

unaustralia | strangeness and value¹

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I begin with a story. This one happened to a friend of friends. Similar things are happening to friends of your friends, right across Australia.

A Sydney businessman—I'll call him K., but don't confuse him with the hero of a novel by Kafka or Coetzee, he's a real person—is defrauded by his accountant. The Federal Police are called in, and they in turn—presumably because the possibility of money-laundering is involved—call in ASIO. K. is told that if he is to recover his money he will have to sign a confidentiality agreement—something like the British Official Secrets Act—which he does. At around this time he is approached by a man who says he too has been defrauded by the accountant. They talk about it, and K. arranges to meet him a second time. When he arrives the man is in police uniform and arrests him for having breached the confidentiality agreement by speaking to him. K. is taken to court; after three days of hearings the charge against him is dismissed on the grounds that he was not informed of his rights at the time he signed the agreement. ASIO then applies for a control order against him—the same order that was served on Jack Thomas after his acquittal on terrorism charges, and which confines him to his home between midnight and 5 am, requires him to seek written approval to make phone calls, and confiscates his passport. The evidence in the ASIO dossier all goes to the point of K.'s being politically 'connected'—that is, having made acquaintance in the course of his business with members of Amnesty, the ACTU, and the Labor Party. The dossier contains photographs of politicians and trade unionists leaving K.'s office, and extensive information about his past. His neighbours and friends are repeatedly photographed and their phones are tapped. K. is never informed of the grounds for the control order, other than his being politically 'connected'. At this point in time K. is waiting for the adjudication of

the control order. His lawyer has been told that he too will be served with a control order, and assumes that unless he complies his other clients will be subject to investigation. K. says two things about this web of unexplained actions against him and his lawyer: 'they knew everything about me'; and 'it's enough to drive you mad'.

The story I have told is one that I cannot tell. In order to make it public I have to cast it in a form that makes it unrecognisable. I have altered some of the details of K.'s identity, and details of the story itself, in order to protect him from further charges of breach of the confidentiality agreement, and to protect myself from charges of breaching section 105.41 of the Anti-Terrorism Act by telling this story. I cannot go to the newspapers with it because they are prohibited from publicising details of control orders, and in any case publicity would further endanger K. In a very real sense, we are silenced.

Part of my concern in this lecture is a puzzle about what politics has become at a time when traditional concerns with open government and the rule of law have been devalued as, it seems, never before, and yet when this devaluation is conveyed in the very language of truth and justice which is denied at the level of actions. I call this politics 'postmodern', in the sense in which Bill Brown uses that word: to describe a post-Enlightenment and anti-pluralist politics, whether it be that of neoliberalism or of the new religious fundamentalisms, characterised by the invocation of a state of permanent exception and by the authoritarian consequences that flow from it.² And I use the metaphor—one I take from the conference to which this talk is a coda—of a place called UnAustralia, not in order to describe a national ethos, nor to accuse others of breaching some putative core of national values, but rather as a way of describing the logic of negation by means of which this shadowy realm of counter-terror, together with its corresponding politics, is conjured into being.

That logic of negation is different from a simple incompatibility between one order of being and another. Let me try to clarify what I mean by invoking Kant's distinction between real and logical forms of contradiction. 'Real' contradiction here is a relation of contrariety between incompatible states of being: a relation between A and B. 'Logical' contradiction, by contrast, is a relation of antinomy between internally differentiated aspects of the same state of being: a relation of A to non-A. It's the second of these forms of negation that is implied by the term 'UnAustralia': not a simple contrary in which UnAustralia is merely different from Australia, but an internal and constitutive contradiction; not simply the absence of the thing negated, but its continuing presence as a ghostly or uncanny absence. UnAustralia is the negative image of its positive counterpart, brought into being by means of a magical exclusion of whatever does not fit, an expulsion of the extraneous, of whatever comes from and seems to belong to an outside, of the stranger without and within.

