

Human rights: can we still afford them?

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All my life growing up in the UK – and this is the perspective I am inevitably talking to you from – successive governments and their supporters in the media have repeated the same refrain:

Britain is the mother of democracy, the inventor of liberty.

International human rights: we don't need them. They only tend to become trivialised when applied on UK soil.

Human rights, in other words, are apparently something *foreigners* lack; a means for the North to tell the South where they've gone wrong and we've gone right.

This discourse changed dramatically following 9/11, - in the UK as elsewhere - when in the context of understandable concerns about security, America, with a little help from Britain, declared war on terror:

- amidst claims of collusion in the maltreatment and torture of detainees abroad there was pressure to include evidence from torture in domestic criminal trials in the UK;
- whether, and when, to torture entered the mainstream of political debate.
- house arrests, indefinite detention without charge, and trials held behind closed doors became a reality, all in the home country of the Magna Carta.

Human rights, it seems, were no longer something we didn't *need* in the west – they were something we could no longer *afford*.

Now we are entering a new phase in which our leaders in the UK are playing catch up with the new American president as he seamlessly links the founding values of American and western democracy with international human rights standards.

Human rights, he argued in his Cairo speech on 4 June, are part of the defence strategy of the west; for they define what we stand for and what is worth defending.

In his inauguration speech he was even more direct about this:

“as for our common defence, we reject as false the choice between our safety and our ideals. Our founding fathers, faced with perils that we can scarcely imagine, drafted a charter to assure the rule of law and the rights of man, a charter expanded by the blood of generations. Those ideals still light the world, and we will not give them up for expedience's sake.”

But just as these sentiments are gaining traction on both sides of the Atlantic, with some new policies to reflect them, *another* spectre looms. With the global economic crash the cost *and* relevance of human rights are again at an issue. To many human rights campaigners the question “can we still afford human rights?” is not one to ask in polite circles.

The director of Amnesty International in the UK spoke for many human rights defenders recently when she wrote:

“for almost a decade, since the aftermath of the attacks of 11 September 2001, the message of the powerful has been that human rights have to be

compromised in the name of security. Now, in the name of economic recovery these rights are again being de-prioritised. It won't do. Human rights are not an ideal you opt into when times are good. Most governments are signatories to treaties, which oblige them to protect everyone's human rights at all times." {Global poverty: the human-rights dimension', Open Democracy, May 2009}

Of course it is true that human rights standards are protected by legal treaties that most states around the world have ratified.

But as philanthropists – and custodians of charitable resources - you are more than entitled to ask whether in prioritising the funding of human rights you get enough bangs for your bucks?

In the short time left to me, I want to try to answer our question, *can we afford human rights?*, in 2 parts –

- A) it depends on what we mean by human rights?
- B) it also depends on what we mean by afford?

A: Too often the discourse and literature ignores the 'human' in human rights.

It was only after WWII that the phrase *human* rights became part of popular discourse, with the Roosevelt-inspired universal declaration of human rights (UDHR). The declaration built on the legacy of the enlightenment, in which individual freedom was *paramount*. The UDHR developed *new* understandings of what is necessary for humans to *flourish*.

Prof Ronald Dworkin, the famous American theorist, spoke in the classic enlightenment vernacular when he wrote in 1977 that "in most cases, when we say that someone has a 'right' to do something, we imply that it would be wrong to interfere with his doing it, or at least that some special grounds are needed to justify that interference." {*Taking right seriously*, Duckworth, 1977}.

3 significant hallmarks of the UDHR, and subsequent international human rights treaties, illustrate how modern human rights thinking has developed *beyond* Dworkin's 'non-interference' model into a framework for the 'respect and *fulfilment*' of fundamental principles and standards.

- A) influenced by all the world's great religions, developing theories of social democracy and communitarian philosophies from east and west, the UDHR did not privilege liberty over the values of dignity, equality and community.
- B) as a consequence, in the international human rights framework individual rights can be limited, *proportionately*, where necessary to meet the needs of the wider community, *provided* these limits are commensurate with the values of human rights in a democratic society
- C) this broad approach – in which equality, dignity and community are valued alongside liberty and justice (indeed there is no justice without them), provides the root to what we call economic social and cultural rights - to health, food, an adequate standard of living and so forth. These were given equal standing to civil and political rights - like free speech and association - in the UDHR.

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What lay behind this development was an acceptance that a right to life, without the wherewithal to live, or freedom to choose, without meaningful choices, are rights stripped bear of transformative effects.

Dr Melissa Lane, a senior lecturer in history at Cambridge University said:

"In recent years [we have fallen into the trap of] defending a bare list of rights, not a social outlook which connects with people's wider values. ...to win genuine popular resonance, we need to celebrate not just the liberty to do what others don't like, but also those who make use of their liberty to service the welfare of others and to advance broad social ideals."
{‘Liberty as a social value’, March 2009}

The post-war human rights framework also brought new approaches to the *protection* of human rights. Whilst a violations/compensation model involving judicial remedies for state breaches of fundamental freedoms remain vital, a ‘respect and fulfilment’ approach to human rights has brought other mechanisms in its wake including human rights commissions, international monitoring bodies, ombudsman and inspectors to address inequalities, injustices and undignified treatment.

The UK's new statutory Equality and Human Rights Commission was established to promote and protect the rights in the 1998 Human Rights Act which incorporated the European Convention on Human Rights into UK law. In a year long inquiry into human rights – published in June [on which I sat as the lead commissioner], we heard convincing evidence – some of it externally evaluated - about the difference a culture of respect for human rights can make to both those who deliver and receive public and allied service.

