

Human rights in an age of globalisation: the challenge of growing up

[A talk by Conor Gearty, Rausing Director of the Centre for the Study of Human Rights, intended to mark Human Rights Day on 10 December 2002 and to initiate a discussion on the role of human rights in the modern world.]

I want in these remarks to begin a discussion on how best to manage the success of the human rights idea. This may sound like a contradictory task. Clearly 'human rights' is one of the biggest subjects around: why even try to manage something that has already proved its laurels? How dare anyone even suggest that a subject so moral and ethically focused as human rights should be managed in any sort of way? Is not 'management' the sure route to decline? I don't think that it is. I am going to suggest here that it is precisely because of its astonishing success as an ethical idea over the past few years that all those who are seriously committed to the protection of human rights need to think with greater care than ever about where our subject fits in the global community. Our old approach to the subject may no longer work in modern conditions.

Let me explain a bit more what I mean by this. In the old days, during the Cold War, the powerful had little serious use to make of the language of human rights. To East and West alike it was a tool in an ideological war: the Soviet leadership excoriated the US for neglecting social and economic rights, while the Americans shouted back about the lack of a free press in Moscow and the jailing of Dr Sakharov and other 'prisoners of conscience'. There was simply no meeting point between these two radically different versions of rights.

It was tough in those days to be a human rights enthusiast. Protagonists of the human rights idea occupied a small tent in no-mans-land between these warring factions, neither socialist nor capitalist, but something in between, a community of idealists who saw the language of rights not as part of some larger ideological battle but as an ideology in itself, an ideology that demanded respect for human dignity, for civil liberties and the rule of law. Of course the socialists thought the human rights people were capitalists in disguise, and the capitalists thought they were communist agents so they got fired on from all sides. (Once upon time I was doing some of the firing myself.)

As I say, it was a tough time to be a human rights activist, but it was also a pure time, when there were few true believers and the lack of central engagement in the battlefields surrounding the tent gave its dwellers a grand sense of being above the surrounding fray. In many ways this was true. Human rights provided a clear, almost other-worldly, ethical perspective with a take on the wrongs that were being done on the surrounding battlefields that was as detached as it was determined. 'This is not our world,' it seemed to say, 'we belong elsewhere'.

Everything changed in 1989. Suddenly one side in the great twentieth century battle collapsed. Like the German army in 1918, the Communist battalions suddenly melted away. Within what seemed like an instant, not only the outward defences of the Soviet system – the Warsaw's, the Prague's, the Budapest's – had been stormed, but so even had the inner citadels of Marxist-Leninism, Moscow and Leningrad.

All that was left on the battlefield were the Capitalist victors, swarming over their ideologically-gotten gains. Of course many of the old left joined forces with the Capitalist victors: being materialist in their hearts, they found it easy to re-attune their addiction to a striving for personal wealth. But others who might have believed in the ethical aims of Communism and Socialism, even if not in the Soviet means, continued to view the Capitalist alternative with distaste. So too did many in the West, who were already suspicious of the ravages that capitalism wrought on the person and who had been dependent on fear of the (now collapsed) Soviet bloc to impose some kind of social democratic order on its materialistic excesses. The worst fears of these Western sceptics seemed to be borne out in the 1990s when a new, terrifying kind of global capitalism seemed to burst onto the world, enslaving whole tracts of the developing world just as entrepreneurs from earlier generations had once enslaved both proletariat communities in early western societies and the subjects of imperial rule further afield.

It was around this time, the mid 1990s, that people began to notice that the little human rights tent, which had survived on no-mans-land for so long during the great ideological wars just past, was still there, with the same ethically impressive, dedicated people hanging around, determined to do good. To the old socialists, who couldn't bear to become full capitalists, this looked now like a very attractive place to be. To profit-makers who wanted some kind of human face, it also seemed ideal – enough ethics to dilute capitalism with humanity but not enough to threaten an unwanted revolution. Then came the horrors of Rwanda and Yugoslavia and a recovery of the old idea – which had fuelled the immediate post-war period – of why human rights *really* mattered. The tent grew and grew in size, as it accommodated more and more people determined to assert that the market was not the only show in town.

That is now true; there are at the start of this millennium once again two big ideas, but the second is no longer (or at least no longer for now) communism or socialism, it is human rights. Our subject says in a quiet whisper to the droning capitalist voice declaring 'there is no alternative', that 'yes, there is, there is a better way', and that way is to be found through the language of human rights – a phrase that carries within it respect for the dignity of the person, a commitment to the rule of law and a determination to secure and protect civil liberties and democracy. In this global capitalist, post-religious age, human rights carries a fearsome burden –

it shoulders the entire conscience of our age, protecting us from the worst excesses of both ourselves and our neighbours.

As the former UK Home Secretary Jack Straw was fond of saying, with rights come responsibilities. The idea of human rights is no longer peripheral to political debate, the perennial outsider always insisting on but inevitably being denied entry to the high table of diplomacy and international relations. Its protagonists can no longer afford to see themselves as above the compromises and challenges of tough political life, able to protest in perpetuity against decisions that it is left to others always to make. Human rights is no longer an ethical accessory: it has become a necessary garment in our otherwise brutal, cold and capitalist world.

To rise to the challenge posed by this newly acquired centrality, the language of human rights must now work to become clearer than ever both about what it stands for and (just as importantly) about what it does *not* represent. The idea of human rights stands at its core for an ineradicable intuition about the dignity of the individual person. 'We all matter' is the simple insight that the subject brings to the military, the political and the international arenas. 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 or wage savage, genocidal campaigns on its neighbours. I say 'properly functioning', because 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. Human rights is so close an ally of the democratic ideal that the two are for all practical purposes interchangeable. True there is a discussion to be had about whether a democratic government always respects human rights and about whether courts should be allowed to override such

assemblies in the name of individual rights. But this is a minor discussion on the margins of our subject: effective democratic rule invariably produces respect for human rights, of both the civil and political and social and economic sort. (It is because so many important global decisions have drifted away from any kind of democratic base that we have such terrible violations of human rights such as the right to food and shelter and to work in recent years.)

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 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 that might otherwise have been difficult to make. 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 broadmindedness 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 a 'all things to all people' vague kind of liberalism.

Secondly, and it follows from the point just made, a commitment to human rights is not, in the words of the lord chief justice for England and Wales, 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 right human rights response to the events of 11 September 2001 so difficult. But the language of human rights does provide a more than adequate answer to such threatens 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 to put some further thought into how it connects with other concepts, such as democracy and social justice certainly, but also even 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 such 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 that 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 insists 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, then 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. This is the reverse side of what I spoke of earlier: 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 two-fold. 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 actual fact in defiance of it. It is a risky 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 passion-less 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 somewhere, in a direction of which we approve and towards a place we all want humanity to arrive at.