The status of strangers is central to my argument. It is in terms of the interchangeability and interaction of inside and outside that Simmel understands the stranger in his essay of

that name. The stranger, he writes, is the synthetic unity of wandering and its conceptual opposite, fixation in space; the stranger is thus not one who arrives and leaves, but one who, coming to stay, nevertheless remains 'a *potential* wanderer: although he has not moved on, he has not quite overcome the freedom of coming and going'.³ The stranger thus has 'the specific character of mobility', and if this mobility takes place within a closed group it 'embodies that synthesis of nearness and distance which constitutes the formal position of the stranger'.⁴ The freedom of entry into and departure from the settled group enjoyed by the stranger has as its counterpart indifference toward him, and the price of his freedom is thus his solitude within the crowd.⁵ One has only an abstract relation to the stranger, since 'with the stranger one has only certain more general qualities in common, whereas the relation to more organically connected persons is based on the commonness of specific differences from merely general features'.⁶

Strangeness is the opposite of a settled condition, defined only by its inside: the stranger is the one who disrupts settlement. Think of K. in Kafka's *The Castle*, a stranger who arrives in the village seeking the employment he claims he has been offered. K. is a classic outsider, who is asked: 'But what are you ...? You are not from the Castle, you are not from the village, you aren't anything. Or rather, unfortunately, you are something, a stranger, a man who isn't wanted and is in everybody's way, a man who's always causing trouble...'.⁷ In this confrontation a complex game is played by both sides. K. is by no means an innocent victim; rather, he is a man betting everything on his move to gain admission to the Castle, and beyond that something like recognition—one of the two modalities of justice in Nancy Fraser's definition.⁸ On its side, the Castle plays a defensive game which is often apparently complicit with K.'s attack, as when it claims to recognise the good work he has been doing as a surveyor. Bureaucratic hierarchy and opacity are weapons in this conflict, but so, most powerfully, is the fact that the onus is on K. to prove what his standing is in this place that refuses him the recognition he desires. One way of reading this story, then, is as a parable of the quest for justice, and of its denial in systems which are opaque to outsiders. Like the man from the country who seeks admission to the Law and is told, at the moment of his death, that the door he has been waiting at was meant only for him, and that now it is being closed, K. comes to realise that 'there is justice, no end of justice—only not for you'.

The logic of uncanny reversal expressed in the notion of UnAustralia is most evident at its edges, where it deals with those who don't belong and where the mechanisms that have been used to excise this unplace from the solid mainland of our Australian reality are most clearly displayed. For Australia in the years of the Howard government, refugee policy has been at the heart of our sense of the kind of political order we desire; a number of cases (the seizure of the *Tampa*, the children overboard affair, the drowning of 353 people on the SIEV-X) have dramatised the tension between, on the one hand, a dominant xenophobic

understanding of the stranger, generated and expressed in the rise of One Nation and in the adoption of this hostile and fearful vision by the Howard government in its display of toughness towards asylum-seekers, and on the other a xenophilic relation to strangers inscribed in the international covenants on the treatment of refugees to which Australia is a signatory, and in the widespread but politically futile criticism by the intelligentsia of refugee policy.

Here are two stories amongst many. The first is that of Shayan Badrie, a six-year-old Iranian boy who was reduced to a state of helpless paralysis by his detention in Villawood: 'At Woomera, Shayan had seen guards beating detainees with batons during riots. And at Villawood, Shayan had not spoken since he had seen blood pouring from the wrists of a detainee who had tried to commit suicide. He also refused to eat or drink and had to be taken to hospital every few days for rehydration. Aamer Sultan, a medical practitioner, and also a detainee from Iraq, had identified Shayan's condition as immigration-detention stress syndrome'.⁹ Yet health practitioners working in these detention centres are largely silenced by the confidentiality contracts signed as part of their contract of employment. Shayan was removed from Villawood and placed in a psychiatric hospital whenever he got to the point of being unable to eat or drink; he would then, against the advice of psychiatrists, be sent back to detention. In an interview on the *7.30 Report* in May 2002 the Attorney-General, Philip Ruddock, repeatedly referred to this young boy as 'it': 'He said that "it" was like this not because of detention but because "it" had a stepmother'.¹⁰

