. Being human in contemporary Western culture depends on this in Taylor's view. It constitutes a telos, or purpose for human life which guides behaviour and interaction with others. And importantly, it is derived from metaphysical understandings of what life should entail, the activities one should pursue, and the values which accompany this.

Further discussion: inclusion of the metaphysical

The preceding excursion into many of the facets of Taylor's work is not merely an exercise in describing his philosophy. Tying together the disparate strands that I addressed is arguably a coherent set of ideas that underpin Taylor's 'unforced consensus' approach to human rights. While based on a reading of his 1999 work, Taylor's view of human rights, is anchored by a complex and interrelated philosophy that provides the foundations for human rights. Consensus relies on mutual respect and empathy (Fopp, 2008a: 284-293), genuinely listening to one's interlocutors without taking what they say at face value, and acknowledging that our own views and horizons can be shifted, altered and modified to accommodate other points of view, just as they can be changed by our own. So, Taylor's concepts of the interpretive approach, fusions of horizons and understanding (rather than knowing) drive an underpinning consensus on human rights. Without these, Taylor argues, inter-cultural dialogue and genuine agreement on human rights is not possible.

But Taylor's work goes further than this. Through the politics of recognition, Taylor emphasises that understanding and communicating across cultures and difference is a necessary and valuable end in itself. Recognition involves acknowledgment and respect; it is also built upon the inherent dignity and potential that is said to reside within every human being. It also allows each person to develop and express his or her own inwardly derived 'authentic' 'self'. To put it in another way, Taylor's 'unforced consensus' view of human rights has its foundations in a broader theorising, much of which, seemingly, has little to do with human rights. However, a closer reading of his work demonstrates otherwise.

Significantly, in his justification of human rights and his broader discussion of contemporary Western society, Taylor explores issues that many scholars consider off limits, such as 'what it is to be a human agent, a person or a self' (1992: 3), the implications for living in a modern secular society, and more directly religious and theological issues. As the discussion in this chapter has shown, Taylor addresses many broad philosophical concepts that move beyond standard explanations for human behaviour. By considering issues such as the authentic self and the need for recognition Taylor embraces what may be termed 'metaphysical' dimensions of the human condition. That is, his underlying justification for human rights is *not* constrained to the physical or biological dimensions of human existence that characterise the capabilities or human frailty approaches; likewise, Taylor is not limited to legal explanations for human rights (although he certainly recognises the importance of these). Taylor's work analyses aspects of human life and experience that fall outside these boundaries and he is unafraid of engaging with the metaphysical elements of human life. In so doing, Taylor is able to ask more probing questions of human rights and enquire as to *why* humans deem them important in a manner eschewed by most theorists. Whereas Turner and Nussbaum assume that bodily integrity and basic capabilities provide a basis for human rights, Taylor is willing to explore and theorise those issues that make human rights important.

While I suspect he would not disagree with Turner and Nussbaum as far as they go, his analysis allows him to ask more probing questions when their analysis exhausts such questions or which they do not seem to ask. For example, his analysis permit such questions as: What is it about human precariousness and basic capabilities that it should be a reason for human rights? One can imaging Taylor responding by asking what it is about human precarious and capabilities that provides a defence for human rights. In effect, Turner and Nussbaum beg such questions. Such questions involve entering territory that they refrain from entering. But the questions that Taylor's analysis provides are significant because he can address the questions they leave unanswered. And his answer would seem to be that the

reason human precariousness and capabilities are important is because both point to some underlying or prior conceptions of what it means to be a human being.

Taylor's proposition on rights also stems from theorisation on what it means to be a human being in modern society and the ontological sources (White, 2005: 14) of meaning, identity, self-hood and legitimation. Significantly for this thesis, Taylor's work – the broad umbrella under which his view on human rights has developed – implies that much of the contributing factors to the 'unforced consensus' approach that I have addressed above, are metaphysical in character and origin. Arguably, the metaphysical (including his theism) has a vital role to play and is embedded in his philosophy. Taylor recognises that views of the good life are necessarily derived from metaphysical sources (although not exclusively) while suggesting a method for human rights consensus that accounts for divergent worldviews and their metaphysical assumptions.

However, what is arguably a great strength of Taylor's contribution – the willingness to go where other scholars do not – can potentially lead to accusations of indulging in metaphysics in an era when social theory strives to be non-metaphysical (Langlois, 2005a: 15, 2004: 257). Particularly, he could be criticised as merely endorsing one philosophical tradition – perhaps one Christian outlook – when promoting human rights. White (2000a: 43) acknowledges that the content of Taylor's work leaves him open to critics who 'assume that he is offering what I have called strong ontology; that is some foundationalist, determinate truth about the shape and direction of the world and self'. This is despite the underlying argument in Taylor's consensus approach that different metaphysical traditions can be employed to achieve agreed norms of behaviour.

There may also be the criticism that Taylor's work relies too heavily on subjective interpretations. This view is supported by Taylor's words (quoted in Abbey, 2000: 58) that: 'Human beings are self-interpreting subjects'. Yet it is possible to over-state Taylor's commitment to this kind of interpretation. It

is not that Taylor views humans as 'interpretation all the way down' (Dreyfus, 1991: 37). Rather, his well noted communitarian approach to politics recognises the social preconditions necessary for specific ways of viewing the world (Abbey, 2000: 102-103). Notions of the self, for example, can only flourish in social contexts that enable individual freedom that:

> certain possibilities and self-conceptions for individuals become conceivable … it is not possible for an individual to value autonomy or to see himself or herself as a bearer of rights and freedoms unless these goods are available in the wider culture (Abbey, 2000: 103).[17]

Another criticism that I offer is that, although Taylor analyses and dissects aspects of social life that may be regarded as metaphysical in origin, he does not explicitly claim to the need to acknowledge and engage with the metaphysical issues that underpin human rights. This may seem a curious claim. However, my point is that although Taylor's work fearlessly traverses the metaphysical (as well as less controversial terrain), he does not directly spell out the methodological imperative to include them in social theory. In a sense, Taylor's commitment to embracing the metaphysical is shown rather than told; demonstrated in his choice of subject matter rather than articulated as a methodological issue.

My argument is that Taylor does not clearly and openly address the need for engaging with and critically assessing the assumptions (including metaphysical) that implicitly inform a view of human rights. This is perhaps an unfair criticism, given Taylor's enormous contribution to scholarship and the relatively little scope he has devoted to human rights theory, but it is pertinent to this thesis nonetheless. It thus indicates that, despite the numerous advantages of Taylor's general outlook, there is a need to go one step further and look for a theoretical position that *does* address the weaknesses mentioned here and draws the clear and direct link between the metaphysical and human rights. This will be taken up in the following chapter.

[17] This comment could arguably be applied to Donnelly's assertion that human rights are not Western in character.

Conclusion

This chapter has analysed the work of a significant theorist who provides greater explicit philosophical foundations for human rights than those addressed in the previous chapter. Although Charles Taylor has written little about human rights compared with his overall output, his work provides significant insights into the extent that *a priori* foundations can shape and frame human rights theory. I argued that Taylor's proposal for an 'unforced consensus' on human rights is based upon a number of broader concepts that he has deployed in discussions regarding cross-cultural understanding and the philosophy of social theory. My argument was that concepts such as the 'fusion of horizons', recognition and the authentic self underpin and give rise to Taylor's consensus framework. Without mutual respect, a genuine willingness to listen to and understand others, or recognition of the value of diversity, agreement on human rights in the way envisaged by Taylor would not be possible. However, there is perhaps a weakness implied here, as Taylor does not provide an explicit link between his broader philosophy and his views on human rights

My analysis in this chapter also illustrated that not only are foundations crucial, but that many of the foundations that contribute to human rights theory and human rights themselves are arguably metaphysical in origin. Taylor has (implicitly) acknowledged that individual and social identity, along with values that articulate the inviolability of humans stem from metaphysical sources even if they are mediated and expressed in social and political terms.

Yet there is a sense that Taylor's approach to human rights is not quite up to the task that I have identified in this thesis. For all of Taylor's philosophical strengths – and there are many, as I have demonstrated above – they do not necessarily translate into explicit formulations of human rights. Taylor's comprehensive theorisation of modern society represents – in a sense – the opposite of approaches to human rights that focus on international law, implementation and activism. It provides the essential philosophical and theoretical building blocks for human rights theory – such as the recognition

of and engagement with cultural 'others', and the importance of metaphysical concerns. And even though these elements inform the 'unforced consensus' approach, Taylor has relatively little to say on how to realise in practice the fundamental principles he develops. His Thai example (which illustrates how an unforced consensus may utilise different justifications to reach the same human rights goal) intimates the connection between theory and practice, but there is arguably scope for greater elaboration of these themes.

Therefore this begs the question: is there a way to take on board the clearly theorised body of philosophy that Taylor has contributed and apply it more directly to a framework of human rights? How can the extremely valuable arguments made by Taylor on cross-cultural understanding, recognition, secularity and the self be applied to human rights more broadly? These issues will be taken up in chapter 9. More importantly in the context of this thesis: how can recognising the role and importance of the metaphysical influence the ways in which human rights frameworks are conceived by theorists? I contend that this last point is addressed by the work of Langlois who stresses that metaphysical concerns are an inherent and unavoidable aspect of human rights theory. In the next chapter I will demonstrate how this approach provides the basis for a framework of human rights that is cognizant of metaphysical concerns.

CHAPTER 7
ONTOLOGY, THE METAPHYSICAL AND PHILOSOPHICAL ANTHROPOLGY: ANTHONY J. LANGLOIS

'Proponents of human rights, in order to respect the rights they claim their interlocutors should have, should be able to give persuasive reasons as to why human rights should be accepted as a political creed. Part of this process is coming to terms with the source of their high human anthropology' (Langlois, 2004: 244).

Introduction

The previous chapter on Charles Taylor explored a method by which consensus on human rights can be achieved. The chapter also elucidated the foundations on which Taylor builds his proposed unforced consensus, these being facets of shared human experience and approaches to cross-cultural understanding. That chapter demonstrated how Taylor provides a broad-based and clearly theorised position that is coherent despite its diversity. I also argued that Taylor's work embraces the metaphysical aspects of human life in a manner distinct from other scholars. For Taylor, the metaphysical aspects of human self-understanding are not domains to be cordoned off and avoided by social and political theory, to be left to theologians or spiritual leaders. No such boundary exists for Taylor and as such he includes in his broad philosophy subject matters that are not normally included in social theory. In doing so, Taylor implicitly argues that metaphysical concerns need to be explored and included in scholarship. However, despite his significant contribution to the field, Taylor does not explicitly articulate this methodological imperative. So this thesis now turns to a theorist who *does* overtly make this claim.

This chapter focuses on the work of Australian political theorist Anthony Langlois (born 1970). Specifically, it addresses aspects of his work which build upon (explicitly or implicitly) the issues raised by other theorists and which have been discussed in this thesis. As a means of responding to many of the central concerns in the human rights debate, Langlois contributes to the general literature in a number of ways. These include the ways in which consensus on human rights might be attained despite pluralism and diversity,

and the importance of addressing the ontological and metaphysical assumptions underlying views of human rights.

Importantly, Langlois' work responds to a variety of issues which have been addressed in some of the main branches of human rights literature. Of particular relevance is that Langlois has directly critiqued the work of the other theorists included in this thesis and generally found them to be wanting in certain key areas.[1] Langlois' critique explores the foundational claims of human rights theory in a manner consistent with my aims in this thesis.

This chapter begins by outlining Langlois' key arguments in relation to human rights. I argue in this chapter that Langlois responds to the flawed universalism of other mainstream theorists – such as Nussbaum, Donnelly and Turner – in two main ways. In the first of these Langlois proposes a similar method to achieving consensus on human rights to that developed by Taylor, namely, what he labels 'incompletely theorised agreements' which draws upon legal theory. Langlois bases this account of human rights on what he (2002: 480) terms the need for a 'reconceptualisation' of rights to view them as *political* in character.

Langlois' conception of incompletely theorised agreements places emphasis on human rights outcomes and agreed norms of behaviour. The justification for why such behaviour should be deemed normal and acceptable does not emerge from an over-arching, unified master image of humanity, or from a purportedly universal human ontology or shared needs; rather, Langlois' approach fosters multiple justifications based on local and Indigenous value systems that stem from the diversity of human traditions. A multiplicity of political, cultural and metaphysical outlooks can be employed to justify and defend human rights norms. In his second main response to existing human rights theory, Langlois proposes a new way to conceptualise what is universal among the diversity of human traditions. I argue that by conceptualising

[1] For critique on Rorty see Langlois (2004: 257-258, 1999a); on Coomaraswamy, see Langlois (2002: 481); on Donnelly, Langlois (2004: 256-257, 2003a: 512-513); on Turner, Langlois (2001: 96-98); on Nussbaum, Langlois (2004: 258); on Taylor, see Langlois (2001: 127-128).

human rights in these two main ways, Langlois' work is sensitive to the diversity of backgrounds that give rise to human rights values while, crucially, acknowledging that metaphysical outlooks are inherent in any claim to human rights.

Furthermore, this chapter argues that certain key foundations underpin the claims identified above. To begin with there is the claim that different societies and cultures hold diverse, even incommensurate, views of rights and justice. This fact of international politics might imply that it is impossible (or at least highly unlikely) that any agreement can be reached on the philosophical or metaphysical justifications for rights; too much diversity leads to disagreement rather than consensus. A second claim follows from the first: because of the impossibility of reaching consensus on the philosophical level, Langlois claims that human rights must be conceived as *political* in that they are the subject of power struggles, debate and compromise. It is at the political level Langlois claims that consensus and universality is possible, rather than through attempts to find a universal ontology as a basis for rights (as is the case with Turner and Nussbaum, among others).

In recognising that views of human rights and justice are based upon diverse and contentious claims, Langlois argues that attempts to provide universal frameworks necessarily articulate implicit assumptions. As I have foreshadowed at various points throughout the preceding chapters, Langlois (2005a: 8) emphasises that all theories of rights – no matter how universal or free of metaphysical concepts they strive (or proclaim) to be – assert values regarding the worth of the human and the role of rights in protecting that worth. In short, rights claims are inextricably linked to, and implicitly based upon, philosophical anthropology regardless of attempts to ground rights in legal frameworks, human ontology or any other supposedly neutral justification. What is more, the values expressed tend to reflect views developed by traditional liberalism (for example, the assumption that individual rather than collective rights take such primacy) rather than enhancing a cross-culturally appealing vision of rights.

Langlois' acknowledgment that metaphysical assumptions are present in all accounts of human rights underpins his human rights framework in that it argues for low level agreement regarding outcomes rather than attempting to provide a universal justification for rights which obscures its metaphysical allegiances. For Langlois, theories of human rights necessarily articulate tacit or explicit metaphysical standpoints; therefore because consensus on metaphysical beliefs is thought to be impossible agreement on rights needs to be at a level that brackets them out. That is to say, agreement should only be at the level of outcomes – however they may be justified – rather than at the level of prescriptive claims as to what conditions should be met for a valuable human life (à la Nussbaum and the capabilities approach). In contrast, the chapter on Taylor outlined his proposal for consensus and the extensive philosophical work that informs it, but noted that it does not provide a particularly elaborate connection between theory and practice. As I argued in this thesis, particularly in chapters 4 and 5, although many theoretical positions are purported to be based on non-metaphysical footings, they inadvertently claim their usefulness and legitimacy through implicit appeals to metaphysically derived notions regarding the human person.

I argue that because Langlois is sensitive to the metaphysical and ontological components, his view of human rights focuses on low-level, practical outcomes – agreement on behavioural norms – rather than on a singular justification for rights. Nussbaum (and others) are relatively prescriptive in terms of the specific needs that they believe must be met for human beings to have a truly *human* life. As I argued in chapter 5 the lists of capabilities implicitly articulates a view of what humans are and what their lives *ought* to consist of, and that this view inherently originates from metaphysical beliefs – despite Nussbaum's claims that the capabilities approach is sufficiently general and universal for it to avoid endorsing one metaphysical view over any other. In contrast, Langlois' awareness of the inherent philosophical anthropology of human rights claims underpins his Incompletely Theorised Agreement framework which only stipulates that agreement is necessary on outcomes.

I argued in the introductory chapter of this thesis that Langlois' concern with exposing the assumptions and foundations on which views of human rights are built is a novel and an important approach. The main reason for adopting this perspective for this thesis is that, as Langlois asserts, issues of ontology and metaphysics are typically either side-stepped or under-theorised in mainstream theory. In this 'post-metaphysical' world, as Langlois (2004: 26) puts it, theorists and activists are reluctant to put forward any one metaphysical outlook as a basis for human rights. Yet, they wish human rights to be implemented and accepted universally and are often unwilling to accept local tradition and cultural relativism as an excuse for rights violations.

In response, Langlois addresses metaphysical and philosophically anthropological issues by showing how they are commonly understood in various schools of thought. The issues are implicit in all human rights theory, even when their relevance is actively denied (as is the case with Richard Rorty), when they are taken-for-granted (for example in Coomaraswamy's approach), and when they are more clearly articulated (such as with Turner and Nussbaum). The chapter now analyses Langlois' view of human rights.

'Reconceptualising' human rights and justice

Despite claims by some[2] that there is a world-wide consensus on human rights, Langlois (2004: 257; 2003a: 513) asserts that there has been no agreement on the nature of rights and basis of rights. This is partly because the world consists of a diverse array of values and worldviews that are at times incommensurate. Disparate notions of justice, the good life and the ideal form of the human make it extremely difficult, if not impossible, to achieve consensus on these crucial issues which underpin human rights:

> It is not possible to arrive at consensus [on human rights] in a way that will receive unanimous consent from the various religious, political and philosophical traditions of the world. There cannot be one agreed theory of justice when there is so much dissent as to what justice entails (Langlois 2001: 144).

[2] For example, Donnelly and Coomaraswamy.

To resolve this difficulty, Langlois argues for consensus, but only at the level practical outcomes and agreed upon norms without seeking the near-impossible agreement on metaphysical issues.[3] In this he shares some ground with Taylor. Given the diverse, and often mutually exclusive, range of world views, cosmologies, behaviours, conceptions of society and the individual, and metaphysical frameworks, it is simply not possible to achieve a single theory or justification of human rights which is universally accepted. Put differently, the plurality of conceptions of morality, justice and ethics in the world do not facilitate a single unified theory of human rights which relies upon a single metaphysical conception (Langlois, 2001: 100). The aim then becomes reaching agreement on lower-level outcomes such as norms of behaviour, rather than on the theory which supports why those behaviours are just.

