

Human Rights after Darwin: Is a General Theory of Human Rights Now Possible?

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Seven years ago, almost to the day, I applied for the job I am about to give up. I was a week late, and only sent in my CV and cover letter because I had finally taken the advice of my friend and long-time colleague Francesca Klug who was already well-ensconced in and enjoying LSE. Though the centre for the study of human rights already existed at LSE, with Francesca very much associated with it, the then director of the School Anthony Giddens keen on it, and Professor Fred Halliday in place as its inaugural director, it wasn't present in any tangible, physical sense. It was a generous benefaction from our chair this evening that made the appointment of a bespoke Director and a real centre possible. This was to be no ordinary academic post: a new regime within LSE, it was intended to be at the centre of engagement with human rights – based at the School for sure but unapologetically reaching out into the wider world. In other words it was the dream job.

My interview, though, held upstairs in this building, got off to what might be described as a difficult start, an Oxford professor of genuine gravitas and distinction wondering out loud (more or less in my direction) why – given my notorious opposition to bills of rights and all forms of constitutional rights – I had even bothered to apply. This was an entirely accurate summary of my academic work through the 1990s and into the first years of this decade: those of you who know me well will now be relieved to learn that I have no intention of reprising this evening the various reasons for the positions I then took (and why when you look very closely there is not the slightest inconsistency between what I said then and what I write now). But what answer could I give to the Oxford Professor's question? Was I applying because not only was this the dream job but also because LSE was a great place, part-founded by the Irishman George Bernard Shaw and the home of such leaders in my field as Harold Laski, William Robson, John Griffith and latterly Martin Loughlin. Up to a point, this was it, yes.

But also because – and this is the answer I gave then and believe even more firmly today, seven years on – proponents of human rights are believers in an idea, not in any particular means of bringing that idea about; that what matters are equality of esteem, universality of respect, and a commitment to some intangible almost inarticulate sense of what human rights people think of as the dignity of all, and sometimes these very positions can lead – should lead I would of course say – their holders to scepticism about the claims and capacity to deliver of certain self-describing rights' documents: the most obvious means do not always serve their declared ends, however flamboyantly they might be framed.

This kind of belief in human rights is what has informed my time at LSE. We have always kept the Centre away from the lawyers, happily quartered in a Sociology department where it has been well supported not only by brilliant academics such as (particularly) Stan Cohen but also by a succession of convenors/heads of department: Nik Rose, Dick Hobbs and

latterly Judy Wajcman. This is not because we hate lawyers or want like Shakespeare to kill them all – how could I say that with such supportive colleagues as Christine Chinkin and also with Chaloka Beyani as the chair of my advisory board? Rather in the human rights centre we think that they are so powerful there should always be some hindrances to their natural tendency towards institutional colonisation, towards disciplinary empire-building.

In the critical early months, before I had even properly come in, I followed the Centre's then acting director Professor Peter Townsend around the School in search of premises which we eventually found in an old kidney hospital on the site. Suitably decked out in the centre colours of green and blue (what a fight it was to get the colours of our choice!), this is where we still are. (Every about six months we are told the building is scheduled for demolition: we just carry on and have never been wrong yet.) Peter – without whom the centre would not be what it is today – was also able to secure School support (over and above that being provided by the Rausing gift) to help towards an extra post and the arrival of Joy Whyte as our first centre manager was largely his doing: it was Joy who was a prime mover behind so much of what we did in those first years. In Joy and her successor Zoe Gillard – both here tonight – I have been exceptionally lucky to have had two centre managers whose administrative skills have been matched by their vision and with whom it has always been a pleasure to work: the centre is their creation as much as it is mine.

Then there have been the students. It took about three years for it finally to get through to me that centres at LSE are not supposed to teach at all, that this is what departments and institutes do. By then, I had already started three new courses in law, doubled the numbers on the MSc human rights course, and brought in Harriet Gallagher as our new postgraduate administrator (in place of Katherine Worthington who had migrated back into academic scholarship). Protected by the generosity of my external funder, I could insist that all this teaching activity was what she wanted. It has been the reason why I have been able to draw a succession of brilliant academics into our fold. First were Gerd Oberleitner, happily here this evening, to teach the international law side, and then Claire Moon from the department of sociology to cover all that Weber and Durkheim stuff about which I as a black letter lawyer hadn't a clue. With Margot Salomon having taking over from Gerd, and Alasdair Cochrane now also on board (in succession to Ivan Manokha and Nick Guilhot) we have throughout been a flourishing island of scholars. If you doubt this read some of their books: *Global Human Rights Institutions* from Gerd, *The Political Economy of Human Rights Enforcement* from Ivan, *The Democracy Makers* from Nick, *Narrating Political Reconciliation* from Clare, *Global Responsibility for Human Rights* from Margot, and *Animal Rights* on the way from Alasdair. All done in the midst of teaching the students.