The second, taken from an account by Michael Gordon, an investigative reporter with *The Age*, is that of Mohammed Sagar, an Iraqi refugee who has been detained since he was rescued in the 'children overboard' episode. Sagar was found by Australian immigration officials to have been an opponent of Saddam Hussein and to have suffered torture at his hands; he was, however, given an adverse security assessment by ASIO, which means that Australia is now relieved of the legal obligation to offer him asylum. Like a second Iraqi, Mohammed Faisal, who was evacuated to a Brisbane psychiatric hospital after becoming suicidal, Sagar has never been told what he is supposed to have done to warrant an adverse security assessment, and so has no way of challenging it; nor is there any provision 'for some outside authority, for instance a retired judge, to establish that ASIO's decision was soundly based'.¹¹ Moreover, the adverse assessment is effectively a veto on any other country accepting the two men.¹²

Let me single out three salient areas of contradiction operating in these stories. The first is that refugees with legitimate grounds for asylum can be imprisoned indefinitely without a judicial order and in the harshest conditions on grounds which are unknown to them, and without right of appeal to the legal system. The second is that it is only descent into madness that offers a way out for those like Sagar and Faisal who have been adversely assessed: it's as though the system had been designed to induce mental trauma.¹³ The third is the

fact that, under section 209 of the Migration Act, those like Shayan Badrie and Mohammed Sagar who are detained in conditions designed to drive them mad incur a monetary debt for the cost of their involuntary detention, and these debts may be used to deny them re-admission to Australia should they ever leave it.¹⁴

Each of these contradictions instates a vicious circle which has the effect of blocking the performance of justice. Like the prisoners in Guantanamo Bay, refugees detained in Australian detention centres or, a fortiori, in Papua New Guinea or Nauru exist in 'a legal black hole where people can be held day and night and without effective access to help'.¹⁵ Yet it is difficult to understand why this extremely expensive process of repulsion of a relatively small number of asylum-seekers has been conducted with such intensity. Part of the explanation lies in the electoral context of the 2001 federal elections, in which hostility to refugees seemed to be giving an electoral advantage to a newly energised One Nation, primarily at the expense of the Liberal Party; in that context, the evolution of Australia's refugee policy can be seen to be above all a matter of the neutralisation of a force to the right of the Liberals by the appropriation of its central platform. There is a longer history too. Marr and Wilkinson posit a continuity in Australian attitudes to Asian outsiders from the anti-Chinese sentiments of the 1880s to the present; but beyond that lies a more complex mode of generosity towards refugees. In the case both of European refugees after WWII and of Vietnamese refugees congregated in camps in Malaysia, Thailand and Indonesia in the 1970s, Australia accepted refugees, often in large numbers, by means of a process of selection conducted in those offshore camps: 'Australian officials were in complete control of the process and they chose with care. Ever since then, in Australian eyes, refugees are people who wait patiently in camps far away for us to come and select them.'¹⁶

This seems to me to clarify the particular hostility shown towards boat people by the Howard Government, by the preceding Hawke Labor government which introduced mandatory detention, and by the majority of the Australian people, and in particular the apparent oddness of the decision made in 2006—a further extension of the Pacific Solution—that refugees arriving in Australia by boat would automatically have their claims processed offshore. As Peter Mares explains,

The majority of asylum seekers in Australia never came by boat in any case; they came on planes, with visas, as visiting students or tourists or business people—and then sought asylum after clearing immigration, or when it came time to go home again. Even at the height of the 'boat people crisis', these 'lawful' asylum seekers outnumbered the 'unlawful' arrivals by at least two to one. They were not detained and lived amongst us in the community; they were rarely a topic of media attention and never a cause for public panic, even though

they were, statistically speaking, far less likely to be refugees in need of protection than their counterparts on the boats. But the debate about refugees and asylum seekers in Australia has never been particularly rational because it is driven by fear.¹⁷