Therefore Langlois endorses the view that, at the practical level, human rights should be justified from within a given culture without reference to a unified and common 'transcendent human nature'. He (2005b: 383) notes that human rights are 'established and regarded from within our philosophical, political and religious traditions'. The implication is that human rights are not a universal political expression of an idealised human nature, but constitutive of specific values and a product of various human traditions. This recognition of the incompatibility of different metaphysical and philosophical justifications for human rights is a contributing factor in Langlois' framework

An incompletely theorised agreement

Like Taylor (and to a lesser extent, Nussbaum and Donnelly, as well as John Rawls,) Langlois proposes a method for achieving agreement in human rights despite the degree of plurality and diversity in the world. His notion of an *incompletely theorised agreement* (hereafter ITA) is adapted from legal theorist Cass Sunstein.[4] Sunstein's theory details how agreements are achieved when there are differing conceptions of justice and reasonings for

[3] Langlois' view of consensus is thus similar to that of Taylor, but contrasts with Donnelly who argues that consensus should be attained on fundamental principles, but not on the fine details.

[4] See Sunstein (1996a and 1996b).

legal outcomes. In essence, the incompletely theorised approach seeks agreement on human rights *outcomes*, specifically on accepted norms of behaviour, rather than on the underlying philosophical justifications of such behaviour.

A main feature of incompletely theorised agreements on human rights is that they remove 'from the human rights discourse its dependence on any one metaphysical system, tradition or foundation' (Langlois, 2001: 101). That is, the dominance of the Western conception of human rights is extricated from agreements about acceptable behaviour. Rather, such norms are 'justified indigenously' (Langlois, 2001: 123). They are 'supported locally by a multitude of different ethical, religious and cultural moral systems *where they are in agreement*' (Langlois, 2001: 102). That is, behavioural norms are validated independently through specific local understandings of morality and justice (à la Nussbaum and Taylor, although Langlois provides a more detailed account of how this might happen in practice).

This 'reconceptualisation' of human rights, as Langlois puts it, has at least two main benefits. Firstly, it attempts to be more inclusive, as it involves a diverse range of justifications from across the globe. Langlois (2001: 122) illustrates how this approach would work in practice:

> a set of environmental rights may be variously justified as legitimate because commanded by God, necessary for utilitarian reasons, or intrinsic to the environment by virtue of its being. These three justifications in themselves privilege different fundamental values and may require additional beliefs and propositions which, because antithetical, cannot be synthesised into a complete theory amenable to universal assent. In such a situation, where outcomes are the same but paths to justification are different, incompletely theorised agreement is a useful means to re-theorise – in this case, environmental – rights.

A second benefit of this approach flows on from the first: it removes, or at least reduces, accusations of Western bias and imperialism in the human rights discourse as local worldviews are used to justify universal, agreed upon standards of behaviour. The incompletely theorised agreements can thus be

accorded greater credibility and validity than a purely Western conception of human rights as it generates its foundations and justifications locally. Human rights are more likely to be supported as their justifications are decentered and diverse rather than imposed from without. In words that echo Charles Taylor's sentiments, Langlois (2001: 103) observes:

> Human rights becomes less threatening if it is seen as a proposal for what it might be like for people of various cultures and backgrounds to live together, rather than being seen as a doctrine or ideology which is forced onto people in an authoritarian fashion.

By allowing for local and Indigenous justifications, human rights then become arguably more defensible.

By contrast, a traditional method of theorising human rights is to propose a grand theory which: a) purports to be universal; b) derives this claim to universality from seemingly objective and observable criteria, rather than via more contentious and seemingly problematic metaphysical explanations; and c) does so because it can claim to trump all other theories and perspectives.[5] This approach is what Langlois (2001: 112) might term a *completely* theorised agreement, in that the theory attempts to be a definitive justification of human rights and accepted behaviours. It claims to be superior to all other accounts – including local practices that seem to endorse human rights violations or contradict Western notions of human dignity[6] – and, as it is assumed to be universal, is imposed upon others. However Langlois' *incompletely* theorised agreement approach makes no such claims. It relies upon a diversity of justifications, rather than one definitive justification:

> The outcome of such a reconceptualisation would be to allow various incommensurate moral systems to support human rights without needing to vie with each other as *the* universal or true final appropriate foundation for human rights as such. This provides a *politically* legitimate way of articulating and theorising human rights, such that the discourse is not undermined by the ongoing debates

[5] C.f. Connell (2007).

[6] Several of the theorists discussed in this thesis are, in my view, guilty of this to varying extents. For example, consider Rorty's positioning as 'deprived' of those who do not accept human rights; or Donnelly's rejection of non-Western versions of dignity; or Coomaraswamy's condemnation of any customs that contravene international law.

> among elite philosophers using arcane and technical language much removed from the traditions and moral vocabularies of practitioners and 'ordinary citizens' (Langlois, 2001: 102-103).[7]

Thus far, Langlois' work does not seem especially novel or distinctive, particularly after considering Taylor's 'unforced consensus' model in the previous chapter. However, I will demonstrate that Langlois' approach enhances understanding of human rights through re-identifying what can be accurately labelled 'universal' among the diverse human traditions.

Redefining the universal

Integral to Langlois' reconceptualising of the human rights discourse is his redefining the ideal of 'universal'. As previously noted, on Langlois' account human rights are traditionally considered to be universal because they express shared human needs and values, and thus should be universally applied. Values that are in conflict with human rights are presumed to be morally inferior and expected to be subjugated by the moral and political force of the human rights regime. However, Langlois' work emphasises the local, the particular and tradition-specific nature of values such as justice and emancipation. There is simply no one right or stable definition of these terms and the imposition of one onto others merely marginalises certain voices.

Despite this emphasis on the particular, Langlois argues that it is possible, even necessary, to identify what is universal about humans and human rights. For Langlois, (2001: 145) this is primarily concerned with the *moral* content of human behaviour (which includes human rights and justice). Despite differing conceptions about what constitutes justice, emancipation and the good life, the common element is that they are centred on human agents making *moral choices*. That is, people universally 'make choices about the good the valuable, what ought to be done, what ought to be endorsed or opposed'

[7] Another benefit which the incompletely theorised agreement approach has over traditional understandings of human rights is that it allows for change and modification of conceptions of rights. Unlike a supposedly definitive and universal account of human rights, Langlois' approach is able to adapt to the views of the societies which it seeks to guide. This perspective also underscores Langlois' fundamental assertion that human rights are political and discursive in character (as I will explain below).

(Langlois, 2001: 145).[8] This is expressed through the discourse of human rights:

> The human rights discourse represents something that is universal in all human beings: that we are all moral agents and that, as such, we need to judge human behaviour in moral terms. This is to see human rights as a contemporary language through which to express an aspect of being human which is universal, namely the capacity for moral judgement and choice, the moral sense which we all have, even if (as is the case) the content of the moral sense is not the same between you and me and others (Langlois, 2001: 145).

Therefore divergent conceptions of justice and visions of humanity can be bound together at a very fundamental level. Langlois (2001: 126) observes elsewhere that:

> at the meta-level they [ideas of justice] can be identified together as a language which seeks to articulate the ideal conditions for *being* as humans, given their fundamental assumptions about what constitutes such being.

Thus it is not the *content* of a particular framework of morality or justice that is universal (as is often presumed in the dominant view of human rights) but the fact that humans from a diverse range of backgrounds possess a sense of moral choice which guides their decisions in shaping their social world.[9]

Conceptualising universality in this way has at least two main advantages. Firstly, as discussed above, it removes the link between human rights and any one human tradition and includes a diverse range of local definitions of justice and emancipation. It involves an 'understanding of universalism … which is not totalisingly uniform' (Langlois, 2001: 145). In simpler terms, this amounts

[8] Langlois' thoughts here resonate with other theorists discussed in this thesis. For example, the emphasis on the moral nature of humans is similar to Donnelly's claims, while the discussion of choice and autonomy overlaps with that of both Coomaraswamy and Nussbaum.

[9] Compare this view with that of Coomaraswamy, for example, who asserts that human rights (as expressed by international law) resonate within all cultures throughout the world. The implication is that the content of moral claims are similar between societies rather than diverse as argued here by Langlois.

to a framework or skeleton of moral norms and justice as universal; the flesh on the bones is particular and is constituted by domestic values and beliefs.

Secondly, as I will explore later, Langlois (2001: 145) argues that the traditions from which different senses of what is moral emerge are not arbitrary, but discursive, and the resulting moral choices are therefore 'normative and binding'. That is, they have the weight and clout of being a product of a specific set of values and history, and are not simply plucked out of the ether and arrived at without any *a priori* assumptions. This claim responds to the potential accusation of relativism. For example, in liberal democracies, the term emancipation:

> is developed intersubjectively, contextually and historically. It is not therefore relativistic, however, because it is guided by non-arbitrary particularist claims of emancipation (even though these may well differ or even conflict in detail due to their context) (Langlois, 2001: 146-147).

Terms such as justice and emancipation, then, may be said to be 'both universal and particular' (Langlois, 2001: 147). They are 'universal' because different definitions of the terms draw on 'the idea of resistance to human wrongs' (Langlois, 2001: 147). They are 'particular' because the content of these definitions vary from culture to culture and depend upon local tradition, values and history. Put differently, the diverse meanings attributed to such terms are always contingent and not derived from an Archimedean point or a universal sense of Reason. Langlois' theory straddles the boundary between claiming human rights as merely discursive and contingent (à la Rorty) on the one hand, and holding weight, authority and persuasive truth for the human traditions from which they emerge (à la Taylor), on the other. In doing so, Langlois arguably presents a more nuanced and sophisticated account of human rights than many other theorists, including those tackled in this thesis.

For Langlois, what is universal in humanity is not our apparent vulnerability to illness or disease (à la Turner), nor is it reducible to a list of essential capacities and needs (à la Nussbaum). For Langlois, universality consists of the different human cultures seeking ways to define what is moral and just,

and how best to treat each other. This universality both operates at a level more fundamental than capabilities theory and human frailty – in that it is limited to general principles of justice – and is more sophisticated than those alternate approaches because it focuses on the diversity of legal systems and values rather than supposed ontological sameness.

Disparate views of human rights and justice

The points discussed above are built upon specific foundations and assumptions. As I have indicated, Langlois is acutely aware of the disparate array of conceptions of rights and justice that are often contradictory, in tension, incommensurate or irreconcilable. These conceptions are themselves the product of distinct cultural histories and diverse metaphysical, political and ontological outlooks. It is no wonder then, that consensus on human rights and their justifications has been a hard-fought and protracted battle. Despite what many theorists claim (Jack Donnelly being the most notable of those discussed in this thesis), consensus is yet to be achieved: 'concerning human rights there is not consensus but controversy' (Langlois, 2004: 256-257). Any apparent consensus is notable for what it excludes as for what it includes (Gordon, 2006: 164), and the limits and qualifications of a consensus devalue the *prima facie* power of its claims (Langlois, 2003a: 513). Thus, what is often seen as universal and self-evident is instead characterised by power relations, contestation and political struggle.[10]

Human rights as political and contested

As a way of illustrating the political nature of human rights in inter-cultural relations, Langlois (2001: 126-151) shows how rights generally – within a state or political system – are a product of political context. The argument is that that rights that come to be recognised in international are a product of competing values and power relations both within a society and between nation states. The rights people possess and assert over others are underpinned by specific values, values which take precedence over those of

[10] The lack of easy agreement on human rights arguably underpins Langlois' stance that ITAs are the most suitable route for human rights, because they maintain that agreement is only necessary at the level of outcomes, not justification.

others. In other words, rights depend upon hegemony of particular values and social practices. Langlois (2001: 128) writes that:

> The right of the rich to own slaves, of men to dominate 'their' women, of women to terminate the life of the foetus, of the church to deny women that right and so on – these are all 'rights' that have been arrived at through the establishment and hegemony of a certain set of social practices and values. It is the case that each of the 'rights' or values just listed has been socially questioned and in many such instances the present 'right' is quite the opposite of what was previously the case …
>
> They are rights or can only become rights with the evolution of social practices which support the hegemony of those values, such practices being the result of either imposition or dissent in a range of social environments that is, they are dependently related to power and authority.

These quotes illustrate that rights are inherently related to social context, dominant values and power. Human rights are never the product of unproblematic rational consensus, but reflect political power, allegiances, hegemony and subjugation. Thus in order for the content or nature of rights to change (particularly to include particularist rights or to include marginalised or newly emerging social groups), there needs to be a degree of contestation, antagonism and debate. Existing rights may work to the advantage of the powerful in society and world politics, or at least there might be resistance to change because of the power of tradition. In such a scenario, the group with the desire for new rights will have to enter into an antagonistic political contest with the status quo; there will be debate, conflict and controversy over the proposed changes to rights.

Further, the outcome of such a contest is often decided by those with the most resources. Langlois (2001: 131-32) notes that:

> one or another of these groups may have entrenched political influence or power, may court public opinion more effectively, may have greater resources for communicating its message – and so may win out over the other. Even where, in principle, the rights being claimed by the different and competing groups are not antithetical (which will not always be the case), the needs, aims and ends of the groups in question lead to a political struggle.

Such antagonism is what Langlois means by the political nature of rights, as rights are *always* the product of power and debate.

> It is not a process of social institutions being made to conform to an agreed theory of justice by rational actors, but, rather, one group having mastered the art of political persuasion so as to see their cause through, as against those who wish to retard such social change. (Langlois, 2001: 130).

As it stands, the current human rights discourse tends to be characterised by Western hegemony, despite what some theorists maintain. It is Western concepts of rights, justice, emancipation, universality (and similar issues) which tend to provide the boundaries for human rights talk in world politics. However, as noted, the Western notion of universal human rights is far from what it purports to be. It is the product of a specific political tradition to the exclusion of others. As Langlois (2001: 128) writes, even the name is exclusionary:

> …it is the very language of 'universal human rights' that hides from us that these values are contested, not universally held and often maintained by and for the advantage of the powerful and authoritative in society.

So, how should the human rights discourse account for such differences? How can differing conceptions of human rights, justice, emancipation (and so forth) be consolidated?

Rights as discursive

Before addressing these issues, it is necessary to stress that the manner in which different cultures understand the concepts surrounding human rights depend upon local traditions and 'contextual reasoning'. Put differently, the understandings a particular society might have of justice and rights are shaped by the 'subject position' of that culture (Langlois, 2001: 132). The broader values, social practices and institutions give rise to particular definitions of terms such as justice, and which make sense within that society. Those understandings do not necessary make sense or prevail in another

society due to the different traditions and values there. Thus there is the very real potential for varying, often incommensurate understandings of concepts which are central to the human rights discourse: terms such as justice, emancipation, rights and liberty. However, although such understandings may be substantially different and emerge from diverse foundations, they are not, Langlois stresses, arbitrary. They are arrived at *discursively* and are a product of a particular history, political tradition and group of social institutions.

This approach is in tension with more conventional conceptualisations of human rights, in which there is a desire to produce a theory or foundation which exists above and beyond specific understandings of rights and justice. Such theories might be called upon in cases of human rights abuse to point out how such abuses are a violation of some higher human essence such as expressed by the frequently used phrase 'crimes against humanity'. As Langlois (2001: 133) writes:

> human rights are conceptualised as being, as it were, 'above the fray' – that inasmuch achieving the political recognition of rights was concerned, this was an issue of forcing people who wilfully disregard justice and sought their own aggrandisement and power to see what was 'right' and submit to justice, the natural law, reason, human rights.

Under such a conceptualisation of human rights, justice and emancipation, these concepts are seen to be static, absolute and universal. They are assumed to be derived from an Archimedean point (Langlois, 2001: 134), which is presumed to be neutral and objective. In doing so, the dominant human rights discourse is discriminatory because it 'unrepresentatively enforces one account of the good life, ignoring pluralism, (Langlois, 2001: 129). In other words, it assumes that all humans have the same needs and wants, despite the fact that the degree of diversity in the world means that the values of liberal justice are not held universally.

In contrast to this view of human rights, Langlois emphasises the *discursive* nature of human rights. He (2001: 125) notes:

> the human rights discourse is about justice and emancipation, and that, while these terms may be defined diversely and even incommensurably between the human traditions, they are *not arbitrary*.

In other words, the various human traditions which give rise to differing concepts of justice are not arbitrary, or mere relativistic construction, but a product of specific historically sedimented ways of living, worldviews and knowledge bases (Szasz, 1994: 4).

This point leads back to Langlois' claim that human rights are inherently political. Because different cultures have different conceptualisations of justice and human rights, there is scope for a dialogue between the diverse human traditions. Rather than imposing a universal view of rights, or attempting to achieve consensus when there are intractable differences, Langlois suggests that human rights should be contested, debated and argued. He (2001: 133) writes that human rights should be 'moved into the area of politics – the contestable, the antagonistic, the "us" and "them" relations'.

But again, this raises the question of how any agreement or cooperation on human rights can be achieved if every voice is different. Langlois (2001: 125) argues that it is *because* the different human traditions are discursive rather than arbitrary that dialogue can occur. He (2001: 125) writes:

> In this way, the human rights discourse is recognised as an arena for the discussion, debate and institutionalisation of our various and sometimes antithetical conceptions of justice and emancipation. There is a need for an account of how this arena works and should properly be understood to work – a *political* account of the human rights discourse.

As with debate over the rights of previously excluded groups within a society, so it is through political contestation and debate that the human rights discourse can be expanded to include different and previously excluded definitions of justice and emancipation. Such definitions emanate from particular and local understandings and are in stark contrast with the

purportedly universal nature of Western-style human rights that characterises much of the thought and political discourse on the subject.[11]

Langlois (2001: 137) outlines the strength of this political understanding of human rights thus:

> An understanding of the political … suggests that it has the strength of recognising the antagonisms between the different human traditions and of facilitating a *non-arbitrary conversation* between them – that is, the real differences that exist between and within traditions are recognised and thus open to positive facilitation, rather than being smothered by an ostensive consensus on societal values (emphasis added).

