

Human rights

– the need to stand strong

It's time for human rights advocates to stand strong in their beliefs, argues **Conor Gearty**. Individual dignity, civil liberties and respect for law are the crux of human rights thinking. But the law itself can seduce. How will human rights develop next?

The idea of human rights provides an important counterpoint to the confident hegemony of international capital. The subject stands at its core for an ineradicable intuition about the dignity of the individual person. Every culture everywhere has strands within it that preach the visibility of all of the people within its remit: these are human rights strands. In the West, the idea began as a Judeo-Christian one but became secularised at the time of the Enlightenment. Other places will have different narratives, developing and protecting the same set of insights. In its modern form, respect for human rights demands a tolerance that refuses to punish the different among us simply on account of their being different. It requires a pluralism that denies that the only properly functioning society is one in which everyone shares the same set of views. Broad-mindedness is therefore an important part of human rights, but only in the sense that acceptance of the permissibility of other views is required: there is no obligation to share or approve those views, merely to accept that it is not necessarily wrong to hold them.

But human rights also seeks to secure human dignity via a strong emphasis on democratic forms of government, and on the civil liberties necessary to such a system of self-rule. A properly functioning democratic government, which exposes itself to periodic free and fair elections, is not the kind of organisation that tends to want to destroy its own people through starvation or malign neglect in the interests of the governing élite. The phrase 'properly functioning' is important here. We do not have to look far to see many societies that present themselves as democratic, perhaps even see themselves as exemplars of freedom, but which on closer scrutiny are anything but. The price is then paid in the form of the impoverishment of (parts of) its people and the fighting of unnecessary wars.

Linked to respect for the dignity of the person and to the importance of civil liberties and democratic government is the third angle in the triangle of interests that together make up the human rights ideal: this is respect for the principle of legality, or the rule of law. A society governed by laws, by objective rules of which people know in advance and a society in which disputes are resolved not by force but by an independent branch of government, is bound to be a place in which it will be possible to develop both the respect for civil liberties and the dignity of the person on which the human rights edifice depends. The principle of legality is a *sine qua non* for the rest of the project: you can have the rule of law without respect for human dignity and the democracy, but you most certainly can't have democracy and respect for the dignity of the person without some kind of commitment to an independent rule of law.

Thinking through what is entailed in the human rights ideal allows us to draw out a number of points. First, it is obvious that some people and groups do not belong in the human rights tent, despite their protestations to the contrary. At this point in its history, the protagonists of human rights need confidently to assert that the subject is rooted in tolerance and broad-mindedness certainly but is nevertheless dogmatic that such tolerance and broad-mindedness should be shared by others. Human rights is not a one-way-street, with the human rights activists offering a welcome and shelter and protection to those who would seek to destroy all that it stands for. The subject should oppose all forms of religious fundamentalism (whether Christian, Zionist or Islamic) and all expressions of racist sentiment with a venom that should surprise those convinced that human rights is an 'all things to all people' vague kind of liberalism.

Secondly, and it follows from the point just made, a commitment to human rights is, in the words of the lord chief justice for England and Wales, not a 'suicide pact'. Proof of success does not lie in our extinction. In the past, perhaps, the language of human rights has not covered as well as it might have done the need of every individual for personal security. When expressed in state terms, this is described as the interests of national security but in the language of human rights it is the security of people rather than places that is in issue. This is what made the proper human rights response to the events of September 11 so difficult. But the language of human rights does provide a more than adequate answer to such threats to international security, both in the form of the developing idea of an international criminal jurisdiction and in the concept of exceptions and derogations from human rights law, which allow departures from particular standards in specific situations but insist that those departures be carefully monitored and narrowly tailored to the real exigencies of the moment.

Thirdly, as it settles down on the centre stage of world politics, the human rights idea needs some further thought into how it connects with other concepts, such as democracy and social justice certainly, but also the market and the need for economic progress that is felt so strongly by developing nations. There is a risk of a kind of moral exclusivity or superiority in the deployment of the language of human rights, suggesting that the only people with the true interests of man and womankind at heart are the human rights people. We know this is not true. Human rights supplies an important perspective on other conduct but it does not challenge the need for other disciplines or recognise that they too may be motivated by non-selfish goals. The future of human rights lies in creative interaction with the forces for global good and in a robust and confident antagonism to the reactionary elements and ideas scattered around the world that would drag the planet back to a dark age of immoral and human-rights-disregarding despotism.

Fourthly, we must be mindful too of the temptations that success brings in its wake, the giving in to which would produce short term pleasure but long term extinction. There is a huge temptation to succumb to double standards, both in the way that protagonists of human rights conduct their own affairs and in the selectivity of their condemnation of abuses of human rights. As far as the first of these is concerned, the protagonists of human rights must conduct themselves in exactly the way they demand of others, providing within their organisations paradigms of best behaviour from a human rights perspective. They must be even more transparent in their operations and accountable for their actions than would be regarded as normal in international organisations and in other non-governmental organisations. Such determination to be whiter-than-white is an inevitable part of the 'human rights' claim: such powerful moral language cannot just be for external use.

As far as the dealings of the human rights organisations with the outside world are concerned, the risks are great. Very powerful nations naturally want not just military force but morality on their side as well, and they are able to exert real pressure to have their human rights agenda treated as though it were the whole story when it might just be part, and even a small part at that, of the story, ignoring as it often will crises of poverty or starvation which it is not in the interests of that nation to see. Promoters of human rights standards must resist the blinkers offered them by the powerful and insist on seeing the whole picture before them, however inconvenient or distressing it might be to powerful friends and funding bodies. As to how it then deals with the whole picture before it, that is a pragmatic question – the important point is that it is tactical and not rooted in the moral certainty of the deliberately half-sighted.

Fifthly and finally, there is the seduction of law. A successful and thriving rule of law is an essential feature in any properly functioning, human-rights-oriented society. But there are risks in a society in which the lawyers set too much of the pace and use up too high a percentage of a nation's moral capital. Human rights should never become a subject which is rooted so deeply in the law that the only right human rights actions are those mandated by this or that document or this or that adjudication. The risks in adopting an overly legal approach to rights are twofold. First, it may lead to a lowering of standards through constitutional texts and/or judgments supposedly carrying forward the human rights project which are in fact in defiance of it. It is a tricky venture in any society, even a democratic one, to put the judges in the front line of human rights protection. The second risk is an even greater one, however. An over-commitment to the legalism of human rights drains the subject of life, emptying it of much of its ethical activism and moral energy and replacing these vital forces with the careful accuracy and the passionless pedantry of the law. The promotion of human rights must use law to achieve its ends, but should be careful never to surrender all its energy to this necessary agent for its success, to this dangerous, double-edged friend.

It is an exciting time to be an advocate of human rights. The field is open and the subject stands on the cusp of a remarkable flourishing, as it stands ready to represent and promote many of the best features of what it means to be human in an insecure world. If there is lively debate and some turbulence ahead, then we should welcome this as evidence that the subject is being taken seriously, and more to the point is going in a direction of which we approve, towards a place humanity wants to reach. ■



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