The history of selective admission of asylum-seekers from offshore is doubtless the source of the folk myth of ‘the queue’ in which refugees are supposed to wait. Boat people are anomalous in this respect because they force themselves upon us; they lack the notion of orderly queuing, and indeed live their lives with a desperation that is alien to us. But a further reason for the hostility towards them that the government has exploited—and which at times it made explicit—has been the equation of refugees with a more general class of stranger: the terrorist. As Julian Burnside aptly puts it, the government has consistently conflated questions of border control, immigration policy, and the treatment of refugees.¹⁸

The broader picture of UnAustralia that I want to paint here has to do with the legal regime that now governs national security—for example in the story of K. that I told at the beginning of this lecture. Let me tell a further story at this point before I move on to summarise some of the effects of this new anti-terrorist regime. It involves a former intelligence agent, Andrew Wilkie, who resigned from the Office of National Assessment in March 2003 in protest at the Government’s abuse of intelligence reports in making its case for the existence of weapons of mass destruction in Iraq. Wilkie stood as a Green candidate against Howard in Bennelong in the 2004 elections, and in the same year published *Axis of Deceit* with the Melbourne publisher Black Inc. Before putting the book into print, Black Inc. showed the book to Dr David Wright-Neville, a Monash academic and former analyst at the Office of National Assessments, who recommended excising ‘a dozen or so passages’¹⁹ in order to avoid any possible breach of national security. Still cautious, the publisher then sent the manuscript for further assessment to a Canberra lawyer, Martin Toohey, who, without informing either the author or the publisher, sent it to the Attorney-General’s Department. At the beginning of September 2004, when the book had already been on sale for several months, squads of government officials claiming to be from the Attorney-General’s Department visited the offices of Black Inc. and the offices or homes of the journalist Carmel Travers, Wilkie’s brother and sister in Tamworth, and the Melbourne academic Robert Manne who had commissioned the book. According to Carmel Travers’ account, broadcast in a report on *Dateline* in June 2005, the officials ‘spent a day trawling through her computers, looking for sensitive information. When they found any, they smashed the hard drives with a hammer to make sure it was really erased. They referred to the process as “cleansing”’, and conveyed to Travers the impression that this was an everyday occurrence, something that had happened, in their words, ‘70, 72 or 73 times’.²⁰ Apart from the *Dateline* story and a single report in the

Sydney Morning Herald,²¹ reporting of this story has been minimal, for the good reason that the reporting of issues deemed to threaten national security carries sanctions of up to five years imprisonment. All of those whose computers were 'cleansed' were required to sign confidentiality agreements prohibiting them from discussing what had happened; they were also invited to fill out a customer satisfaction form.

The relevant legislation instituting new anti-terrorist powers since September 11 2001 is the following bills:²²

Security Legislation Amendment (Terrorism) Act 2002 [no. 2];

Suppression of the Financing of Terrorism Act 2002;

Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002;

Border Security Legislation Amendment Act 2002;

Telecommunications Interception Legislation Amendment Act 2002;

Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002;

Anti-Terrorism Bills 1, 2 and 3 2004;

National Security Information (Criminal Proceedings) Bill 2004;

Australian Anti-Terrorism Bill 2005;

National Security Information Legislation Amendment Bill 2005.

The key negative effects of these bills are as follows:

- ASIO has powers to detain people secretly for up to a week even where they are not suspected of and will not be charged with a crime.
- People receiving an adverse assessment on security grounds are not entitled to know the grounds on which ASIO has made this assessment.
- People who have been adversely assessed may have their passport or visa cancelled, without right of appeal and without being told the grounds for cancellation.
- In the case of preventative detention orders, the subject of the order is not allowed to know the evidence against them, and they can be kept under house arrest without trial or right of appeal for up to a year. They may contact a family member or employer, 'but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for the time being';²³ they may not disclose to anyone the fact that they are being detained or the period of detention.²⁴ Their lawyer, similarly, 'is ... prohibited from disclosing to any other person the fact that a preventative detention order has been made, unless it is in the context of court proceedings or a complaint to the ombudsman'.²⁵
- In the case of control orders, the subject of the order is not informed of the proceedings until after the order is made and served on them, and the onus is on them to prove the

grounds for revocation; but there is no guarantee that they will be given the information about the reasons for the order that would allow them to do so.