The political approach thus involves the voice of many; it decentres the discourse and disrupts dominant Western liberal values and removes the reliance on a single metaphysical understanding (even if that understanding is implicit or obscured by anti-metaphysical rhetoric). As it is an ongoing dialogue – a *non-arbitrary conversation* – there is the scope for change and evolution over time, rather than the static concept of universal human rights which pervades world politics.

As with any contest and debate, there is no final agreement that remains valid indefinitely. This is especially the case when there is as broad a range of understandings of the central issues as there is with the human rights discourse. There is no guarantee of a smooth transition to human rights observance or of agreement on the content of the rights or 'calm collective convergence on a singular set of behavioural norms. Rather, it is going to be a political contest formed by the question of competing understandings of the practice of justice' (Langlois, 2001: 132).

But as the political contest over the content of human rights is essentially a battle for hegemony, it could be argued that a culture could, in dialogue with others, put forward any 'right' if it helps to obtain control over the discourse. This is especially worrying if the rights put forward are actually violations of

[11] Once again, compare this point with the general position of Donnelly (chapter 3).

existing human rights standards. However, Langlois argues that that political model of human rights does not allow for such relativism.

The idea that the content of the human rights discourse can be decided through debate between differing human traditions might open up the possibility of relativism. If, for example, states in dialogue wish to include their own understandings of justice and rights, then it might be argued that *any* such understanding could be put forward as a human right, including practices which maintain dominance and oppression. However, Langlois argues that this is not the case. The argument returns to the point that the human traditions which give rise to varying conceptions of rights are *not* arbitrary, but discursive. Langlois (2001: 135) writes that

> … the criteria for what may or may not be accepted into the discourse of human rights are not determined by trying to get to the universal rules or reasons that are thought to be behind our moral perceptions. Rather, they are determined by the norms and ongoing practices of the existing discourse and the 'analogical comparisons of cases' across traditions. It is precisely this which prevents the political nature of the discourse from becoming arbitrary. The political is the recognition that reason is discursive and tradition-dependent … (Langlois, 2001: 135).

Furthermore, Langlois (2001: 150-1) writes that:

> The discourse of human rights is a discourse about justice. The contributors to the discourse come from traditions which have criteria for judging just behaviour. The issue is not whether any behaviour at all can be described as just, but it is one of different criteria.

This has implications for the way in which the dialogue can proceed: 'Differences in ways of being exist', writes Langlois (2001: 151), but 'what is crucial to understand is that [self-descriptions] are not arbitrary. It is this which allows the negotiations of these differences to proceed in "good faith"'.

The point Langlois draws from this is that relativism is only an issue 'for as long as the theoretical justification of human rights seeks to identify a foundationalist conceptual scheme to be used as the measuring rod against

other such (but mistaken) schemes' (Langlois, 2001: 136). That is, if human rights are seen as discursive rather than foundational,[12] relativism is not a concern. It becomes a matter of competing and contested discursive understandings of rights, justice and emancipation, rather than of 'universal' ideals battling for dominance.

Langlois, (2001: 134) reiterates the point:

> To return politics to the discourse of human rights does not mean that any claim about the nature of human rights is acceptable; nor does it mean an end to rationalism, universalism and individualism in the articulation of the nature of human rights. Rather … it recognises that these are arrived at discursively – that is they not the product of an abstract, objective universal Reason, but reasoning particular to the resources of the different human traditions.

Put differently, 'reason is discursive and tradition-dependent' (Langlois, 2001: 135); views of justice and human rights are a product of contextual reasoning and depend upon a specific 'subject position' (Langlois, 2001: 132).[13]

Foundations: The metaphysical, ontology and philosophical anthropology

Response to existing literature

The above section highlighted Langlois' proposed method of incompletely theorised agreements which aims to increase the cross-cultural appeal of human rights. To reiterate, this approach emphasises agreement on norms of behaviour but not on the philosophy or values which justify them. This approach is arguably Langlois' response to perceived inherent inadequacies with current thinking on human rights, namely the apparent inability to satisfactorily deal with diverse worldviews and their associated metaphysical

[12] 'Foundational' in this sense means emanating from a singular, external, universal source; it does not mean in this context that views of human rights do not rely on foundations.

[13] However, what is deemed just is also a product of power relations in any given society; the powerful – including national governments – can define as fair and equitable policies targeted at disadvantaged and vulnerable people. For example, social welfare policies that arguably placed onerous expectations and requirements on the unemployed can be endorsed by governments as sharing obligations mutually and fairly, when arguably they are in the service of a neo-liberal agenda that seeks to maintain and extend pejorative images of welfare recipients. See Parker (2004) as well as Parker and Fopp (2004, 2005).

assumptions. The previous section detected foundations of Langlois' position in the view that the broad range of worldviews and conceptions of justice and rights are incompatible. This underpins Langlois' notion that ITAs should focus on attaining consensus on low level outcomes. However, this section argues that Langlois work is also founded upon the similar notion that metaphysical and ontological assumptions are inherent in views of rights, and awareness of them can lead to more compelling theory. My argument is that Langlois' work is founded on the perceived shortcomings of existing theory in the way in which it addresses metaphysical assumptions. What is more, this foundation lays the path for ITAs.

A fundamental argument of this thesis has been that all conceptions of human rights are built upon *a priori* foundations and assumptions which shape the eventual view of rights. This conception is valid both in cases where the foundations are implicit and tacit, on the one hand, or clearly articulated, on the other. Throughout this thesis I have highlighted the values which constitute a diverse range of human rights perspectives and argued that the ontological and metaphysical components of human rights are inherent and unavoidable. Although most theorists wish to eschew metaphysics in one way or another, their presence looms large – the 'elephant in the room', so to speak – and their implications remain under-theorised.

Langlois identifies two main issues which are germane to this argument. Firstly, the literature on human rights tends to reflect difficulties in coming to terms with metaphysical and ontological problems. He (2004: 260) outlines the dilemma thus:

> … all the approaches used to answer the question 'what are human rights?' appear to be at best unstable and at worst intellectually indefensible. In large part this is because of a tendency to be either triumphalist about one particular metaphysics or to eschew deep metaphysical questions entirely. Neither approach works.

Both Richard Rorty's and Jack Donnelly's conception of human rights are arguably 'triumphalist', while theorists such as Turner and Nussbaum seek to

avoid valorising specific metaphysical views while inadvertently relying on them for the functioning of their theories (see chapters 4 and 5). In fact, it is this second group of theorists that Langlois (2003a: 511; 2004: 260) characterises as 'deontological' and 'post-metaphysical' in that they aim to provide a basis for rights that falls outside of metaphysical explanations. For Nussbaum it is human needs; Turner, human frailty; Coomaraswamy, international law. In each instance, the given foundation for rights is perceived as universal, 'neutral' and above specific worldviews, cosmologies and metaphysical conceptions. These observations lead on to a second issue inherent in the literature to which Langlois responds.

As I argued in the introductory chapter, all accounts of human rights rest on specific claims about the nature of rights, the value of the human person and justifications for rights claims. As Langlois (2005: 8) emphasises, these value positions are present even when those talking about rights are unaware of them:

> when people who are engaged in the work of advocacy or diplomacy assert a right, they are making very real claims about the existence in one form or another of a human right, and as part of their assertion they will go on themselves to engage with ontological grounds for that belief.

Put another way, the implication here is that when talking about human rights there are always assumptions present regarding the nature and justification of rights that include metaphysical and ontological issues that therefore cannot be bracketed out of the discussion. Langlois (2004: 260) continues:

> The difficulty is that metaphysics cannot be sidestepped, but nor, in our post-metaphysical era, can any particular metaphysical approach legitimately claim the certainty which is engendered by the rhetoric of human rights, and which resides in the background of Enlightenment traditions out of which modern human rights were born.

These metaphysical and ontological assumptions remain despite the attempts to circumvent them.[14]

To clarify, Langlois has detected these uncertainties and inconsistencies in the existing literature and has sought to develop a theory of human rights which avoids such problems. It is arguable, therefore, that Langlois' awareness of critical tensions within existing conceptions of human rights underpins his ITA approach. This approach seeks to both recognise the importance and profound influence of metaphysical assumptions, and to avoid privileging such assumptions in devising a method of consensus which can be considered universal.

Revealing human rights metaphysical and ontological assumptions

To further support his case for ITA, Langlois attempts to demystify claims that human rights as popularly understood can be viewed as universal. He does this by unpacking the metaphysical and ontological assumptions implicit in the 'standard account' of human rights and in the work of notable theorists (Langlois, 2005a, 2005b, 2004, 2003a, 2003b). Langlois begins this endeavour by challenging the notion that human rights are based solely on the virtue of being human. By extension, his work also critiques dominant assertions that human rights are universal, self-evident and given. Rather, Langlois argues that the primary definition of human rights in contemporary international political discourse is based on specific assumptions and tacit claims about the nature of rights, the nature of humans (philosophical anthropology) and why humans should have rights. Central to his argument is that many purveyors of human rights often forget or assume the specificity of rights and the values expressed therein, such that alleged universality of human rights is taken-for-granted and viewed as neutral.

[14] As I argued in chapter 4, Turner makes normative assumptions as to why humans should be shielded from the consequences of frailty which derive from an unacknowledged stance on the value of the human self. Thus Turner's tacit philosophical anthropology is what validates his position on human frailty and its attendant undesirability. What Turner intended to avoid (a metaphysical foundation for human rights) is actually what makes it function as a theory and gives it its persuasive power. See also Langlois (2001: 97).

Langlois (2003a: 510-512; 2004: 247-253) maintains that the concerns of Enlightenment philosophy have shaped the scope of rights today. During the European Enlightenment of the eighteenth century, there was a preoccupation with overcoming existing metaphysical and religious worldviews that framed actions and behaviour in terms of 'God's will' or other theological interpretations (Langlois, 2004: 252). In this historical milieu philosophers sought alternative visions of humanity that avoided metaphysical issues. By the time human rights (re-)emerged in the mid-twentieth century, many of the epistemological claims of the Enlightenment had become entrenched in political discourse so that any overt metaphysical grounding for human rights was notably absent from the UDHR in 1948; they were arguably taken-for-granted. Concerns over exactly what rights are, their ontology, and metaphysical foundations were brushed aside and excluded from rights talk. All that remained were *assertions* about human rights: that they exist on the basis of existing as a human being, that they are inalienable and universal. There is no *justification* of the rights expressed in the Declaration (Langlois, 2005b: 374). As Langlois argues, this vision of human rights relies upon assumptions about rights while evading any question of why they should exist.

The result, according to Langlois (2003a: 511; 2003b: 52), is a dominant liberal conception of human rights that seeks to evade metaphysics and is thus 'deontological'. In his (2003b: 52) own words:

> 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.[15]

In essence Langlois' view is built upon the argument that universal human rights are not universal or self-evident but in fact conceal, and indeed rely upon, specific metaphysical and ontological assumptions about the nature of humanity. Langlois (2005b: 383) continues:

[15] In this sense, Donnelly is perhaps the most obvious example of a deontological theorist.

> Human rights, despite the claims of some, are not rights we have simply by virtue of being human. Rather, they are rights, generated by narratively rationalised metaphysical beliefs, beliefs which inform us as to what the metaphysical category 'human person' means – always a moot point. This meaning depends on ontological, axiological, teleological and epistemological claims made and explored through the human traditions – metaphysical claims about the value of being human, the purpose and meaning of being human, and about the forms of knowledge which enable us to arrive at these conclusions. The acceptance of the human rights doctrine upon the simple assertion that we have human rights as humans, and that this is universally the case, elides these complex metaphysical narratives.

The liberal tradition which has given birth to human rights implicitly asserts a vision of 'true humanity' which is believed to be unencumbered by outmoded and limiting theological or metaphysical worldviews. However, the liberal imperative for a 'metaphysics-free vision of humanity', is ironically 'a narrative of what it means to be human' (Langlois, 2005b: 375, 381). Specifically, human rights are based upon 'liberalism's ontological individualism [which] holds that the individual has moral primacy over claims which may be advanced by any social collectivity' (Langlois, 2005b: 379). Additionally, there is the assumption that humans are a 'moral unity' – or human essence – that relegates cultural and historical differences between people to secondary status. This means in practice that human rights implicitly assert individual rights and individualism – the rational liberal subject – as an idealised vision of humanity therefore claiming that the demands of 'culture' should be overridden by the liberal conception of humanity.[16]

For example, the capabilities approach utilises a list of supposedly universal human needs that should to be met via human rights. However, the fact that humans require food and shelter to survive and satisfying social relations to flourish does not by itself ineluctably imply that these needs ought to be met or that worthy human lives should be enabled. It is the unspoken – and unseen – cluster of values and beliefs pertaining to the assumed value of humans and their potential that creates the link between human capabilities

[16] Langlois (2005b: 379) highlights two other metaphysical assumptions behind human rights which are not strictly relevant here and are thus omitted from this argument.

and human rights. The claim that capabilities theory is universal and does not advocate for any particular metaphysical outlook is thus spurious. Furthermore, the inadvertently deployed and tacitly articulated metaphysical assumptions of capabilities theory leads to a relatively prescriptive list of allegedly universal human traits and requirements. This list also mandates those dimensions of human life that must be fulfilled for a life to be considered 'truly human'.

Langlois' concern with the concealed metaphysical and ontological assumptions of human rights theory therefore underpins his view that agreement should be incomplete and focused only on broad concepts. Local interpretation of human rights norms avoids prescribing specific human needs (and the associated imperative that they need to be met for a life to be worthy of the name 'human'), while circumventing imposing particular metaphysical beliefs on others. For Langlois, ITA is a suitable method for achieving these aims.

My argument here is that Langlois' analysis of the human rights discourse highlights its cultural and historical specificity in stronger and more persuasive terms than other theorists (who often relegate such discussion to a mere paragraph). By emphasising the metaphysical assumptions inherent in human rights, Langlois' work further illustrates the need for approaches such as ITA which allow for local justification of rights based on domestic metaphysical traditions.

By diagnosing that unacknowledged and tacit metaphysical assumptions are problematic for human rights theory, Langlois (2004: 244) advances the view that rather than ignoring or evading the metaphysical, theorists need to be more cognisant of their own beliefs in this regard. The result would be a more detailed and fine grained account of human rights that has a clearer and better reasoned basis that is thus more defensible (Langlois, 2005a; 2004). If human rights are to be used as a defence against abuse of state power then there needs to be a persuasive appeal to something beyond state boundaries. There needs to be exploration as to what human rights actually are, how they

are arrived at and how they are justified. Without this, human rights may become a victim of their own elusiveness. Langlois (2004: 260) argues:

> It is not enough to claim that human rights are social practices embedded in our global way of life – undoubtable true though this is – nor that rights signify nothing more than modes of rights talk. Rights that are nothing more than talk, and practices which have no virtue other than that they are what we presently do, have no persuasive power. The ontology of human rights must reach beyond these to a vision of human being which is able to garner authority and force in human affairs.

In doing so, it is necessary to confront metaphysical and ontological issues and not avoid them. He (2005a: 9) notes that:

> any assertion of human rights includes presuppositions about the ontological status of human rights. These may be implicit or explicit in the mind of those doing the asserting, but they are there, and thus cannot be separated from the way in which we conceive of human rights.[17]

The conclusion which Langlois draws from this is that it is not desirable to separate the ontology and the metaphysical from human rights as many theorists are prone to do (see Pogge, 2002). He (2005a: 7) argues further:

> it is not possible to conceive of human rights without having (at least tacit) links to ontological arguments of one form or another about humans more generally: that they have rights, and about rights: what their nature is, how they exist, how we know about them, how this knowledge is justified. These point to the ways in which human rights exist and how their existence might be known and justified.

Furthermore, defensible human rights are required in order to prevent the sorts of nihilistic and anti-human doctrines (such as those perpetrated during the Second World War) which would exist without a sense that human have intrinsic merit and value (Langlois, 2004: 216).

[17] See Langlois (2005a,)for a more detailed analysis of how ontological assumptions influence the conception of rights.

This again raises some central issues in the ongoing debate about human rights. These include the need to reconcile the diversity of metaphysical platforms that underpin human rights in different cultures with the idea the rights are universal. Langlois' work poses some significant questions for human rights theory: How, without sidestepping metaphysics and ontology, can a view of human rights be achieved that is neither reduced to relativism nor imposes one worldview on others in the name of universality? The issue remains of how human rights can function with a diverse range of conceptions of justice and rights.

Narrative and context

An outgrowth of Langlois' recognition that local metaphysical views ought to be taken into account extends to his proposal of how this might be done. He (2001: 165) argues for thinking about human rights through narrative. The stories that can be told by diverse human traditions about themselves express their self-understandings and their humanity. Langlois is therefore endorsing a localising and particularising of the human rights discourse based on non-dominant views of human being and the good life. Giving voice to narrative in this regard unsettles the traditional universalist view of human rights that effectively glosses over cultural difference and local narrative. There are three main implications of this approach. Firstly, as identified, it de-centres the dominant assumptions in human rights discourse and beckons marginalised (non-Western) perspectives from the periphery towards the central focus of human rights.

Secondly, using narrative as a way of comprehending human rights helps to overcome the competing extremes of universalism and relativism. This has already been foreshadowed above, but it is worth spelling it out more clearly here. Taking account of local narratives of justice enables a broader range of views to contribute to human rights discourse. The totalising power represented by the language of 'universal human rights' can be countermanded by giving voice to, and taking seriously viewpoints which may differ from the dominant perspective of rights. This approach also illustrates how human rights theory can and should take account of the particular rather

than derive abstract, 'universal' axioms that aim to override pluralism. Doing so works in favour of the human rights project itself as the rights are more congruent with the particular values of different human traditions. Langlois (2001: 165) claims that rethinking the human rights discourse involves thinking:

> *through* the stories, narratives and traditions that define us as individuals and communities, rather than trying to avoid them. Avoiding the stories that define our identities means that whatever we are protecting with the human rights discourse will always be something that is slightly different from and out of touch with those things we value most.