In a nutshell, the human rights values of freedom, respect, equality, dignity, and autonomy (FREDA) – provided they are underpinned by a legal framework (like the UK's Human Rights Act or other domestic bills of rights) - can provide an ethical framework, to guide the often edgy power relationships between service users or clients and the officials who have the power to make decisions which effect all our lives.

Tangible results, which defy the often artificial distinctions between so-called civil and political/social and economic rights, included:

- A) Mental health patients experiencing increased confidence and new skills through participation in services
- B) Schools signed up to 3 Rs programme (rights, respect, responsibilities) recording sustained reductions in bullying and exclusions
- C) Social workers applying respect for the right to family life to keep elderly couples together in care
- D) Police fulfilling their duty to protect the right to life through a set of minimum standards to safeguard everyone from known and foreseeable harm, e.g. from domestic violence, or witness intimidation.

Interestingly, the social purpose consultancy, Global Partners, found similar impacts in recently published *international research on using human rights in anti-poverty strategies* (including examples from the USA).

Global Partners found that a human rights approach can have an impact on structures and relationships of power that produce inequality and injustice by, for e.g.:

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- Mobilising communities to be agents of their *own* solutions to achieving social change; and
- Weaving accountability and transparency into anti-poverty strategies.

All well and good, but, turning to the 2nd part of our question, can we *afford* such an approach?

Claims that human rights –and in particular social and economic rights – require unaffordable remedies and produce *unsustainable* results, are generally based on a violation/compensation model of human rights.

Evidence suggests that the recognition of health as a fundamental right in Brazil's 1988 constitution, for example, has come to be interpreted by the courts as a justiciable right of {often wealthy} individuals to demand expensive, individualised treatment from the state. This has resulted in a very high rate of successful, but costly (and arguably inequitable) litigation. (7,400 right to health cases in 5 states of Brazil; 82% success rate). According to research, this approach has *not* been a transformative, systems-changer. {*The right to healthcare in the courts of Brazil*, Octavio Ferraz, Assistant Professor of Law, University of Warwick, 2009}.

In the few other countries where economic social and cultural rights are protected constitutionally, either they are mostly *not* directly enforceable as individual rights through the courts [e.g. India/Ireland/Ghana] or justiciable rights are broadly framed in similar terms to international treaties. In South Africa, for e.g., the right to healthcare, must be 'progressively realised' through 'reasonable' measures within 'available resources'.

The question of affordability does not just revolve around *legal* framing but on how you *conceive of* the human rights enterprise in the first place.

The famous theorist Amartya Sen distinguishes between "health achievement" and the "*capability* to achieve good health". On this conception, human rights are not just about measuring violations and awarding redress, but about providing the means for human flourishing. {A. Sen "Why health equity?" Oxford University Press, 2006}.

If a human rights approach to health and other social and economic rights is conceived in such "capability" terms, a convincing case can be made that the use of human rights might *reduce* costs in the long-term.

Not only in the sense Ken Roth, director of Human Rights Watch, spoke of when he predicted a reduction in mandatory prison terms and the death penalty (where the lengthy appeal process costs more than life imprisonment) in order to save money. ('G20: the summit must not forget human rights', Human Rights Watch 2008).

But also in the sense that an "ethically responsible economy," to quote the UK's Archbishop of Canterbury - where economic success is measured in part by the benefits accrued for the least privileged – can *reduce* the costs that poverty and unrest inevitably inflict on society.

As my LSE colleague, Dr Margot Salomon has said: "international human rights law does not prescribe a particular economic system ...it does, however, contain both

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principles and standards that seek to ensure that any methods for achieving economic growth are just, and that its benefits are fairly distributed.”

All around the world we have witnessed the effects of market systems which do not have fairness and justice built into them.

- More than 100 people were killed in Cameroon in violent clashes over rising food prices.
- Similar strikes and protests took place in Egypt, Tunisia and the Ivory Coast.

Richer countries - like China, India and the gulf states - have begun acquiring farmland from impoverished countries like Sudan, Tanzania and the Congo which are already struggling to feed their populations.

The UN's high commissioner for human rights has become alerted to this phenomenon because this kind of injustice is beginning to be understood as a human rights violation that requires intervention, not just an economic or development question.

Martin Luther King once said: “there is nothing more dangerous than to build a society, with a large segment of people in that society, who feel that they have no stake in it; who feel that they have nothing to lose. People who have a stake in their society, protect that society, but when they don't have it, they unconsciously want to destroy it.”
{1965 Commencement address at Antioch College}

60 years ago, as the world recovered from the second devastating war of the century, idealistic men and women came together to create conventions and institutions to secure peace and prosperity for all. It is easy to forget that before this time there was virtually no international law to regulate the treatment by governments of their citizens which was perceived as purely a domestic affair.

Just as today climate change is viewed as potentially ruinous for the human species, so the mothers and fathers of post-war human rights instruments judged that our very survival *depended* on establishing and implementing an internationally agreed legal and ethical framework – which they called human rights - to manage our relationships with states and with each other.

Amongst the many demands that were facing the world at the end of a catastrophic war, the respect and fulfilment of the fundamental human rights of all was understood to be of the highest priority .

From today's vantage point of a much more prosperous, if no less unequal, world: *can we still* afford human rights?

My answer is: how can we not?

Professor Francesca Klug
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