- It is illegal now to advocate conduct to assist an organisation or country which is 'at war with the Commonwealth, whether or not the existence of a state of war has been declared'.²⁶
- Access to sensitive security information in pre-trial and trial proceedings may be severely restricted. The National Security Information (Criminal Proceedings) Bill 2004 and supplemented 2005 allows the Attorney-General to issue a non-disclosure certificate specifying which information may not be disclosed, and then makes it an offence to disclose this information, or to call a witness where the Attorney-General has ordered that the witness be excluded. The Attorney-General's decisions are not subject to review, and his non-disclosure certificate must be taken as conclusive evidence in pre-trial and extradition proceedings that national security would be threatened by disclosure. The concept of national security takes on an expanded meaning here, referring not only to matters of national defence but to economic security, the affairs of the intelligence forces of countries allied to Australia, the protection of scientific and technological knowledge, and so on. Further, it is not only the defendant who is refused access to the evidence used against him or her: where a prosecutor invokes the non-disclosure regime in a trial, it becomes an offence for anyone to disclose the specified information to a defendant's legal representative; during the trial itself, greatest weight must be given to the Attorney-General's claim of risk to national security, and less weight to adverse effects on right to a fair trial and interference with the administration of justice. One critic of the Bill gives the following examples of how it might affect the right to a fair trial:

A defendant might be accused, for example, of training with a terrorist organisation. At a bail hearing, he or she may wish to produce, as evidence of his or her lack of criminal intent, documents or witnesses who will demonstrate that he or she acted at the request of, or with the acquiescence of an Australian intelligence agency, or of an intelligence agency of a country allied with Australia. Under the Regime, it is likely that the defendant would be obliged to give notice prior to producing such evidence, and the Attorney-General would then be able to issue a certificate which precluded the evidence from being produced, with the consequence that the accused is not able to make out his or her case for bail... The likelihood of such adverse implications for the fairness of pre-trial proceedings would be even greater for any individual charged with an espionage or similar offence; for it is likely that a great many of the relevant witnesses and documents which the defendant might want to produce or gain access to at the pre-trial stage would be apt to be barred by a certificate from the Attorney-General.²⁷

- In general terms, these bills give rise to the possibility that, with evidence not made known to the defendant or tested in cross-examination, and with the decision on whether to admit evidence or to exclude witnesses made in a closed court from which the defendant and their lawyers may be barred, Australian citizens could be convicted on the basis of secret evidence in a largely secret trial. Nor could the defendant appeal on the basis that evidence was excluded, since this evidence would in turn be excluded from appeal hearings—even if the defendant knew exactly what it was that was being kept from their knowledge.²⁸

Questions of information are central to what is most problematic about this legislative regime. It operates by means of a reflexive spiral in which prohibitions on access to knowledge about legal processes in turn affect the integrity of those processes. The rule of law is proclaimed in the same moment as certain necessary conditions for its operation (such as access to the evidence being used against defendants) are removed.

We have a number of terms for the form of bad paradox that operates here: Catch-22, the Orwellian, the Kafkaesque, Lyotard's concept of the *différend*. The most precise formulation of its logic that I know, however, is Bateson's theory of the double bind, developed to explain the communicative patterns shaping the impossible impasses that govern the experience of schizophrenics.