So Langlois calls attention to the need to account for difference and the divergent values that constitute diverse identities and metaphysical frameworks, and for these to contribute a more inclusive and universal vision of human rights. This is in contrast with other theories which strive to overcome metaphysical commitments and produce abstract 'propositional codes or lists of neutral rules' in the manner of Nussbaum, for example (Langlois, 2001: 167).[18]

Although there maybe the danger of giving way to relativism in the manner implied by Rorty's argument for sentimental stories, Langlois (2001: 166-167) stresses that views of justice are context-dependent and non-arbitrary. Narratives of justice constitute 'what situated agents think important in their situations' (Langlois, 2001: 166). However:

> It remains the case that agents in analogous but different situations may make different and even incommensurate decisions, but this is not the same as making arbitrary decisions. By taking seriously the different ways in which justice is contextualised, by focusing on the surrounding web of motivations, reasons, emotions, actions, justifications and traditions the spectre of unbridled relativism disappears … we need to pay attention to the context in which agents are acting, the social practices which obtain, and the way in which these together give witness to the legitimacy of a particular narrative (Langlois, 2001: 166).

[18] And as I have argued throughout this thesis, such intentional avoidance of metaphysics often inadvertently enacts very specific assumptions derived from liberal political theory.

The third implication relates to the importance of local metaphysical views in constituting human rights. This point reinforces and elaborates upon the argument that philosophical anthropology is an integral aspect of human rights and that it should not only be acknowledged but also engaged with in all of its diverse forms. Langlois (2001: 165-166) claims that inclusion of local narrative is necessary for recognition of (universal) human being.

Further discussion

It seems that Langlois' usage of an incompletely theorised agreement of human rights has much in common with Charles Taylor's 'unforced consensus'. On the most obvious level, they both depend upon local and Indigenous understandings to validate accepted outcomes. It is not so much the underlying justifications that count, but rather the types of behaviour which are endorsed by culture that are of prime importance. It does not so much matter if a 'rather different route has been traveled to a similar goal', as Taylor (1999: 135) puts it, as long as the goal is reached.

However, Langlois provides a more developed and detailed approach, partly because he applies an existing legal theory to human rights. But some of Taylor's underlying theories of inter-cultural understanding are similar to those of Langlois' incompletely theorised agreement approach. For example, Langlois' theory relies upon the idea that human rights firstly needs to recognise and respect the value of local traditions and worldviews. But more importantly, Langlois' approach, implicitly or explicitly, utilises many of the same principles as Taylor's method of 'understanding' (see previous chapter). Incompletely theorised agreements produce non-definitive accounts that are party-dependent and are amenable to change as goals or facts change. This is in contrast to Taylor's concept of 'knowing' and the *completely* theorised approach which seeks to be definitive, rule out or account for any changes ahead of time, and purports to be universal or neutral.

Despite the obvious advantages discussed above, Langlois readily accepts the limitations of his incompletely theorised agreement approach to human

rights. The first is that, although this framework had appeal because it does not depend upon or presuppose any single grand theory of human rights, the human or society, it is itself a grand theory. As Sunstein (1996a and 1996b), notes, incompletely theorised agreement, as a method of attaining consensus, are not themselves subject to incompletely theorised agreements. Put differently, they themselves are *completely theorised agreements*; there can be no negotiation of the terms and conditions or assumptions which underpin incompletely theorised agreements. For example, a party (person, nation, government) cannot decide that agreement should be reached on the underlying principles or human rights, or that agreement on outcomes is not desirable. This would go against the 'rules of the game', in that it is in tension with seeking agreement on behavioural outcomes. The rules themselves cannot be altered to suit. Incompletely theorised agreements, then, therefore assume that they are superior to other theories of human rights and are able to be applied universally. ITAs also make assertions regarding how agreements should be; that is, they make *complete* and universal claims that all other agreements should be partial, contingent and incomplete.

There is another criticism which Langlois identifies. By their very nature, incompletely theorised agreements are centred around existing frameworks of discourses. In this case, it is the human rights discourse which presupposes that it is desirable and just to treat people in certain ways, in whatever manner that behaviour might be justified. The incompletely theorised approach helps to make sense of the existing human rights discourse by building on it rather than offering 'foundational justifications, complete theorisations or abstractions' (Langlois, 2001: 120). It thus operates within the limits of existing discourse, a discourse which Langlois (2001: 120-21) has described thus:

> The discourse already exists, comprising centuries of philosophical and religious speculation, and a half-century of international law development. It is associated with the expansion of international society and the mechanisms of the late twentieth-century state. It is a discourse that has evaded every attempt at complete theorisation, either as a codification of the discourse as it presently

> stands or as a universally agreed proposal for how it should or might be re-theorised.

Importantly, within the human rights discourse, there is 'a certain normative structure…which provides the analogue for the [legal principle of] precedent' (Langlois, 2001: 121). He (2001: 121) continues:

> In the same way that incompletely theorised agreements in domestic legal contexts cannot proceed independently of the legal settings in which they function, nor can incompletely theorised agreements as a way of understanding human rights should proceed independently from the existing human rights discourse.

That is to say, incompletely theorised agreements on human rights need to operate within the constraints constructed by the human rights discourse. More specifically, such agreements are not *ad hoc* or arbitrary, but must be consistent with the law and existing human rights conventions and instrumentalities.

The implication is that only certain types of behaviours are deemed acceptable as human rights outcomes. This might be considered an advantage when attempting to discredit nations or governments who abuse human rights in the name of 'Asian values' or local tradition. However, it raises serious questions about the validity of the incompletely theorised approach when genuinely held fundamental values conflict so that no agreement on acceptable behaviours can be reached. Langlois, (2001: 121) writes that

> there are genuine cases where, precisely because human goods are plural and are unable to be reduced to one master value, the internally legitimate aims and objectives of religious and philosophical traditions will be in conflict with one another inasmuch as they are translated into the human rights discourse and understood as rights.

This means that *because* different people are using their own culturally specific and internally legitimate values to attempt to come to agreement on human rights, no such agreement is possible due to the diversity and incompatibility of those rights with others.

The constraints imposed by ITAs to include only non-arbitrary notions of just that are *in agreement* with accepted norms emerge upon a more critical reading of their logic. These have both positive and negative implications. ITAs begin from the assertion that only those theories of justice, morality and fairness that are both the product of existing human traditions and consistent with human rights norms. This entails that those values that are based on a different philosophical anthropology to that which underpin human rights will be excluded. For example, values and cultures that place the highest value on the life of adult males but lesser value on women and children. For these people, these beliefs constitute what it means to be a human and emanate from long standing traditions. However, the metaphysical and anthropological outlooks that underpin them are inconsistent with human rights and so cannot be allowed to prevail. Therefore it is arguable that the Western liberal philosophical anthropology of contemporary human rights defines what other outlooks can contribute to the discourse and marginalises those that do not already have the same assumptions regarding the worth of humans and human life. Conformity, or at least greater alignment, with the dominant norms of human rights is needed in order to be granted voice in the discourse. And because these norms have their origins in philosophical anthropology and the metaphysical, it could be argued that the one cluster of metaphysical beliefs will continue to prevail over the others.

So this poses a problem for the incompletely theorised agreement method of understanding human rights. Although it has many strengths, it is unable to provide answers where agreement is unobtainable due to the diversity of human values. This is an issue which Langlois explores, and will be discussed in the following section.

Conclusion

In this chapter I argued that Langlois' view of human rights is a response to the perceived weaknesses of existing human rights theory. These weaknesses include the inability to adequately reconcile the tension between universalist accounts of rights and local, non-Western values that are in

disagreement. This flaw in mainstream human rights literature is seen by Langlois as a product of scholars who inadequately acknowledge the influence of metaphysical and ontological assumptions in formulating theories of rights. Langlois' ITA approach to human rights consensus is a response to this dilemma by seeking only to achieve agreement on outcomes rather than on a supposed universal justification.

My argument in the preceding discussion was that Langlois' ITA framework is underpinned by a variety of foundations. In identifying the first of I argued that diverse and frequently incommensurate conceptions of justice and rights evident in different cultures renders agreement on the underlying justifications for rights near impossible. Langlois makes the point that varying visions of humanity and society cannot agree on crucial issues such as what being a human means, and why humans should have rights. Rather than attempt to formulate a theory which purports to be universal (either through reference to shared human ontology, human needs or international law, for example), Langlois proposes an approach that seeks consensus at the general level of outcomes. An additional foundation I highlighted in the chapter is that Langlois underpins this approach to rights by emphasising that human rights are essentially political in character rather than philosophical. His political conception of rights forms the basis for ITAs which aim for agreement through political negotiation as opposed to identifying universal metaphysical justifications.

Another cluster of foundations was also identified in this chapter. This level of foundations arguably goes to the heart of human rights and addresses broader philosophical and epistemological issues more than those in the first cluster. More specifically, I argued that this background group of foundations is evident in Langlois' assertion that any given position on human rights expresses, either explicitly or tacitly, metaphysical and ontological assumptions, and that these concerns are inseparable from conceptions of rights. His awareness then of the multitude of conceptions of justice and rights has several implications for human rights theory. These include a critique of existing scholars who have attempted to provide a metaphysics-

free account of human rights but in so doing inadvertently invoke metaphysical accounts of the human person (philosophical anthropology).

An additional implication is that any attempt to provide a 'universal' account and justification for human rights is flawed as it will invariably be partial and particular rather than universal. Such a position, which recognises both the presence and influence of tacit metaphysical assumptions, has enabled Langlois to develop an outlook on rights which merely seeks agreement on outcomes. In other words, Langlois' position is founded on the view that metaphysical concerns necessarily skew a view of human rights *even if* a theorist actively strives to avoid them. Thus, in Langlois' view, implicit metaphysical assumptions regarding the worth of the human self are an intrinsic and inescapable dimension to human rights. Additionally, Langlois makes the methodological directive that theorists need to engage with these dimensions in order to produce more clearly defined and defensible frameworks.

CHAPTER 8
THEORIES OF RIGHTS AND THE ROLE OF FOUNDATIONS

Introduction

Up to this point, this thesis has been concerned with two main issues. Firstly, it has explored various theories of human rights, and secondly (and most importantly), it has emphasised how these theories are built upon certain foundations and *a priori* assumptions regarding a range of issues. Such issues have included the nature of human rights, their perceived source, their foundations and justifications, and tensions between claims to universality and underlying ontological and metaphysical assumptions. Having provided details of these theoretical dimensions, this thesis now turns its attention to two crucial points. The first is to more clearly demonstrate the link between pre-existing positions and standpoints to human rights across the theories analysed. This issue was addressed in the individual chapters, but it is necessary to forge the links and the tensions between the theorists more carefully and in greater detail to illustrate the substantial influence that such assumptions have on a given theory.

This chapter also aims to critique and evaluate the positions presented in the thesis. The theoretical frameworks analysed in the previous chapters represent a diverse range of thought and philosophy on human rights which are often in tension and at times mutually exclusive. Given that there are competing claims about human rights, I intend to evaluate them based on the prior assumptions embedded in the various approaches. Issues to be considered include: the extent to which a given position is clearly theorised; whether a theorist acknowledges the foundations on which their approach rests; if a scholar's claim to universality is either supported by their claims about the sources of rights or undermined through the smuggling in of particular metaphysical justifications; and an evaluation of the tacit values and assumptions which constitute the foundations of a given perspective.

I argued in the Introduction to this thesis that varying theoretical standpoints will have different foundations based upon, *inter alia*, the prior concerns,

knowledge and epistemological stance of the theorist in question. These foundations will in turn be of varying character. For example:

> … the difference between the religious natural law theorist and the social constructivist is the base (rock bottom) or source of the justification for their position. For the natural law theorist the ultimate source or base of their position is a god, or a divine transcendent being, who is the author of such political values. For the conventionalist or the constructivist the source of the justification is the culture, society or the group which enshrined the principles in law or norms of some kind (written or verbal) (Fopp, 2008a: 238).

This premise has informed aspects of this thesis as each of the views of human rights analysed rely upon different foundations according the scholars' concerns, interests and values. In addition, the preceding chapters have explored and developed Langlois' (2004, 2005a, 2005b) assertion that tacit metaphysical and ontological assumptions, previously under-theorised, must be brought to the fore in human rights theory.

Thus, in this chapter I aim to provide greater clarity in depicting the link between human rights theory and the foundations on which they are based. In doing so, I will advance the argument that foundations need to be clearly articulated and cognisant of metaphysical and ontological sources, illustrating that several of the positions presented in the thesis are wanting in this regard. For example, Donnelly, Coomaraswamy and Turner rely upon important assumptions that are not clearly articulated or recognised in their theories. Charles Taylor (1992: 516) has written that 'High standards need strong sources'.[1] Human rights are almost universally regarded as high moral standards towards which humanity should strive. If human rights are to attain and maintain the high standards with which they are entrusted, then it is incumbent on those who advance theories to recognise the need for human rights theory to be clearly and rigorously theorised. The lofty moral ideals implied by human rights therefore require stable and explicit foundations to make them more resilient to attacks from those who may question the benefits of allegedly Western rights, or those who deny that any universal foundation

[1] See also Freeman (1994).

can or does exist. These assumptions must be clearly explored and articulated so that high moral claims about rights and humanity are more easily defended and less susceptible to critique.

Another type of foundations I identify here include metaphysical, ontological, axiological (that is, concerning values) and teleological beliefs regarding human beings and human rights. Such normative positions provide a fundamental basis for the various human rights theories and give significance and value to the mechanisms for protecting and enhancing human rights which each position endorses (for example Nussbaum's capabilities approach). Furthermore, I argue that these fundamental assumptions are usually taken-for-granted and not explicitly articulated in the theory. Yet, they perform such a crucial function in shaping human rights theory. The theorists represented here seek to avoid employing a metaphysical framework to justify human rights lest they privilege one metaphysical outlook over another. However, I argue that metaphysical foundations are unavoidable and are thus present in these theories in the form of normative assumptions and a concealed philosophical anthropology. These assumptions necessarily form the basis for a view of human rights whether the theorist in question acknowledges them or not.

The following will attempt to illustrate the above points by reference to the first five theoretical positions addressed in this thesis. The remaining two (those represented by Taylor and Langlois) will be left to the following chapter as those positions explicitly explore the metaphysical and foundational claims inherent in human rights discussions.

The discussion now focuses on the link between human rights and foundations. Specifically, it will address the role of foundations on a given theory of human rights. In so doing, my discussion will highlight the distinction between foundations that clearly express an integral aspect of the theory and those foundations that are assumed and employed uncritically. Examples of the first variety of foundations include Rorty's pan-relationalism and Turner's

sociology of the body. These foundations are part of the theorists' broader work within which their human rights framework exists.

Foundations

It has been a recurrent theme of this thesis to highlight that all theories of human rights rely upon various assumptions which may be tacit or explicitly articulated. I want to emphasise that rather than merely amounting to assumptions, these pre-existing positions constitute fundamental foundations on which the different theories rest. A simple example is the assumption that international law gives legitimacy to human rights. This constitutes a foundation that supports the claim or argument. The result is that this example of a human rights theory is built upon a legal framework with its own assumptions and foundations and, as such, notions regarding the nature of rights and appropriate responses to violations are defined in terms of legal structures.

Similarly, a conception of human rights founded upon a sociology of the body will contain features that correspond to the fragility and precariousness of human ontology (à la Tuner). What is more, these differing foundations reveal the extent to which the various approaches analysed in this thesis are clearly articulated and theorised and thus their ability to provide defensible justifications for human rights. I shall take up this final point in the next chapter. However, in the following sections, I demonstrate how the different human rights frameworks I have addressed are based upon and substantially influenced by specific foundations.

Pragmatism and anti-foundationalism: Rorty

The first chapter of this thesis dealt with the pragmatist/anti-foundationalist view of human rights as typified by the late Richard Rorty. In that chapter I argued that Rorty purveyed a theory of human rights that was unashamedly 'anti-foundationalist' in that he denied any intrinsic humanity that might warrant universal human rights (Rorty, 1993: 114-117). Similarly, he (1985: 13) insisted that the notion of 'human nature' is 'not a useful moral concept'. In other words, for Rorty, it is neither useful nor relevant to theorise about the

human's supposed inherent character when talking about human rights. Rather, Rorty emphasised human rights as historical fact, meaning that they are a product of contemporary thinking that has lead to significant improvement in the lives of many across the globe. Rorty's denial of metaphysical or any other type of foundation enabled him to promote the 'morally superior' 'human rights culture' (1993: 116) as the preferred way of treating people, and to make such a claim without feeling the need to support it any further. Furthermore, because he claimed there is no common human essence through which to defend human rights, Rorty called for spreading the rights culture through the telling of sentimental stories rather than through appeals to rationality or morality (Rorty, 1993: 134). Yet despite his 'jettisoning of epistemological foundationalism' (Dunne & Wheeler, 1999: 9) Rorty still maintained that human rights can be defended.

The most obvious connection between Rorty's foundations and his human rights theory is Rorty's rejection of the 'truth as correspondence' theory. This claim has several dimensions which provide important foundations for Rorty's view of human rights. The first of which is that, for Rorty, there is no metaphysical, or other foundation or justification for any of the phenomena we humans experience and understand. That is, the meanings, values and social phenomena that humans create and experience do not have any origin in, or correlation to external factors. There is nothing outside of our own experience, nothing transcendental, universal or non-human – including what Rorty (1993: 114) calls 'a purportedly ahistorical human nature' – that gives either meaning or purpose to the world. For Rorty, our nature as humans is not derived from an external, essential human nature; the reality of human culture and human interactions does not correspond or mirror anything beyond itself. Rorty believed that philosophical attempts to access any such nature (or indeed any knowledge of 'reality') has yielded either no such knowledge or at least nothing relevant 'to our moral choices' (Rorty, 1993: 115).

A second dimension is that the anti-foundationalist approach depicted above forms a solid and clear foundation or basis for Rorty's views on human rights.

This link is evident in a number of different respects. For example, Rorty's assertion that nothing has a definitive essence or non-relative basis is transferred onto his approach to human rights. When Rorty (1993: 115-116) rejected foundations for human rights and human nature as both useless and irrelevant, he was invoking his broader repudiation of the 'truth as correspondence' theory.[2] Language (for example, along with any other object) according to Rorty (1999: 50) 'cannot fail to represent accurately, for it never represents at all'. Furthermore, the effect of anti-foundationalism on Rorty's theory of human rights is that he denied the existence of a human nature to provide a moral justification of those rights. In other words, human rights are neither the expression nor the protection of an essential humanity which we all share; rather, human rights are seen as merely a human invention which has improved the lot of many but which requires no further justification.

The above point overlaps with an additional foundation, namely Rorty's notion of 'panrelationalism'. This term refers to the 'antiessentialist' idea that there is no knowable intrinsic nature of things. We can only ever know what a given object (or theory, or idea) is in relation to other objects (or theories or ideas). Rorty argued this point by showing that numbers only have meaning in relation to other numbers and do not, in themselves, possess an intrinsic character distinguishable from that of other numbers because 'there is nothing to be known about ['things'] except an initially large, and forever expandable, web of relations to other objects' (Rorty, 1999: 53-54). Thus the concepts underpinning panrelationalism bare obvious similarities with the Rortian view of human rights.

Such claims lead into a third foundation evident in Rorty's theory, which is related to *utility*. Rorty made it clear that he did not believe that theories about the world can ever represent reality (1999: 50). He argued that such theories (such as those derived from particle physics) should not be evaluated in terms of their correspondence with reality, but in terms of their ability to cope with

[2] Rorty invoked this perspective by implying that neither human nature nor the protection of human rights are said to correspond with an external reality.

and manipulate the world. In other words, *utility* becomes the sole criterion by which to measure a view about the world. Technological developments, for example, which make life easier (such as medical treatments, lifestyle products like home entertainment systems) are not more in touch with reality than those that do not, but are useful tools to cope with the world:

> Descriptions of objects in terms of elementary particles are useful in many ways – as many ways as particle physics can contribute to either technological advances or imaginative, astrophysical, redescriptions of the universe as a whole. But that sort of utility is their *only* virtue (Rorty, 1999: 59).

They are not – and cannot be – compared with other, less successful (or older) technologies on the grounds that they are closer to the essential workings of the universe, or a more true expression of humanity, but rather on their ability to improve the lives of people.

The preceding comments on pan-relationalism (or relativism) and utility provide additional input in shaping Rorty's work on human rights. Such foundational claims go a long way to explain why Rorty viewed human rights as not inherently indicative of a perceived human nature or as being aligned with the ideal workings of humankind. Rather, human rights are one perspective among many with no inherent justification for their superiority other than their supposed effectiveness. Yet, Rorty's emphasis on the apparent utility of rights in fact functions as means of privileging human rights over other ways of treating people. As Rorty (1993: 116) asserted, the 'human rights culture … is morally superior, but I do not think this superiority counts in favour of the existence of a universal human nature'.

Despite the apparent and appealing logic of Rorty's general argument, its logic does not hold when Rorty applied it to human rights. As I have stated, Rorty used a relativistic approach to explain that objects, points of view, conceptions (and so forth) have no intrinsic value, and are not inherently superior to any other. Yet, Rorty proclaims the superiority of human rights on the basis of utility, that rights are the most effective method of improving the

lives of people around the world. In short, human rights are superior because they 'work'.

However, despite Rorty's claims to utility having a measure of appeal on paper, he did not provide any clear justification for why human rights are preferred, or for that matter why any of the other useful tools of Western civilisation are preferred. But is Rorty's foundational assumption of utility and assessments of which tools are superior based on an ethnocentric and arrogant vision of the status quo? Human rights are presumed to work because they are viewed as superior to the alternatives. However, this view is blind to the power and political contestation which has led to human rights assuming the dominant role in world politics which they possess today. This perspective thus is also limited to the dominant voices on human rights (namely those which are derived from Western liberal democracy) and marginalises alternative (non-Western) visions of rights and human worth. Rorty's position leaves several unanswered questions: what is meant by utility? Useful for whom? What happens to tools which are deemed to be less useful? Who determines what is useful? Useful for what or whose interests?

In addition to the above, we can detect the role of foundations that are less obvious and immediate than those provided by anti-foundationalism and its related values. There are latent assumptions regarding how humans should treat one another that seep into Rorty's work. These are embedded in his claims to the superiority of human rights and imparted in his desire to spread them. Despite his denial of the metaphysical origins of human rights, Rorty's endorsement of difference and tolerance, and belief in Western democracy and justice, suggests that he was committed to a notion of what a good human life should be. When Rorty (1991: 206) argued in favour of 'opening the doors of procedural justice to people on whom they had been closed' he implicitly claimed that all humans *ought* to have access to this kind of justice, that is desirable and necessary for human life.

Rorty's sentimental stories similarly make appeals to a notion of human nature that places value on human life and the quality of life, including inter-personal and family relationships. Rorty's (1993: 133) explanation that torture or abuse should cease 'because her mother would grieve for her' displays a clear belief that grief is undesirable, and that living a happy life is preferable.

Here we can detect the less overt, less visible, latent foundations that underpinned and shaped Rorty's endorsement of human rights. His anti-foundationalism and rejection of metaphysics notwithstanding, Rorty was arguably committed to a mode of living (viz American-style Western liberal democracy) that is derived from implicit metaphysical understandings regarding what life should be, what humans ought to be allowed to do and choose, and that they should be free from persecution for living in these ways. The foundations that constitute this aspect of Rorty's work are much less overt than the more obvious and tangible theoretical assertions (such as anti-foundationalism and pan-relationism) that support his stance on human rights. These tacit foundations are obscured by the more readily apparent ones; the metaphysical content of Rorty's work is blanketed by the edifice of anti-foundationalist rhetoric. It is *these* foundations that are in impulse behind his human rights theory, while his pragmatist logic constitute his justification.

International law: Coomaraswamy

Chapter 1 on Rorty concluded by arguing that his approach is deficient as he provided little justification or grounding for human rights. Despite the view that Rorty's 'anti-foundationalist' perspective relies upon foundations (however implicit and unarticulated they may be), the foundations in his work are arguably somewhat vague and ill-defined by Rorty himself. His justification on the basis of utility alone does little to strengthen the case for human rights. Therefore, I sought an approach to human rights which provides a more concrete and tangible basis. Coomaraswamy's work is suitable in this regard as it is founded upon a basis of international law, and can be seen to implicitly respond to some of the flaws in the Rortian framework.

I argued in chapter 2 that Coomaraswamy's work on human rights is underpinned by her support of international human rights law as the benchmark by which to assess human behaviour. For Coomaraswamy, internationally endorsed law, as reflected in the UN Universal Declaration (among others), provides a basis by which to assess and criticise human rights violations. Coomaraswamy simultaneously claims to support cultural pluralism and universal human rights in a way which may appear paradoxical. However, in my view, she claims that universal human rights are superior in important respects. While anthropologists in favour of 'culture' may defend such practices as FGM as integral to the creation and maintenance of identity, Coomaraswamy is a fervent critic of such an argument. For her (1999b: 83), such traditional practices are 'classic abuse situations' that deny intrinsic human rights. As I argued previously in this thesis, Coomaraswamy stresses the need for 'bottom-line standards' which 'trump' traditional practices when they are inconsistent with human rights.

At this point in the argument the contemporary human rights discourse is a helpful tool in Coomaraswamy's rhetorical armoury. With its talk of universality and equal rights, human rights are invoked by Coomaraswamy to defend and justify over-riding, cross-cultural, and, yes, universal principles. These principles are, for Coomaraswamy, legitimate and axiomatic standards which possess virtue over and above any local custom which may result in harm, torture or death.

It was my argument in the chapter on Coomaraswamy that she falls short of supplying sufficient theorisation or clear and explicit foundational support to her claims. Her regular justification of rights in terms of the relevant corresponding international legal instrument does little to support human rights to those who might question the legitimacy of international law. A jurisprudence framework of rights is, in my view, an insufficient basis for human rights as it does not adequately explore the crucial conceptions of the human condition and the origins of rights. Put differently, Coomaraswamy's work describes human rights as international laws (including UN treaties) but does not attempt to defend human rights, or, crucially, does not say why

human rights are necessary. Rather, the reasons for human rights are not articulated but *assumed*. Coomaraswamy claims that human rights are necessary to avert the mistreatment of women and others, but she goes no further in explaining why this should be so other than by reference to the law (and an occasional, vague, mention of a 'common humanity).

Furthermore, Coomaraswamy's emphasis on law ignores the political processes and power plays which are in the background when nations sign up to human rights laws. Governments may wish to *appear*, in the eyes of the international community, to be adherents of human rights, and so give apparent assent to international law while in reality human rights may be systematically abused. There is also the argument that different cultures may interpret laws in different ways such that what may appear to be agreement on certain norms is not always the case. These points undermine Coomaraswamy's claim to international consensus on human rights; while there is apparent uniformity of opinion throughout nations who have signed international legal documents, close analysis shows that such consensus is limited or, in some instances, simply does not exist.

So which dimensions in Coomaraswamy's work provide justification for human rights? The answer to this question may stem from the assumption that law (both international and domestic) is a fair and moral reflection of human experience. That is, laws are assumed to codify normative stances regarding acceptable behaviour, interaction between people, and, crucially, the value implicitly placed on human life. I argued in chapter 4 that Bryan Turner's notion of human frailty was only a useful method of asserting human rights inasmuch as it expressed tacit assumptions about the value of individual humans. In my view, international law is a useful system of protecting and promoting, but it works as a justification of human rights only to the extent that it reflects *a priori* political and anthropological assumptions. It is this philosophical anthropology which is at the heart of the matter, rather than the laws themselves. Appeals to human rights on the basis of law are essentially hollow so long as they refer only to such legal instrumentalities. What gives the law moral force is the tacitly invoked beliefs about what it is to

be human and what value can and should be placed on human life. Similarly, laws may be conceived as a means to an end. But what is the end that human rights law are attempting to achieve? What is the rationale for human rights law? Coomaraswamy has, I have argued, failed to either address these concerns or to make the explicit connection between law and values on which they are founded. Those values are implicit in her work, but they are taken-for-granted and assumed (partly on the basis that human rights resonate throughout all the cultures of the world). So, while human rights law is necessary, it is not a sufficient justification for why human rights should exist. Therefore, Coomaraswamy's legal foundations are often tethered to other unacknowledged and unexamined assumptions regarding human rights.

Donnelly: international law

The work of Donnelly contains similar arguments and overlapping foundations to those discussed above. These are primarily based on international legal instruments (most notably the UN Universal Declaration of Human Rights) and the apparent consensus on human rights among most nation states. Although Donnelly and Coomaraswamy both rely upon similar foundations and import similar assumptions into their human rights framework there are some significant points of difference between them (for example, both have opposing views on the extent to which Western-style rights are consistent with traditional, non-Western values). While Coomaraswamy's approach was shown to be deficient in its over-reliance on international law as a foundation of human rights, Donnelly's work provides moves beyond legal justifications of human rights as and engages more explicitly with notions of human morality.

I argued in chapter 3 that Donnelly grounds his position on undisclosed values and political preferences despite his stated rationale for the universality of human rights. It has been my contention in this thesis that Donnelly bases his advocacy of universal rights partly on axiomatic claims – that we have human rights simply by virtue of being human – and in the apparent consensus of law. Donnelly repeatedly asserts the view that humans have their rights set out in the Universal Declaration. To reiterate his position, Donnelly deploys notions of ideal human dignity and morality which he presents as universal

and neutral. While he acknowledges that non-Western cultures have developed concepts which are similar in scope and run parallel to contemporary notions of human rights, Donnelly ultimately rejects them. The basis for this view is that no other moral framework gives rise to and protects individual autonomy and dignity to the extent evident in human rights.

Added to these stated foundations for his position, Donnelly argues that the threats posed to people from capitalism and global markets are now universal, despite these threats originally emanating from Western Europe. Such origins for him are not indicative of a uniquely Western phenomenon, but rather a case of who 'got there first'. Donnelly implicitly argues that such phenomena are universal rather than particular – arguably because of his foundational belief in the superiority of liberal capitalism. This position thus gives rise to Donnelly's apparently paradoxical claim that rights are (oxymoronically) *relatively universal* in the sense that universality is attained solely at the conceptual level. That is, the details of human rights and the laws to implement and protect them remain the province of individual nations and cultures to decide based upon their own values and social contexts. However, the over-riding point to observe here is that these details must conform to the broad concepts which, Donnelly freely admits, originate from Western political traditions.

That Donnelly justifies the universality of human rights on the fact that what was originally a European project is now a global phenomenon, arguably, reveals his political preferences and foundations. As I argued above, there is at the heart of Donnelly's work a fundamental and unacknowledged commitment to the liberal values of individuality and dignity. There is an uncritical jump in his justification of human rights when he argues that rights best enhance human dignity.

However, he does not posit why it is important to preserve and foster human dignity. Rather it is assumed, but has a profound influence on the shape of his work. Without any explicit rationale for human rights Donnelly's work thus begs the questions: why should we have human rights? Why advocate them?

Similarly, Donnelly presumes that liberal notions of the individual are the preferred manner to view human relations. Although such individuality is evident in the human rights regime which Donnelly deems universal, he ignores the specificity of its origins. And what is more, he confuses universality with dominance when he argues that human rights (and their attendant values of individuality, autonomy and dignity) are universal due to their prevalence. Donnelly's theory does not explore why these aspects of human relations should be considered important and superior, and as such they are imported into his framework without clear rationale or acknowledgement. As such, these criticisms call into question the efficacy of Donnelly's argument.

These criticisms have been taken up by other human rights scholars who argue that Donnelly neglects to encompass in his work points that are arguably crucial for human rights theory. Langlois (2003, 2004) and Freeman (1994), for example, highlight that Donnelly avoids exploring deeper philosophical questions such as 'What is it to be human?' (Langlois, 2003: 514) and 'eschews the question of philosophical anthropology and ontology' (Langlois, 2004: 256). Rather, Donnelly opts for a more descriptive framework which incorporates a realist outlook. My argument (along with critics such as Freeman and Donnelly) is that Donnelly's human rights theory is found wanting because its foundations are not explicit. Too much is taken-for-granted; too little explored; its foundations are limited by tacit assumptions and pre-existing preferences. Yet the foundations are there – albeit latent – and they play a substantial role in shaping his universalist theory.

Turner: sociology of the body and human frailty

The human rights framework developed by Bryan Turner represents a distinct break from the theorists discussed up until his inclusion in this thesis. As discussed above Rorty, Coomaraswamy and Donnelly employ a range of implicit values and preferences and do not reveal the foundations on which their positions rest. Turner's approach is markedly different from those discussed in chapters 1-3 in that he provides a rationale for human rights that is at once clearer and more explicit, and based upon largely different

justifications. While Coomaraswamy and Donnelly attempt to argue in favour of the universality of rights in terms of international law, consensus and prevalent practice, Turner's approach is based on a sociology of the body. He attempts to provide universal grounds and justification for human rights without recourse to metaphysical or religious explanations. By the same token, he wishes to avoid a biological reductionist model whereby human behaviour is explained solely in terms of physiology and biology (Turner, 1996: 60). Although these two dimensions are typical of various sociological models, Turner posits an innovative approach which encompasses the human body as both a social and physical unit.

Turner's approach asserts that the universal feature of human existence is our physical frailty – that is, our body's tendency to illness, age, decay and death. Further, while nation states attempt to ameliorate the effects of this frailty, modernity itself can have a negative impact on the body. The hazards of pollution, accidents from modern machinery and other dimensions make human life socially precarious. This enhances the inherent precarious nature of the physical frailty which defines human ontology.

The influence of the foundations on which Turner's view of human rights rests is readily apparent. A large proportion of his work (for example, 1996, 1997b, 2000) is dedicated to exploring a sociology of the body, including the role of the society on how the body is constructed and perceived, as well as the way in which social forces interact with 'nature'. Human bodies are *embodied* – that is inherently physical and social at the same time. There is an interdependent relationship between the physical and social dimensions of the body.

Turner's sociology of the body bears a direct influence on his human rights work, although the connection is not always made explicit by Turner himself. My point is that, in a fashion similar to the way in which Rorty's human rights framework was part of a broader outlook of the world, so too Turner's position is an extension of his sociology of the body. Turner employs the same presuppositions, research questions and theories to investigate human rights

as he does the rest of his work. For example, Turner's human rights position relies upon the same notions of the human body as both physical (and frail) and social(lly precarious). Similarly, his view that humans are socially positioned and enter into an already established social world with existing values is transposed onto his human rights approach. The sociality of human relations (including the corporeal body) implies that humans can be sympathetic towards others and recognise the plight of others in themselves. Human rights can thus be argued as a system of minimising the effects of frailty and precariousness; a way of enhancing physical existence in a social world. By founding his conception of human rights on human frailty, social precariousness and the ontological condition of the human body, Turner seeks to supply a universal and uncontentious grounding for human rights that does not rely on more unstable ground such as international law and consensus.

However, as is the case with the theories addressed above, there are further, latent foundations in Turner's human frailty approach to rights that are not evident from a *prima facia* reading of his work. Yet, these foundations are present and crucial in shaping Turner's overall position. As I argued in chapter 4, there is a tenuous or missing link between Turner's justification of human rights in terms of human frailty and human rights themselves. While his approach is appealing in its treatment of the human body as socially embedded, there is little to explain why it is preferable to restrict the effects of frailty. He argues that humans are prone to age, illness and death (frail) and that these threats are exacerbated by the stresses and strains of contemporary society (socially precarious). Turner then advocates human rights as a method to ameliorate these threats to human life and to the quality of that life. What is not made apparent is the implicit, tacit *normative stance* towards the value placed on human life that tells us *why* we should enhance life and minimise frailty in the first place (Langlois, 2001: 96-97; 2004: 259). The imperative that human needs ought to be met 'cannot be derived form the mere fact that unfed humans will die' (Langlois, 2001: 97).

Once again we see unarticulated values (foundations) which play a substantial role in influencing a theory on human rights. In Turner's case, it is the assumption that humans possess intrinsic value, that frailty should be minimised, or at least attenuated, and that such values ought to be protected through human rights. These implicit assumptions are arguably metaphysical, teleological and axiological in character and represent a foundation which assert that 'the human is purposed to live and develop his or her potential, and that ensuring this happens is good' (Langlois, 2001: 97). Again these assumptions centre on metaphysical concerns as to what it means to be human and reasons for human rights. Despite being such a fundamental issue, this philosophical anthropology is largely ignored by Turner, as he has purposely sought a foundation for human rights which is devoid of metaphysical explanations. Rather than achieving this aim, Turner's theory pivots upon a fundamental and basic concern for the needs and well-being of humans because the intrinsic value they are assumed to have. In this sense, the theory of human frailty is less important than the implicit and unexamined assumptions about why it is good for humans to have human rights. Therefore these assumptions form the fundamental foundation of Turner's theory of rights, a foundation which lies deeper and has a more profound effect than his theory of human frailty. However, Turner is unwilling to openly explore these issues. He argues for human rights based on a perceived universal ontology, but baulks at the prospect of going further into the metaphysical assumptions that inform his position. Despite this, these assumptions are present, but latent and their influence unrecognised.