The double bind is a sustained communicative relationship between two or more people, one of whom is designated as the victim. A positive version is to be found in Zen Buddhism, where the master might hold a stick over the pupil's head and tell him: 'If you say this stick is real, I will strike you with it. If you say this stick is not real, I will strike you with it. If you don't say anything, I will strike you with it'. The pupil might reply by reaching up and taking the stick from the master's hand—escaping the field of the contradictions, as it were. In the negative version of the double bind, which has to do with disorientation rather than enlightenment, there is no such way out.

The core features of the double bind in the schizogenic form postulated by Bateson and his associates are: a *primary negative injunction*, with the form either of 'Do not do so and so, or I will punish you' or of 'If you do not do so and so, I will punish you'; a *secondary injunction* which conflicts with the first at a more abstract level and which similarly threatens punishment; some of the forms it may take (often expressed non-verbally) are: 'Do not see this as punishment'; 'Do not see me as the punishing agent'; 'Do not submit to my prohibitions'; 'Do not question my love of which the primary prohibition is (or is not) an example', etc. Finally, a *third negative injunction* prohibits the victim from escaping from the field—that is, from resolving the contradiction by walking away from it. In this situation the individual is exposed to two orders of message, one of which denies the other, and is unable to sort out

the relation between them by means of a metacommunicative statement.²⁹ In logical terms what is going on here is an equation of two incompatible propositions: *if p then ~p*, together with an injunction to disregard that logical incompatibility.

How does the double bind work in the political field? Above all, I suggest, through a form of magical action which negates in language the actuality of the works of government. Euphemism plays a central role here: in the language of the war on terror,

appalling practices are disguised by innocuous terms: ‘ghost detainees’ are people who have been ‘disappeared’ to be held and tortured in secret locations. ‘Stress and duress’ is in truth torture, inhumane and degrading treatment and banned by international law. ‘Extraordinary rendition’ is actually the practice by which suspects are effectively kidnapped, moved from one country to another in a legal limbo without judicial oversight and then handed over to regimes that practise torture.³⁰

Such specific terminological uses reflect a more general structure of negative performativity by which the consequences of government actions are both removed from public view (refugees are held in privately run prisons in remote desert areas or in Nauru) and sublimated into the language of high moral purpose. Take this passage from a speech that John Howard gave to the National Press Club earlier this year, when he spoke of ‘the common values that bind us together as one people—respect for the freedom and dignity of the individual, a commitment to the rule of law, the equality of men and women and a spirit of egalitarianism that embraces tolerance, fair play and compassion for those in need’.³¹ These are, of course, impeccable values, to every one of which I fully subscribe. They work in a context, however, where on the one hand they implicitly chastise non-conformity, and on the other implicitly deny the ways in which the Australian government systematically breaches every one of these values.

The logic of negative performativity is carried through a set of redescriptions in which:

- the use of the harshest and most degrading measures against unwelcome strangers is performed within a proclaimed ethos of fairness and compassion for those in need;
- the imprisonment of child refugees is thought to be compatible with family values;
- the consistent practice of politically motivated lying is undertaken within the rubric of moral clarity;
- sleep deprivation and other acts of physical harm are defined as not constituting torture;
- those who criticise torture, the imprisonment of refugees accused of no crime, and politically motivated lying are accused of failing to share mainstream Australian values.

For citizens—if they are indeed aware of the contradictions—the worst effect of this conjuring of certain facts out of existence is a generalised mistrust of political rhetoric and a

sense that the political order is corrupt. For those trapped in detention centres or subjected to unexplained and unappealable punishment, the effect is a denial of justice that traps them in the vicious circle of the double bind—with all the effects of psychological disorientation that tend to flow from this state of aporia.