Nussbaum: capabilities, Aristotelian philosophy and foundations

A similar claim can be made regarding Martha Nussbaum's work. She, too, provides a historically contingent universal framework for human rights that is founded on the needs of both the physical and the social body. Her list of capabilities not only includes the necessities for a human to survive (its biological and physical needs), but also those elements which she perceives as necessary for a *good* life. In saying so, Nussbaum invokes social needs as well as material ones. However, as she insists, the social needs she specifies

are sufficiently general, 'allowing for more concrete specification by nations in light of their own history' (Nussbaum, 2006b: 1315).

It is an important aspect in my argument that Nussbaum not only employs these purportedly universal social and physical requirements for human life, but adopts more probing and developed theorisation of the human condition and what it means to be human than Turner. Thus her rationale for human rights is more persuasive. A central feature of this approach is that it 'focuses on the question, "What are people actually able to do and to be?'" The answer to that question is the set of the person's *capabilities*' (Nussbaum, 2005: 1315; see also 1993: S55-S57; 1992: 217-218). By investigating social life and human rights in these terms, Nussbaum's theory relies upon foundations which attempt to determine the nature of human existence and the human condition. Such foundations are a way of providing a universal basis for human rights which are neither rooted in the metaphysical, religion, nor are a particular conception of what a good life should be. Nussbaum (2006b: 1315) addresses this last point by providing only general, vague and humble sketches of human capacity, allowing for diversity of implementation. Despite this goal, Nussbaum's question regarding what people are able to do still leaves unresolved the issues of *why* people should be allowed to reach their full potential. The answer to this question may be axiomatic in Nussbaum's view; however it is far from it.

To a large degree, Nussbaum derives her foundations from neo-Aristotelian philosophy, in particular what she (1992) has termed 'Aristotelian essentialism'. This term refers to a vision of human nature which is said to be intrinsic. For Nussbaum, the central dimensions of this essentialism are, firstly, inherent in human dignity. The implication is that the dignity of each and every person is a product of being human and not awarded by others, or based on merit. As I argued in chapter 5, Nussbaum (2006a: 160) asserts that humans 'do not have to win the respect of others by being productive. We have a claim to the support in the dignity of our human need itself'. By basing dignity in human existence, it is then possible for Nussbaum to advocate: a) that all people should lead a dignified life; b) achieving and

maintaining this dignity is paramount; c) the basis for policies which promote dignity are universal; d) dignity is not metaphysical in nature.

The second strand of Nussbaum's Aristotelian essentialism germane to this discussion is the concept that humans are inherently political in nature. This assertion means that humans inherently want to interact with other humans, find fulfilment in social and political interaction, and develop notions of justice (Nussbaum, 2006a: 86). Aristotelian philosophy avers that human are naturally pre-disposed to the concept and institutions of justice (including human rights); giving expression to justice is inherently human. The implication is that to fail to treat others with dignity and justice denies the humanity of both those who withhold justice, and those for whom justice is withheld (as dignity is also inherently human). Again, these foundations provide the basis and justification for Nussbaum's view of human rights and capabilities.

These claims, which are central to Nussbaum's view of human rights and capabilities framework, depend upon this theorised sense of human essence. Despite claims to be avoiding metaphysical explanation, metaphysical precepts are evident in Nussbaum's work here. Nussbaum argues that there is something intrinsic to being human (dignity) which is not in itself physical. This dignity (its justification and its attendant values) exist prior to, or above the level of the physical and thus arguably is metaphysical. As noted above, Nussbaum is addressing the question, 'What are people actually able to do and to be?' But in addition to this, her work not only fails to pose the more fundamental question, '*Why* should people be able to do such things?', the answer is assumed and taken-for-granted. Both this question and its answer are inherently metaphysical in that they ruminate on metaphysically-derived beliefs regarding the meaning, purpose and content of human life. Furthermore, Nussbaum's *particular* answer is arguably skewed in favour of Western conceptions of the good life as they place emphasis on individualism, autonomy and personal freedom. This is despite her claims that the capabilities approach to human rights can appeal to a variety of metaphysical traditions because it both appeals to allegedly universal human traits and

claims to privilege no specific metaphysical outlook. Instead I argue that the capabilities approach relies on foundations that are, in part, inherently metaphysical, which is in turn derived from a specifically liberal philosophical anthropology.

Here the linking of foundations and theories of human rights will pause for the time being. The works of Taylor and Langlois will be addressed in the next chapter because they, in my view, represent theories which possess greater awareness of pre-existing values and for the need to encompass crucial metaphysical issues. However, the discussion now turns to the role and influence of foundations in a more general sense.

The critical role of foundations

Up to this point in this chapter, I have explored the various foundations on which different theories of human rights depend. My over-riding argument has been that all of the approaches presented in this thesis are build upon theoretical and philosophical foundations which are variously unacknowledged or tacit or adjured. These foundations are present even if a theorist denies their existence (Rorty), does not make them clear (such as Coomaraswamy), or claims that foundations are not necessary (Donnelly). Foundations are present both in the form of the assumptions that filter through to the theory (Donnelly's belief in Western values), and in the broader explicit framework developed (such as Turner's sociology of the body). However, my argument here is not only that foundations are present (either implicitly or explicitly), but that they have a significant influence on the shape and character of a scholar's theory of human rights.

In some cases (notably Turner and Nussbaum, but also Rorty), as I have indicated throughout the thesis, a theorist's human rights perspective is a clear and explicit extension of a broader social theory and method of comprehending the world. Rorty's allegedly anti-essentialist view of human rights is intrinsically bound up with his pan-relational world view, a position that denies the intrinsic meaning of anything in favour of relative merit and utility. Similarly, Turner's reliance on human frailty and precariousness flows

from his sociological theory of the body. Both his human rights stance and his broader sociology are similarly pre-occupied with the human body as both a corporeal and social body; they both attempt to find a universal human character based on these aspects while trying to avoid a metaphysical foundation. Nussbaum's approach takes a similar tack by linking Aristotelian philosophy and capabilities theory to human rights, the attempt to deviate from metaphysical explanations as a predominant issue.

The second category of theories analysed (as represented by Coomaraswamy and Donnelly) in this thesis arguably suffer because their foundations are latent and not readily evident or revealed by their authors. The effect is that certain unexpected or unintentional values and assumptions seep into the theory. A case in point is the work of Jack Donnelly. As I argued in chapter 3, an important criticism of his work is that he (2004: 18-21) actively avoids theorising about the foundations of rights other than their current presence in international politics. For Donnelly, human rights are 'things' that exist. Regardless of their particular (Western) origins, Donnelly claims, human rights are universal and desirable because they are the most effective method of attaining human dignity. The human dignity espoused by Donnelly, although portrayed as universal, arguably privileges certain Western values such as individualism and personal autonomy. My argument here is that, because Donnelly avoids theorising about the nature and source of rights, his own values and assumptions (in case this American) are filtered into his human rights framework. It is plausible that if Donnelly had investigated these central questions more directly and explicitly, there is a greater chance that his account of human rights would be less distorted and more inclusive, arguably closer to his aim of *universal* human rights.

A similar argument can be levelled against Rorty. Briefly, Rorty (1993: 114, 115) asserted:

> that there is probably no knowledge of the sort Plato envisaged [of an essential human nature]. Since no useful work seems to be done on insisting on a purportedly ahistorical human nature, there

> is probably no such nature, or at least nothing in that nature that is relevant to our moral choices.

Therefore his solution to spreading human rights could not be to appeal to a common humanity, but to tell sentimental stories in the hope of persuading violators to cease their ways. By attempting to manipulate sentiment, it is possible to manipulate it to achieve less edifying ends than human rights. If there is no sense of humanity to be protected and preserved, then sentimental stories may be used to violate human rights as much as enhance them. Similarly, if there is no clearly expressed universal basis for human rights (including a perceived shared humanity) then there are no standards by which to enforce and implement rights. Yet, simultaneously it seems, Rorty implies that there are criteria for human rights, standards which, when unpacked, reveal themselves to be notably Western and liberal in character. Again, if Rorty had more clearly explored his own assumptions (namely regarding his belief in the superiority of Western-style rights), then his theory of rights would be more inclusive and defensible. As it stands, his work is often considered as arrogantly ethnocentric (Kohen, 2007: 140).

The above criticisms foreshadow additional analysis to be made in the following chapter. However, it is worth greater elaboration here. Langlois (2004: 256-257; 2003: 512-513) argues that Donnelly's work is philosophically slim and avoids engagement 'with the big questions of philosophical anthropology about what it means to be human and, therefore, of what is really signified by "human" in the term human rights'. Likewise I believe that Coomaraswamy and Rorty are also prone to the same criticism. The remaining theorists (Taylor and Langlois), however, do, to varying extents, address crucial questions that are left unanswered by the previously discussed scholars.

In addition, Langlois (2005) raises further criticisms which are applicable to most of the theorists discussed in this thesis. One of the dimensions which all have in common is their desire to avoid a universal metaphysical basis for human rights. They all recognise that cultural and religious diversity negates

any attempt to provide an over-riding theory of rights based on a metaphysical explanation. However, Langlois (2005) argues that metaphysical issues are part and parcel of human rights theory. He (2005: 15) writes:

> The widely accepted idea of human rights appears to be an ideal candidate for a morality without metaphysics, avoiding as it does necessary references to God or other metaphysical assertions (God was deliberately refused a place in the United Nations Universal Declaration on Human Rights). The desire to stay away from ontological and other metaphysical issues sits very comfortably in this intellectual milieu. My argument however, is that these issues are not so easy to avoid, and will always be implicit if not explicit.

These tacit metaphysical assumptions are supported by ontological assumptions about human rights. Ontological beliefs and philosophical anthropology, are intrinsic aspects of human rights no matter how much theorists and activists may like to wish them away (Langlois, 2005a: 8). Similarly, on a more general level, Martin Hollis (in Plant, 1991: 23) maintains that:

> All political and social theorists, I venture to claim, depend on some model of man [*sic*] in explaining what moves people and accounts for institutions. Such models are sometimes hidden but never absent.

Therefore it is necessary for human rights theory to include and explore these metaphysical and ontological assumptions, and to address the big issues of philosophical anthropology which enquire into central aspects of the human condition. The next chapter will provide further evaluation of the theories and theorists included in this thesis by, among other things, analysing the extent to which the key issues identified by Langlois are theorised and explored.

Conclusion

This chapter has addressed the link between foundations and theories of human rights based upon the work of four frameworks of rights. My argument has been two-fold. Firstly, I argued that foundations perform a significant role in determining the shape of a given theory. Although this claim is not particularly controversial for most, it is a rejoinder to post-modern and

pragmatist thinkers who deny the relevance and existence of foundations. The second dimension to my argument has been that these foundations come in two main varieties. The most obvious and manifest foundations are those which derive from the broader perspective of the theory concerned. For example, the pragmatist position epitomised by Richard Rorty derives its view of human rights from pragmatist philosophy which was justified, at least in part, by his rebuttal or correspondence theories of truth. When Rorty denied that human rights reflect any essential human nature, his arguments were shaped by his rejection of the notion that humans can ever really have unmediated access to the universe they study. Philosophy is not a mirror of nature, and any meaning we attribute to parts of the universe (including human rights) reflects our own needs and values and not any intrinsic meaning separate from human perception. Thus human rights are seen by pragmatists as a useful *tool* but not a manifestation of human nature.

The second type of foundations that I analysed in this chapter are those which are latent and not so readily apparent. These, I have argued, consist of values, assumptions and political preferences and are filtered in without acknowledgment or awareness. These foundations are more fundamental than those discussed in the previous paragraph because they include a crucial commitment to human rights and to the value of the human person. In essence they amount to what Langlois (2004) terms philosophical anthropology in that they express ideas about what it means to be human, why humans have value and why they should have certain inalienable rights. These foundations, although taken-for-granted and often intended to be actively avoided, take precedence over the specific justification and mechanisms for enhancing rights espoused by a given theorists.

To explain further, Turner's human frailty model, for example, does not explicitly argue *why* human rights ought to be used to enhance human life and limit frailty. The underpinning (metaphysical, axiological, teleological) assumption is that humans *ought* to be allowed to flourish, *ought* to have their needs met, *ought* to be free and autonomous. Without these implied values,

justifications of rights based on international law, human need or human capability (among others) have a greatly lessened persuasive power.

Furthermore, I argued that because these values are such a fundamental, basic and elemental building block (foundation) of human rights theories they need to be brought into the open and discussed critically. Despite desiring to avoid metaphysical issues and philosophical anthropology in an effort to make human rights universal, theorists such as Donnelly and Nussbaum essentially push these concerns from view and allow them to have a hidden influence. The following chapter will address the work of Taylor and Langlois who differ from the theorists discussed here in that they overtly consider the metaphysical issues when developing a human rights theory.

CHAPTER 9
TAYLOR, LANGLOIS, ONTOLOGY AND THE METAPHYSICAL: TOWARDS A MORE RESILIENT THEORY OF HUMAN RIGHTS

Introduction

The previous chapter provided a critique of the first five theoretical positions analysed in this thesis (namely those represented by Rorty, Coomaraswamy, Donnelly, Turner and Nussbaum). The argument was that although these perspectives attempt to provide something that resembles a comprehensive theory of human rights, each position relies upon assumptions and foundations which are often derived from a broader philosophical stance. What is more, in many cases, these assumptions, prior value judgements, political preferences and commitments can include implicit and unacknowledged values which provide substantial underpinning of the various views of human rights. As I emphasised in chapter 8, these values often entail an implicit philosophical anthropology.[1]

This unacknowledged philosophical anthropology provides the missing link, the essential normative stance, which links justifications and rationales for human rights with rights themselves. For example, Coomaraswamy's argument in favour of international and domestic human rights legislation is essentially informed by an underlying value set that attributes inherent value and significance to human life. Similarly, the view that humans are frail (as expressed by Turner) does not in itself explain *why* frailty should be attenuated or why frailty justifies human rights. In each instance, there is no explicit rationale that links either human rights law or frailty with human rights. The connection is presupposed, and highlights the implicit normative stance which values human life.

The next step in my argument is to explore more fully the argument that such philosophical anthropologies derive – whether a theorist wishes it or not – from underlying views, some of which may be metaphysical in origin. I

[1] Or, as Langlois (2001) states, ontological, teleological and axiological views regarding what it means to be human.

identified in the Introduction to this thesis that all claims to human rights implicitly invoke questions of the ontology of rights – that is, what rights are, from what source they originate, and why humans ought to have them (see Langlois, 2005b). Ontological issues in turn open the discussion for metaphysical concerns, as the reasoning for what rights are, and why humans should have them, is intrinsically bound up with issues regarding the perceived 'nature' of human beings.[2] They are also inherently ontological in character as they entail views on what human beings are. Regardless of the specific source, such values may be deemed metaphysical as they attribute some value or moral status to human beings (such as human dignity and the right to life) which is separate from their existence as physical bodies.

However, many human rights theorists have attempted to avoid an explicitly metaphysical rationale for rights. They have done this for two reasons: firstly some, such as Rorty, argue that metaphysical issues are simply not relevant and in any case probably do not exist. Secondly, another group of theorists – such as Nussbaum and Turner – believe that using metaphysics to justify and rationalise human rights runs the risk of privileging one metaphysical conception over another, thus undermining their attempt at a *universal* view of human rights. Hence we see theorists such as Turner (1993: 491) and Nussbaum (1992: 223) providing a basis for rights (in corporeal frailty and basic shared needs for functioning, respectively) that are purportedly removed from culturally and metaphysically specific contexts. Nussbaum's (1992: 223) claim that the capabilities approach 'does not derive from any extrahistorical metaphysical conception, or rely on any form of metaphysical realism' is one example of this.[3]

While chapter 8 focussed on the first five theoretical positions examined in this thesis, this chapter deals with the work of Charles Taylor and Anthony Langlois. The reason for the distinction is that both Taylor and Langlois engage with *the need* to explicitly address the metaphysical in their respective theories of human rights. The purpose of this chapter is firstly, to explore the

[2] By this I do not mean innate physiological characteristics, but the preferred and idealised form of human living that emanates from political, religious and other social traditions.
[3] See also Nussbaum (1995: 67-70; and 1992: 206-207).

ways in which Taylor's approach addresses some of the shortcomings in the first set of theorists.

Chapter 6 on Taylor developed the link between his approach to human rights and the philosophical foundations that shape it. The chapter argued that Taylor relied upon a framework which enables greater cross-cultural dialogue through a fusion of horizons and an 'interpretive' approach to comprehending and recognising diverse cultural forms. However, Taylor's analysis goes further than this to include dimensions of an 'authentic' 'self' which resides within individual agents. The idea of an authentic self is, Taylor argues, part of the social knowledge embedded in Western societies. On this account, social relations are portrayed as inter-subjective and this dimension permeates society more generally. By identifying such dimensions of contemporary society, Taylor is engaging what may be termed the metaphysical as a basis for his rationale of human rights. Furthermore, Taylor arguably deals with ontology in a manner distinct and more developed than the theorists discussed in chapter 8.

Taylor's great strength lies in his willingness to engage with ontological and metaphysical issues rather than to shy away from or ignore them as some theorists are want to do. His extensive work on these issues provides the basis and foundation for his unforced consensus on human rights, as I argued in chapter 6. However, the application of ontology and metaphysics to *human rights* is, arguably, *relatively* minimal and indirect compared with the bulk of Taylor's oeuvre. What is needed is theory which more directly makes this link and connects human rights with ontology and metaphysics in a more explicit fashion.

The second part of the chapter illustrates the contribution of Langlois and his direct emphasis on the need to provide space and place for diverse conceptions of human being in the human rights discourse. In so doing, I argue that Langlois – like Taylor, but perhaps more so – enhances our understanding of human rights as he is sensitive to the competing demands of cultural pluralism and universalism and that these concerns are built into his

approach. Lanlgois' approach is differently suited to the human rights enterprise than is Taylor's in that there is a more direct, explicit and sustained link between the constituent philosophical ingredients and human rights themselves. While Taylor provides a necessary and profoundly philosophical underpinning to human rights, Langlois builds on this by proposing a more concrete practical framework and by clearly making the case for the need to engage with metaphysical issues. Additionally, the chapter illustrates that Langlois' framework is essentially consistent with a weak ontological approach as devised by White (2005, 2000a, 2000b, 1997), with the implication that robust human rights theory ought to contain such an ontological outlook.

Taylor's foundations: understanding, recognition and the metaphysical

There are two main dimensions to Taylor's work that provide a significant contribution to building a human rights theory. The first is the framework he provides for cross-cultural dialogue. Unlike the other theorists in this thesis, Taylor provides a direct and thoughtful method of engaging with people from diverse cultures so that some common ground may be reached. As chapter 6 demonstrated, there are several elements to this approach. Firstly there is his claim that it is a precondition that we must respect the viewpoint of the 'other' person or culture, but that we cannot take these self-understandings at face value. His (Taylor 1985: 119-126) argument is that to understand another culture we should neither consider them 'wrong' nor 'misled' (as suggested by arrogant ethnocentric views) on the one hand, nor that their worldviews are incorrigible, on the other. They are not incorrigible, but neither are our preconceived notions of the different world we wish to understand. Both parties can learn from each other; the self-understandings of each altered as well as the understanding of the other. 'We' can learn from 'them', just as they from us.

This amounts to Gadamer's *fusion of horizons* whereby the cognitive framework of each party shifts and broadens to accommodate the other and perspectives are melded (in Taylor, 2002b: 287). The foundation for Taylor's perspective here is an approach that takes into account the relationship

between the ‘knower’ and the ‘known’. At core here is a deep respect and *recognition* for the cultural other which is essential for any cross-cultural dialogue. This recognition is *essential* for both genuine respect and effective inter-cultural understanding (see Appadurai, 2004: 62).

Taylor’s view that social agents are not incorrigible both buttresses his consensus approach and safeguards against the relativism that might be thought to be a result of undue emphasis on subjective metaphysical sources. In regards to the latter point, the *corrigibility* of cultural perspectives counter-balances recognition to some degree in that it emphasises that not all metaphysical views are inherently ‘correct’. There is thus scope to make judgements on these views without resort to ethnocentrism and a lack of respect and recognition for the culture from which they are derived. By acknowledging that cultural ‘others’ can hold flawed self-understandings while recognising that they can make valuable contributions, human rights consensus is strengthened. It places certain limits on what values, behaviour and self-understandings can be deemed acceptable, as those which are incompatible with human rights norms can be judged as inappropriate. In other words, incorrigibility reinforces consensus at it renders unacceptable the assertion that any action or value is justifiable as it is part of tradition or existing culture.

Taylor’s view of human rights is underpinned by the counter-balancing notions of recognition of subjectively derived, and inter-subjectively intelligible, identity and values, on the one hand, and incorrigibility, on the other. In a sense these divergent dimensions of Taylor’s philosophy represent a consolidation of the competing forces of cultural relativism – and its attendant views that all values, wordviews and the like are of equal intrinsic value – and universalism with its tendency towards ethnocentric claims about the purported superiority of certain (typically Western) values over others. The former is inherently bound up with engaging with, and taking seriously, the metaphysical and ontological assumptions and standpoint that constitute different cultural perspectives on human life and rights.

This approach to cross-cultural understanding underpins Taylor's notion of an 'unforced consensus' on human rights. Such a consensus view enables peoples of diverse cultural backgrounds to enjoy their own value systems, political structures and metaphysical schemes, and use them to justify broadly agreed behavioural norms. The variety of cultural forms can flourish and provide divergent reasoning for these norms. Additionally, this platform for consensus on human rights is enhanced by Taylor's politics of recognition and philosophy of the authentic self. My argument in chapter 6 was that these issues of respect of identity, dignity and self provide an essential foundation for not only effective cross-cultural understanding, but for Taylor's notion of consensus on human rights. Without these essential elements agreement human rights could not considered possible.

The second dimension to Taylor's approach that is germane (which builds upon that of other theorists) is his engagement with metaphysical issues. Taylor recognises that people's worldviews are informed by metaphysical assumptions about human being, what is good and moral, and how humans can know of themselves and each other (Taylor, 2002b, 1999, 1996, 1985). These issues give rise to values and beliefs that underpin human rights. There are clear foundations to Taylor's work here that are closely allied with the themes of this thesis. These are related to the role of metaphysical and other beliefs in forming views of justice and human rights. My point emanates from Taylor's (1999: 124; 1996: 15) assertion that an unforced consensus on human rights can account for divergent philosophical foundations and metaphysical traditions: 'Each would have its own way of justifying this from out of its profound background conception. We would agree on the norms while disagreeing on why they are the right norms…'.

Taylor's cognisance of the diversity of human rights perspectives and their underlying metaphysical origins has two crucial implications. Firstly, it reconciles the need to recognise diverse cultural values on the one hand, and universal standards, on the other. Secondly, and more importantly for this thesis, Taylor's words reinforce the role and importance of metaphysical beliefs and philosophical anthropology in shaping perspectives on human

rights and justice. This understanding of human rights provides a clearer path towards not only recognising the importance of these issues, but of including them in human rights theory.

In discussing issues of human dignity and the history of natural and positive rights, Taylor (1986: 53) asserts the need to recognise the moral basis of rights. To my mind, this moral basis constitutes a metaphysical basis as it transcends the merely physical and shapes values and beliefs. Taylor (1986: 53) avoids the implication that 'metaphysical' implies 'the existence of strange entities, namely rights that are supposed to exist in nature itself'. Yet his comments regarding moral sources resonate with my concern with philosophical anthropology and the metaphysical that in many respects form the starting point of this thesis:

> … the system of positive rights rests on a set of deep-rooted moral beliefs concerning the human person and the dignity and liberty that we must accord every person. Every moral system has a conception of what one might call human dignity, that is to say, of the quality which, in man [*sic*], compels us to treat him with respect or, in other words, a conception which defines what it is to have respect for human beings (Taylor, 1986: 53).

Thus Taylor recognises that implicit in every view of rights are assumptions about what it means to be human, how humans should treat each other and the value that humans possess. And these implicit values influence what rights are granted:

> It is our conception of the human person that makes us consider certain requirements to be more fundamental than others … Our enumeration [of rights] will therefore depend on our conception of the human person' (Taylor, 1986: 54-55).

Taylor's claim here has important implications for this thesis. For example, it illustrates the weakness in Nussbaum's capabilities approach which sets forth a list of capabilities based on perceived universal human needs. Yet Nussbaum does not clearly identify that her conception of the human person ensures that she considers certain human needs and requirements to be more fundamental than others (to paraphrase Taylor). Taylor therefore

highlights the normative assumptions in the capabilities approach that are not made explicit by Nussbaum.

Taylor's work on the self, religion and secularity provides more evidence of his focus on metaphysical issues. In his work on authenticity, Taylor (1991a: 28-29) outlines the trend towards 'inwardness', to defining oneself and formulating one's values internally rather than in strict conformity to outside pressures:

> There is a certain way of being human that is *my* way. I am called upon to live my life in this way, and not in imitation of anyone else's. But this gives a new importance to being true to myself. If I am not, I miss the point of my life, I miss what being human is for *me* … Not only should I not fit my life to the demands of external conformity; I can't even find the model to live by outside myself. I can only find it within.

This passage, and particularly the final two sentences, provide clues to Taylor's consideration of metaphysical concerns.

Taylor's perspective does more than merely highlight the need to recognise metaphysical standpoints that underpin the variety of views on human rights. As mentioned in chapter 6, Taylor is willing to venture into domains of theory that other scholars often regard as off-limits as the examples in included in this chapter demonstrate. For instance, he discusses at length the intricacies of the self, secularism, social imaginaries as well as theism and religion (see for example, Taylor, 2010, 2007, 2004, 2002c, 1992, 1991a).[4]

More to the point, however, is that Taylor's view relies upon the inter-subjective and 'inward' notions of the self, identity and human rights. This approach is distinguished from the others in this thesis in that there is an explicit recognition of culturally specific and metaphysical values which

[4] His own outlook is framed by a theism that is latent in his earlier works but overt in recent publications (Fraser, 2005, 2007, Abbey, 2006). This theistic framework provides the theoretical space for his notion of the authentic self, and a subjective foundation for rights (Parekh, 2008: 152). However, to say that Taylor is only concerned with metaphysical issues would be misleading; it is not just that he has written on other issues (for example, 1995) but also that he views the metaphysical as an essential dimension of social theory rather than one to be avoided.

constitute conceptions of human being and human rights. The concept of recognition, for example, strives to valorise subjectively derived meanings, values and identities and place them at the forefront of cross-cultural interaction because they can be understood inter-subjectively. This means that cultural identity and authenticity is taken by Taylor as germane to debates on how human rights can work and be agreed upon. Again, Taylor's notion of unforced consensus allows space for diverse and incommensurate world views to validate human rights norms.

Importantly, Taylor's work also draws attention to the importance of *ontology* when considering human rights and society more generally (Taylor, 2003a). Ontology in this sense revolves around human beings and the values accorded to human life by divergent social traditions. White (1997: 506) describes Taylor's approach to ontology as a 'border runner between strong and weak ontology' in that he explores the framework for human being and meaning without the claims to certain, self-evident or unqualified truth that White claims are characteristic of 'strong' ontological positions (see also White, 2005: 17). Additionally, White (2000a: 13) argues that Taylor's weak ontology is not incompatible with his theism (which, on the face of it at least, might lead to stronger ontological claims). In other words, Taylor is able to realise a theory of the social that is partial, contingent and historically situated, rather than claiming universality (see Taylor, 2010: 300).

However, despite White's compelling arguments, there is a sense in which Taylor's ontological framework in not quite up to the task of supporting a robust theory of human rights. The argument in this thesis has been that for human rights theory to advance, theorists need to openly engage with their ontological and anthropological assumptions that are derived from metaphysical beliefs. Although Taylor does address these aspects in some detail, he does so in a fashion slightly tangential to the priorities of human rights theory. As intimated in chapter 6, Taylor's work on human rights is limited relative to his broader philosophical excursions. There is no doubt that the ontological and theoretical issues that Taylor has explored in his career are powerful tools and foundational claims for enhancing our understanding of

human rights. The unforced consensus model of human rights and the politics of recognition are examples of Taylor's finely grained and sophisticated philosophy and approach to ontology. However, Taylor does not apply these tools to human rights in a fashion that provides a comprehensive proposal for human rights. Taylor's unforced consensus framework does indeed draw upon the many facets of his broader philosophy (as I demonstrated in chapter 6). However, the link between these vital building blocks and human rights themselves is less clear. In some respects there is a need for a more sustained application of the details and implications of ontology to human rights, and to these ends the work of Langlois provides some answers.

As argued in chapter 6, Taylor's analysis does incorporate the metaphysical and the ontological, demonstrating his belief that these dimensions are and essential part of social theory. However, he does not explicitly make claim that they should be included – he leads by example rather than imposing directives. Langlois, on the other hand, provides a strong and clear argument for engaging with the ontological and metaphysical issues that many theorists avoid. The following deals with some of the implications of his argument.

Langlois foundations: low-level outcomes, political agreement and the metaphysical

In some respects, Langlois approach is similar to Taylor's. Langlois builds upon the consensus framework explored by Taylor and enhances it by advancing the concept of *incompletely theorised agreements* (ITA). This approach is based on agreement on outcomes based upon individual culture's justifications for justice and human rights rather than relying upon 'any one metaphysical system, tradition or foundation' (Langlois, 2001: 101, 102; 123). Echoing Taylor's words ITA allow 'different routes to the one outcome' (Langlois, 2001: 118). It is a:

> political-legal instrument for enshrining a common set of values, which are supported locally by a multitude of different ethical, religious and cultural moral systems *where they are in agreement*. Thus, human rights becomes a political settlement about how we

> should behave towards one another … [this approach to human rights] is not concerned to establish whether or which of these traditions is the best of finally true explanation of human rights (Langlois, 2001: 102-103).

On the face of it at least, this approach also appears to overlap with that of Nussbaum and Turner (among others) and their attempt to remove discussion of the metaphysical from human rights altogether. However, as has been stressed throughout this thesis, Langlois does seek to eschew the metaphysical, but rather acknowledge the crucial role it plays in establishing human rights theories.

The similarity with Taylor's unforced consensus lies in, firstly, recognising that the different human traditions have their own moral codes, values and self-understandings that can contribute to human rights, but are often constituted by perspectives that are different from those expressed by Western human rights. Secondly, these values are often metaphysically derived and need to be taken seriously by cross-cultural interlocutors. And thirdly, like Taylor, Langlois argues that despite a plurality of at times incommensurate worldviews, there is common ground. These points are elaborated in turn below.

Langlois addresses the diversity of the human traditions to emphasise the apparent difficulties facing human rights theory. He underlines the particular historical and political origins of the dominant view of human rights and argues that despite its claim to universality it includes much that is specific and exclusionary.[5] Human rights are said to be based on notions of rationality and justice that are 'historical, contextual and tradition-dependent' rather than universal (Langlois, 2001: 162). As Langlois (2004: 260) continues:

> The difficulty is that metaphysics cannot be sidestepped, but nor, in our post-metaphysical era, can any particular metaphysical approach legitimately claim the certainty which is engendered by the rhetoric of human rights, and which resides in the background

[5] See also Gordon (2006: 164-165).

> of Enlightenment traditions out of which modern human rights were born.[6]

As there are a range of diverse, even incommensurate of visions of humanity, the differences cannot be resolved on their own terms.

Metaphysical basis

A theme emphasised throughout this thesis is that, for Langlois, metaphysical issues guide every concept of human rights – that is, there is always present some view of what rights people have, and why humans should have them. Furthermore, contained in this is a philosophical anthropology, or a vision of what it ultimately means to be human. The introductory chapter to this thesis notes that Langlois provides the potent argument that all concepts of human rights ultimately rely upon claims – both metaphysical and ontological in character – about the nature of rights. This is the case even when such issues are not consciously employed, or even deliberately avoided. To repeat a key quote from the introductory chapter:

> when people who are engaged in the work of advocacy or diplomacy assert a right, they are making very real claims about the existence in one form or another of a human right, and as part of their assertion they will go on themselves to engage with ontological grounds for that belief (Langlois, 2005: 8).

Crucially, this approach highlights the shortcomings in the majority of approaches to human rights represented in this thesis. As I argued in chapter 8, several theorists (such as Donnelly, Turner and Nussbaum) seek to avoid metaphysics and provide universal grounds for human rights, yet in doing so, inadvertently subsume their own metaphysical and philosophical assumptions into their theory.

The universal and the political

As with Taylor's unforced consensus, Langlois' incompletely theorised agreement model is founded on the view that, despite almost intractable

[6] See also Plant (1991, chapter 1) for a discussion of some of the reasons why metaphysical interpretation have been discredited.

diversity, it *is* possible to find common ground. However, while Taylor provides one example of how unforced consensus might work in practice, Langlois explores a much more nuanced and novel outline that redefines universality. Rather than attempting to locate a universal human nature in frailty or basic needs (approaches which omit the justification of why humans are valuable), Langlois (2001: 145) asserts that the universal quality of humans invoked as the foundation for human rights is the 'capacity for moral judgement and choice'. He (2001: 145) continues:

> Moral obligations, the construction of systems of understanding behaviour in moral terms, thought about the content of morality, ethics, righteous living – these are the universal characteristics of what it means to be a human person. It is true that moral obligation is conceived of in multitudinous and antithetical ways; it is true that systems of understanding moral obligation are diverse and even contradictory in regard to their epistemology, axiology, teleology and ontology … regardless of the moral systems they identify with, persons are universally and constitutively moral, universally and constitutively creatures that make moral choices. By virtue of being persons with identities, we all make choices about the good, the valuable, what ought to be done, what ought to be endorsed or opposed.

Put differently, in Langlois' view, human universality is defined by the ability to produce moral norms of behaviour and to define what is and is not acceptable and what constitutes a 'good' life, regardless of the specific content of those moral orders or conceptions of justice. Furthermore, this moral character partly defines human being and should therefore 'be encouraged in the strongest possible manner' (2001: 145). This morality is both understood and realised in different ways and is derived from diverse metaphysical origins.

Importantly, Langlois' redefinition of the universal unseats and problematises dominant notions of human rights. Despite claims in the academic literature to the contrary by whom Langlois (2001: 129) names as 'Western liberals', human rights is characterised by fundamental disagreement rather than consensus. Dominant Western conceptions of the good life, individual freedom and related ideas constitute the basis of the human rights discourse as it is known today. However, Langlois (2001: 128) states that the pre-

eminence of Western views is the product of political hegemony rather than any agreement on those views or their alleged universality. This illuminates the view that the dominance of certain clusters of values over others is the product of social process and political power; such dominance inherently excludes while at the same time masking its domination by referring to itself as universal or democratic. This sociological approach to power relations is embedded in the human rights discourse, Langlois notes (2001: 125-129). Yet claims to its universality effectively place it beyond reproach and above criticism. He (2001: 128-129) writes:

> The doctrine of human rights is built upon unproblematised assumptions of universality, individualism, and rationality, assumptions which … [are] … plural, discursively created and intransigently dependent on power relations … the very use of the language of 'universal human rights' that hides from us that these values are contested, not universally held and often maintained by and for the advantage of the powerful and authoritative in society … the human rights discourse itself becomes a form of domination and control because it unrepresentatively enforces one account of the good life …

Thus Langlois seeks to unsettle dominant accounts of human rights by highlighting that they are inherently political (in the sense that they assert one set of values over others under the veil of universality).[7] This forms the basis for Langlois' argument that human rights can and should be justified from a range of positions and, importantly, that this diversity of interpretations should contribute to how human rights are understood across the globe.[8]

[7] See also Harding (1992) for similar arguments on how the purported neutrality of science masks deeply embedded power relations which limit who can say what about certain subjects.

[8] Langlois' outlook here is approaching Connell's (2007) notion of 'Southern Theory'. This concept is based on the view that most social science is produced from the perspective of the global north, effectively marginalising Indigenous and other non-dominant perspectives. A Southern Theory attempts to rectify this by taking into account non-Western theories and theorists to contribute to a richer and less distorted view of human societies. In a similar way, Langlois argues that the language of human rights excludes non-liberal perspectives, perspectives that can and should contribute to a broad, more diverse and representative conception of human rights.