I have designated the political order expressed in the new legal regimes governing refugee policy and national security a ‘postmodern’ politics. Postmodernism is a term I dislike and distrust, for reasons I’ve set out extensively elsewhere;³² I have been persuaded, though, by recent arguments that the events of 9/11 did indeed inaugurate a genuine historical break which has transformed the conduct of politics throughout the Western world in ways that push us beyond the informing values of modernity. What seems to change after 9/11 is the apparent permanence of the organisation of the modern state around secular and pluralistic Enlightenment principles. It is threatened on the part of Islamic fundamentalists by virtue of their commitment to a theocratic state governed by religious principles; and on the part of the Bush and Howard administrations by virtue of their contempt for the rule of law and for rational policy formation (the deliberate refusal of informed scientific opinion on climate change, for example), together with their casting of the ‘War on Terror’ in terms reminiscent of the Religious Wars of the sixteenth and seventeenth centuries from which the European Enlightenment emerged.

On the ‘cultural’ level—the level of conflict over ethical and aesthetic values and of the assertion of religious and ethnic identity—the politics of American postmodernity, in particular, is suffused with deeply non-rational positions. A 2004 article in the *New York Times Magazine* by Ron Suskind is illuminating. One key feature of Bush’s faith-based presidency, Suskind writes, is that ‘open dialogue, based in facts, is not seen as something of inherent value. It may, in fact, create doubt, which undercuts faith. It could result in a loss of confidence in the decision-maker and, just as important, by the decision-maker’.³³ Suskind tells of a meeting with a senior adviser to Bush who told him

that guys like me were ‘in what we call the reality-based community’, which he defined as people who ‘believe that solutions emerge from your judicious study of discernible reality’. I nodded and murmured something about enlightenment principles and empiricism. He cut me off. ‘That’s not the way the world really works anymore’, he continued. ‘We’re an empire now and when we act, we create our own reality. And while you’re studying that reality—judiciously, as you will—we’ll act again, creating other new realities, which you can study too, and that’s how things will sort out. We’re history’s actors ... and you, all of you, will be left to just study what we do.’

It is the arrogant exceptionalism of these views that has made possible the widespread suspension of adherence to the rule of law in the invasion of Iraq, in the exemption of Guantanamo

Bay (and probably other offshore detention centres) from the legal jurisdiction of the United States, in the use of 'extraordinary rendition' to kidnap suspects and deliver them to countries that practice torture, and in the stripping of habeas corpus from so-called 'unlawful enemy combatants' (who may be US citizens); the redefinition of torture to cover the administration of 'severe' but not 'serious' pain; the placing of the President above the law in giving him the sole right to determine whether the Geneva Convention has been breached in any instance; and the insulation of previous and future practices of the Administration from criminal sanction.³⁴ Australia's own curtailment of civil liberties and its creation of unplaces for refugees follow on directly from this ethos and the moral contamination it has brought with it.

Yet simply to assert the rationality of the political process against the anti-Enlightenment rhetoric and practice of postmodern politics would be not only to assume a transcendental point (the moment of detached reason) from which to speak, but also to ignore the fantasmatic coordinates that structure the realm of the political. To invoke a public sphere built on conversation about principles as a condition from which we have fallen is still to mistake a normative structure for a reality. Politics is the mesh of desires and fantasies that organise perceptions of real interests. We who would change the way things are have no alternative to engaging with those desires and fantasies. This is not, of course, a license either to give up on rational debate and the critical analysis of social interests, or to reduce political action to the mere working out of fantasmatic identifications. But the point from which we speak our analysis has no universally valid authority. It is a part of the game that it describes.

For us who still aspire to live, perhaps anachronistically, in the 'reality-based community' one of the key difficulties in engaging in political analysis is that the political order is set up in such a way that the act of critique immediately places us in a known position: we speak as a part of the intellectual 'elite', which means that our values are defined in advance as irrelevant to ordinary Australians. (Think of the sympathy garnered by a bewildered Pauline Hanson when asked by a journalist if her policies were xenophobic.) The reshaping of Australia by ten years of Liberal government has been played out around precisely that fantasmatic polarisation and, as Robert Manne puts it, 'on no issue was this battle more clear-cut than on the question of the treatment of asylum seekers. The government's decision to use military force to repel boat refugees was not only a brilliant populist ploy. It also represented for the "elites" a decisive defeat.'³⁵ The revelation after the 2001 election that the government had lied, blatantly and deliberately, about the supposed photographs of children thrown overboard produced no negative effects; no one much cared.