Narrative and context

Chapter 7 pointed to the benefits of employing narrative and social context in diminishing the negative influences of relativism and universalism. By including them in the human rights discourse, that chapter argued, the versions of justice told in non-dominant traditions can contribute to a broader and more inclusive framework of human rights. Balancing the implicit tendency to include any and all local values is Langlois' claim that we need to pay heed to the *context* of non-arbitrary value system when addressing the 'relationships between substantive behaviours and their normative identification with justice' (Langlois, 2001: 166). This approach calls attention to the need for firstly acknowledging that metaphysical and ontological assumptions inherently constitute human rights theories; and secondly that divergent assumptions and worldviews can and should be incorporated into a robust vision of human rights.

So rather than attempting to exclude philosophical anthropology from rationales of human rights, Langlois recognises that such concerns are *central*. What is more, they need to be explicit and acknowledged so that they can be engaged with as much as possible. Without doing so, and in attempting to remove metaphysical dimensions from the equation, underlying assumptions and foundations relating to human rights and the nature of humanity are imported and exert a significant influence. Rather, agreement needs to be reached in the political realm, allowing the possibility for local and domestic metaphysical views to justify and validate broadly accepted norms of behaviour.

Ontology: further thoughts

I have already discussed White's notion of weak ontology in relation to Taylor. It will be useful here to apply a brief analysis of what constitutes 'weak' ontology to Langlois' claims about human rights theory, although much of what is said here could also apply to Taylor. White (2005: 17) notes that:

> A weak ontologist recognizes that these dimensions are universal in the sense that they are constitutive of human being, but she also

> recognizes that no one set of figurations can claim universal, self-evident truth.

This description fits Langlois' work. The universals in his theory are the ability and desire to make moral judgements about the world and that these need to find expression and voice in order to articulate a truly human trait. Langlois also asserts, repeatedly, that no one vision of human being or human rights can legitimately claim precedence over any other, and that no one true Archimedean standpoint is possible. Take, for example his assertion that:

> … the diverse and antithetical assumptions which ground the various human traditions are determinative of the conclusions that are developed about how humans should relate to one another. Thus, the fundamentally different understandings of what it means to be human that are displayed across the human traditions translate into different patterns of and expectations about human behaviour which cannot be reduced to one single universal code. What such reflection teaches is that there is a commonality and difference in our shared humanity. Thus, simultaneously, there is hope for common ground and yet the likelihood of intractable difference in the project of establishing a universal ethic (Langlois, 2001: 161).

Langlois also emphasises that human rights are political, contingent and socially situated rather than the expression from a purportedly neutral 'Archimedean' standpoint. The Archimedean expression supports the certainty and absolute-ness associated with strong ontology. In contrast, Langlois arguably endorses a weak ontology.

My assertion here implies that weak ontological frameworks are required for effective and resilient human rights theory. They need to engage with the ontological and metaphysical but not so much as to uncritically endorse any particular one in a relativistic fashion. This weak ontology entails the degree of doubt and uncertainty that is needed if one is to broaden the dominant horizons of human rights discourse and engage with the alternative, disparate perspectives of the world that theorists almost universally agree exist. What is more, it is arguable that these criteria of weak ontology should be clearly articulated by theory in order to avoid unintentionally privileging certain values

of others (in the name of universalism) in moderate cases, and blatant ethnocentrism in the worst.

Identifying the limits of Langlois

One criticism that could potentially be aimed at Langlois is his claim of the universalism of morality. A moral code, it may be argued, could reason that it is moral and right to treat certain people in ways which are at odds with human rights. To say that all persons possess the ability to make moral choices, or that all societies are shaped by moral codes is to make no assessment of the morality of such choices. It may (or may not) be 'moral', according to some value systems, to treat women as second class citizens or 'right' to deny welfare benefits to people of certain ethnic backgrounds. But arguing that moral judgement is universal does not in itself necessarily strengthen human rights. In the same vein as Langlois' argument that all human traditions universally share the capacity to make moral judgements, it might just as easily be argued that all societies find new and increasingly subtle ways of dominating the weak and the marginalised. History suggests that 'human beings seem to have the unique ability to devise cruel ways in which to harm one another' (Kohen, 2007: 64).

Could the commonality that Langlois claims underpins a re-conception of universality just as easily be turned on its head to justify systematic brutalisation and domination? There is the danger of this happening, as if there is enough agreement that these practices are morally valid then there can be convergence on the values that underpin them. Langlois' (2001: 102) notion of incompletely theorised agreements argues that common values should be endorsed '*where they are in agreement*'. But if the agreement is around values not normally associated with human rights, then the moral, ethical and just imperatives of human rights will not be achieved.

However, arguably the possibility of the above scenario occurring is out-weighed by the moral judgements that humans make regarding behaviour and values and which Langlois argues is a common human trait. Even if a claim is made for the universality of state violence, domination of minorities and abuse

of what is regarded as human rights, there is always present some assessment of whether such justification and acts are ethical and consistent with prevailing views of being human. Even the grossest acts of violence and torture exist in the context of ethical evaluation, either that of the perpetrators themselves (who may believe they are acting for the good of humanity), or the broader societal standards in contrast to which the acts are committed. Langlois' caveat '*where they are in agreement*' implies that universal capacities which make claims to what is moral and what is not should constitute the core of human rights. And the non-arbitrary, socially situated contexts in which these claims are made ensure that justifications are not spontaneously constructed by power elites to serve their own interests.

However, the lack of clarity surrounding this issue suggests that there is a need for further theorisation. Some key questions remain. For example, who is doing the agreement? Are the values that are said to be in agreement represented by politicians and diplomats, or should they more directly reflect a tradition's widely shared beliefs? These point ought to be addressed if the controversies of the 'Asian values' approach to human rights are to be circumvented (Langlois, 2001 chapters 1 and 2). What if a culture's prevailing beliefs endorse unequal treatment of marginalised groups with the perception that it is right for the country or for human kind? There is still a moral faculty at work, yet it is not consistent with the desired ends of human rights discourse. These reservations notwithstanding, Langlois' perspective provides critical insights into the nuances of human rights theorising and indicate a powerful route forward in the discipline.

Conclusion

This chapter has taken the works of Charles Taylor and Anthony Langlois and illustrated how they provide a superior approach to human rights than those addressed in chapter 8. Specifically, I have emphasised that Taylor and Langlois explore the importance of ontology and metaphysical issues in theory.

The ‘metaphysical’ encompasses those values and beliefs that extend beyond the physical which can be (but are not exclusively) derived from religion, theology, politics or ethics. It is not that I am claiming in absolute terms that humans are endowed with a special and unitary moral authority from a higher power (such as God or other religious figure, or themselves as in the case of Fascism and Stalinism); rather metaphysical beliefs emanate from a variety of (socially and discursively constructed) contexts (including religious) which provide the impetus to treat other humans in certain ways. Human beings both individually and collectively, reflect upon values that constitute human worth and dignity and what constitutes a worthy human life. These thoughts and reflections are, arguably, metaphysical in character. And it is from these metaphysically-derived values that human rights claims receive their force and weight, rather than from a non-human or ahistorical source.

Both Taylor and Langlois provide the necessary elements for a theory of human rights that is duly cognisant of the metaphysically oriented philosophical anthropology that inherently underpins claims to human rights. They are also able to avoid the pitfalls that are normally associated with a metaphysical approach – rather than the emphasis on metaphysics leading to theological or similar explanations that exclude those who do not share the same cosmologies, the approaches outlined here can potentially enhance the success of the human rights project. There are at least two reasons for this.

Firstly, recognition of the profoundly metaphysical bases for human rights found in non-Western cultures enables greater respect for diversity, and allows for many more voices in the human rights debate. The second reason – which is intrinsically tied to the first – is that by acknowledging our own tacit assumptions when it comes to human rights we can be more aware of our own preferences and prejudices and the partiality of our claims, especially those we hold to be universal or self-evident. In doing so, there can be greater sensitivity to the perspective of others, and to the voices that are attenuated in human rights discussion; and more possibility of a fusion of horizons, and genuine understanding.

As Charles Taylor (2010: 300) has recently said of master narratives, 'we cannot avoid' them. 'The attempt to escape them only means that we operate by an unacknowledged, hence unexamined and uncriticized, narrative.'[9] The same can be said of the metaphysical and ontological assumptions implicit in any discussion of human rights. They are always there whether we acknowledge them or not; and they always have a profound influence on the way human rights are perceived and on the practical solutions proffered by theorists and activists. The aims and intent of this thesis have been to identify and reveal the hidden fundamental assumptions that are embedded in dominant theories of human rights. It is my contention that doing so is necessary for effective human rights in the future, and that the theories of Langlois and Taylor provide the required tools.

[9] See also Hollis (in Plant, 1991: 23).

CONCLUSION

The preceding chapters have developed an argument around the role of the philosophical foundations to human rights and the need for cognisance of their metaphysical character. The task now is to tie together any final loose ends and ascertain what we can learn from the argument. This thesis has addressed and analysed human rights in a fashion not normally seen in academic literature. Although the intellectual field on human rights is vast and rapidly expanding, there has been very little in the way of works which cover the ground of this thesis. My work here represents an attempt to contribute some much needed theorising of human rights and their philosophical foundations. Too much in human rights discourse is taken for granted. Activists and (Western) governments alike talk about human rights as if these rights were self-evident, universal and unproblematic – at least for all 'right thinking' people. Yet this is far from the case in reality. Rather than there being agreement and consensus on human rights, there is a great deal of contestation and debate about what human rights are, who should hold the power to invoke and uphold them, and even if they exist as they are commonly understood.

I acknowledged in the introduction to this thesis that I chose to analyse a diverse range of theorists because they all represent different nodes of a broad field of thought on human rights. They also contribute something unique to the debate; they rely upon different assumptions, construct their defence of human rights in divergent ways, and, when analysed in the order that I have, implicitly respond to the shortcomings and weaknesses of the others discussed in this thesis. Furthermore, these theorists were selected at the expense of perhaps more obvious choices (such as Rawls or Dworkin) because they discuss human rights specifically rather than (political, legal or moral) rights in a broader sense.

My argument in this thesis has several inter-related dimensions. Firstly, I argued that all perspectives of human rights rely upon foundations; these are

either explicit or implicit assumptions (sometimes both) and assertions on which claims about rights rest. Such assumptions include the implied belief that human rights ought to prevail because either: humans are frail; there are universally shared capabilities that should not be quashed; international law says rights must prevail; there is a consensus among nations and governments that human rights should be respected; and human rights are effective in achieving desired social and political ends. Importantly, even an 'anti-foundationalist' approach, to human rights (for example Rorty's pragmatist framework), or any theory that eschews the relevance of foundations, inherently relies upon assumptions and foundations which inform the theory.

Secondly, I have argued that residing among these foundations is a philosophical anthropology that – disclosed, recognised, ignored or avoided – is part and parcel of any claim about human rights. An inherent aspect of rights talk is that there is always an assertion about what rights are and why humans ought to have them. This unavoidable dimension to human rights is always present in the underlying theoretical framework. It is not merely the task of philosophers, theorists and scholars to reflect upon the perceived 'nature of humanity', or to muse upon what rights actually are; these questions are answered in one form or another whenever one talks of human rights. Even if a person invokes human rights on the basis of advocacy or immediate need, that person is making implicit claims about the ontological status of rights and what I am claiming is the metaphysical origin of such claims.

My point in this thesis has been that when it comes to human rights theory, these metaphysical concerns are typically either ignored, claimed to be irrelevant or actively avoided in an attempt to seek cross-cultural agreement. In each case, the metaphysical sources of human rights are not engaged. By metaphysical, I mean those values and beliefs which extend beyond the physical which can be (but are not exclusively) derived from religion, theology, politics or ethics. It is not that I am claiming in absolute terms that humans are endowed with a special and unitary moral authority from a higher power (such as God or other religious figures, or themselves as in the case of

Fascism and Stalinism); rather metaphysical beliefs emanate from a variety of (socially and discursively constructed) contexts (including religious) which provide the impetus to treat other humans in certain ways. Human beings both individually and collectively, reflect upon values that constitute human worth and dignity and what constitutes a worthy human life. These thoughts and reflections are, arguably, metaphysical in character. And it is from these metaphysically-derived values that human rights claims receive their force and weight, rather than from a non-human or ahistorical source.

There is a substantive distinction here between human rights as socially constructed and human rights as metaphysical in origin. What is socially constructed – and thus broadly divergent among different traditions – is the way in which these values are expressed. The metaphysical views that inform human rights, justice, dignity and other related concepts are given voice through political institutions (such as democratic government and legal structures) and more generally through social practices, socialisation and the reproduction and transformation of cultural norms.

However, the term 'metaphysical', as applied to notions of justice, fairness and rights, connotes the general sense that these notions rely upon master images of humanity and human life. That is, what is considered just depends upon the values placed upon human existence and the conditions of a life worthy of the name 'human'. These are more than merely social conventions (although they are expressed in terms of social structures – laws, practices and the like); they are not arbitrary. They give rise to legal and political structures, voice to claims of discrimination or inhuman treatment, and provide guidance in evaluating if this harsh treatment has indeed taken place. The metaphysical dimensions are, in a sense, the bedrock under which human rights and democratic institutions sit.

If one were to ask the reason why humans should have human rights, then there would be a variety of answers, as I have illustrated in this thesis. One answer might be that we have rights because humans are frail and susceptible to old age, disease and death. Another might be that humans

should be treated in certain ways because they have inherent capabilities that should be allowed to flourish. Others are more direct and say that we have human rights simply by virtue of our existence as humans. In each assessment there is an appeal to a universal human quality or experience that binds all people regardless of ethnicity, political creed or nationality. However, there is an essential component missing from these claims. There is no questioning as to *why* the effects of frailty ought to be ameliorated, or *why* capabilities should be enhanced, or what it is about being human that grants us this special sort of right. My argument is that this missing link is the metaphysically-derived notion that human beings are inviolable and sacrosanct, and that existing as a human entails some special ingredient that positions us in a unique space compared with the rest of the animal and plant worlds.

A dead animal found lying on the side of the road is not accorded the same significance as if it were a human that were found. If the latter occurred there would be some sense of solemnity, not to mention the formal legal and medical investigations that would accompany it. Public access to the site would be restricted; friends and family would grieve; procedures would ensure that the cause and circumstances of the person's death are thoroughly investigated. Dignity would have a high priority. By contrast, a dead wild animal would attract little or no attention. Not even the unexpected death of a beloved domestic pet would have the same ramifications as that of a human.

Why might this be? It is certainly not because animals are not granted rights; they are, but they are neither regarded with the same status, nor enforced with the same alacrity as human rights. In my view this differentiation arises because humans attribute to themselves and each other a special value that cannot apply to other animals. And crucially, this value is metaphysical in character, and derived from reflections upon the nature of human existence and the qualities of a worthy human life. This results in human rights that are of a different order to those attributed to animals.

So, what does this discussion mean for human rights theory? Firstly, seemingly simple, axiomatic claims – such as people possess human rights merely because of their existence as humans – are loaded with assumptions regarding, inter alia, the desired or imagined quality of life and the inviolability of the human body. Therefore, when writing of human rights, theorists need to be cognisant of the inherent metaphysical dimension of their claims (and the ontological implications). That is, scholars could augment and buttress their positions by analysing and exploring the metaphysical positions – rather than evading or ignoring them – in order to produce a theory of human rights with cross-cultural appeal.

Rather than attempting to exclude philosophical anthropology from rationales of human rights, as Langlois recognises, such concerns are *central*. What is more, I maintain that they need to be explicit, acknowledged and illuminated so that they can be engaged with as much as possible. Doing so has benefits for both the scholar and his/her theory, as well as for those we are trying to persuade of the benefits of human rights. But failure to do so means that underlying tacit political, metaphysical and ontological assumptions are not interrogated and are able to creep into theory and wield a significant, yet unacknowledged influence.

Furthermore, my analysis in chapter 9 argues that weak ontological frameworks are required for effective and resilient human rights theory (à la White). Human rights theories need to engage with the ontological and metaphysical but not so much as to uncritically endorse any particular one in a relativistic fashion. This weak ontology entails the degree of doubt and uncertainty that is needed if one is to broaden the dominant horizons of human rights discourse and engage with the alternative, disparate perspectives of the world that theorists almost universally agree exist. What is more, it is arguable that these criteria of weak ontology should be clearly articulated by theory in order to avoid unintentionally privileging certain values of others (in the name of universalism) in moderate cases, and blatant ethnocentrism in the worst.

Several of the theorists (most notably, Nussbaum, Taylor and Langlois) in this thesis acknowledge the need for human rights to have legitimacy among the diversity of human traditions and to allow for local interpretations of rights. However, in the bulk of the literature, there is not, in my view, sufficient engagement with non-dominant views of human rights that holds them on an equal platform to mainstream theories; nor does there seem to be a genuine knowledge, respect or understanding of the content of non-Western views of rights. These views are only considered inasmuch as relate to the possible ways in which they might validate the dominant human rights framework. Only by including a broader range of conceptions of human rights – and genuinely engaging with them – can a more resilient and defensible theory of rights be established. And it is arguable that applying the approach adopted in this thesis can help further this goal.

There is great scope for scholarship that links the theoretical approach employed here to the practice of human rights implementation. That is, further research might explore how interrogating the underlying anthropological, metaphysical and ontological assumptions of a given human rights theory would aid the implementation and expansion of human rights. For example, studies that evaluate the effectiveness of NGOs in increasing the life chances of women in non-Western nations can be melded with the analysis of this thesis to provide an even more critical reading of NGOs' programmatic priorities and implicit values and assumptions.[1]

This is of course an issue that necessitates a different array of theoretical approaches and methodological tools than I have used here such as field work, interviews and participant observation. It would also entail the use of frameworks from development studies, diversity management and post-colonial studies, among others. Doing so will forge new ground in the theory and practice of human rights and bring new awareness to advocates, NGOs and diplomats of the broader import of their claims. As I highlighted in the introductory chapter, the claims these groups of people make when they

[1] On this point I would like to thank Dr Rachel Outhred, former Research Fellow at NCSEHE (see Outhred, 2010).

assert human rights are intrinsically informed by ontological and metaphysical assumptions. My work here aims to illuminate these assumptions and strengthen the case for human rights, not only for those who advocate them, but also for those who question their authority and legitimacy.

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