Precisely because the political logic of negative performativity works through a magical redescription of the real, it is largely impervious to criticism. There is something at once smug and naive in thinking that the transparency of government deceptions will make them

more vulnerable to exposure: on the contrary, it's their very transparency that places them beyond critique.³⁶ They constitute an open secret. Howard's electoral victories have not come about because he is widely believed to be a truthful man; as Marr and Wilkinson put it, 'Though never eloquent, he is a master of political speech. He can spin, block, prevaricate, sidestep, confound and just keep talking through everything ... Above all, Howard is a master of the political art of deceiving without lying. And he lies.'³⁷ And Australian voters know it: it's an integral part of the cynical realism of the Australian political process that deception is factored in as a given.³⁸

One of the temptations for those who would oppose the cynicism of a political order that we take to be corrupted by deception and lies is to despise the politicians who foster it: to personalise our argument. But emotional investment in the person of the leader, whether positive or negative, is always in some sense complicit with the values with or against which it identifies, and its pleasures are problematic. Those pleasures are central to the workings of a mass-mediated and spectacularised public sphere built around a rhetoric of embodiment rather than the classical 'rhetoric of abstract disembodiment'.³⁹ Yet to indulge them is to be caught up in a flow of affect which leads nowhere useful. These are matters of policy and of the social values it carries and fosters; they can and must be analysed in terms of the play of social interests. And while many structures of interest are intractable, there is no overriding necessity to the fantasmatic structure of hostility to strangers that has shaped Australian politics over the last decade. Generosity is part of our history too.

Still the puzzle remains. Why was K. targeted? Not for any connection with terrorism that he might have had, because there was none as far as I know, and as far as K. and his lawyers have been told. The evidence collected against him in the application for a control order was entirely concerned with his political connections—most of them professional rather than personal—in the Labor Party, the ACTU and Amnesty. What this suggests of course is that the 2005 Anti-Terrorism Bill draws the net much more broadly than its stated aims indicate. It suggests that the proponents of legitimate, non-violent political opposition—people like Andrew Wilkie, or members of NGOs—are being defined by the intelligence services as potential enemies of the state. Legislation to protect national security is being used as an instrument in a politics of othering which defines and expels from the polity the stranger without and the stranger within.

This exclusion is grounded in a fantasy: there is no homogeneous community, no 'mainstream', no agreed 'Australian values', no Other, therefore, who can be simply expelled. But this fantasy performs a definite function in the struggle to define inclusion within or exclusion from the bounded Imaginary of the nation. It grounds an authoritarianism which is all the more resilient, and all the more disturbing, for being sanctioned by democratic election.

And that's the issue. If democracy and liberal values are always potentially in tension, how do we take sides when those liberal values are threatened? Each is an absolute value, but they work to distinct ends: democracy on the one hand to the representation of a plurality of interests, liberal values on the other to the safeguarding of the legal and political pre-conditions for that representation. To threaten the latter is to perform an act of disenfranchisement, or to deny franchise in advance by excluding strangers from the polity. And we who have imagined the law only in negative terms, as a repressive but not also as a productive and enabling force, have perhaps been complicit with that denial of franchise.

The war on terror—a 'war' without an identifiable antagonist and with no possibility of ever coming to a defined end—provides the pretext for this process by which the formal conditions of existence of democracy are undermined in the name of the defence of democracy. Structured as a displacement of physical violence into the symbolic realm, democracy has no content; it is inherently unstable, open to manipulation, and capable of attacking its own enabling framework.

So what can we do about this? The usual things, the usual struggle for hearts and minds on the uneven playing field of the public sphere and with the usual inadequate political instruments. The most we can hope for just now is to defend the unfashionable freedoms and the basic forms of civility and hospitality towards strangers that we thought we could take for granted.

We cannot take them for granted.

UnAustralia—this mean and fearful place—is a country I barely recognise.

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