And what a group they – you! – have been: every year I read hundreds of applications and admit not only the best intellectually, and we have had the luxury of being able to be very choosy, but also the most active in civil society. The personal statements that you all write as part of the application process (now overseen by Sara Ulfspärre who is here and before that Ahmad Qandeel – also here - who succeeded Harriet when she like Joy went off to larger things within LSE) – it is these personal statements that really matter, and it has been reflecting on their content that has led me into the subject of this evening's final lecture by me as your centre director.

For these applicants' statements have a common theme, summed up in four short words: 'I want to help'. Their writers will already have helped in some way or another – Amnesty; a small NGO they have started; an internship at an international organisation – but they want to help more, to join the UN or go into civil society after they graduate, equipped they believe (this is why they apply) with the human rights knowledge to do even more. And this 'even more' is invariably to help people whom they don't know, whom they have never met, and who may well come from entirely different ethnic, national, cultural backgrounds: the only common bond is their shared humanity. My students' personal statements never say that they want to do an MSc in human rights in order to analyse more deeply the meaning of autonomy in the work of Immanuel Kant, or to study Habermasian ideal speech conditions that would make civil liberties an effective guarantor of the good society, or to probe the finer points of the latest international law framework for the protection of this or that. Though they write often about terrorism and the (now thankfully) waning 'war on terror', they are never detached but nor do they luxuriate in cynical despair. My students – whom we celebrate later this evening with our seventh annual alumni dinner – are believers in good and doers of good, and 'good' here is not some fancy piece of scholarly jargon. It is the consequence of empathy, in Adam Smith's fine phrase what flows from 'changing place in fancy with the sufferer'.

Stephen Hopgood from SOAS has written a fine book about Amnesty, *Keepers of the Flame*, in which he finds the analogy with a religious movement to be a strong one. Certainly human rights has its Holy Days (10 December), its saints (Eleanor Roosevelt, Peter Benenson), its martyrs (Serge di Mello, Archbishop Romero, too many, sadly, to mention), its missionary orders (Amnesty itself, Human Rights Watch, many smaller movements), even – tragically – its crusades (Iraq) and its Inquisitions (the human rights professors who support institutional ill-treatment to save our civilised souls). But we are not a religion. Jesus is not our guide, nor is Mohammed, nor any other of the great leaders of any of our world faiths. In answering the question, 'why do we care?', we are on our own. But if we can answer this satisfactorily we are well on the way to understanding the power – I would even say magic – of the term 'human rights' in its contemporary usage.

Tom Stoppard has said that 'human rights simply endorse a view of life and a set of moral values that are perfectly clear to an eight-year-old child', and I think that in a profound way which I hope to explain this evening this is correct, perhaps even (as we shall see) understates the point. As I have said before, the human rights movement is a visibility project, its goal is to get us to *see* people truly *as* people and therefore – *each of them* – as *entitled* to right treatment *on account of their humanity*. Over time and across cultures, this project – of *care* because of what is *seen* – has gone under – continues to go under – different labels, protected by the benign power of God, or reason, or custom, or law, or (these days, in many places, as with our students) 'human rights'. But all these structures and terms and arguments and habits are not reasons to care or explanations of why we care, rather they are *ex post facto* rationalisations of a propensity to care that precedes them. We are not persuaded by our brains to care; we care because of what we are, not because of what we think.

Three and a half years ago, I stood here in this place in another public lecture ('yet another' I hear some of you say), and wondered aloud whether we should not worry so much about where this caring tendency comes from, and rejoice instead in the fact of its existence, consciously refusing to ask seriously about its origins lest we should find none and end up thinking ourselves out of the habit. I thought that was wrong then and do so even more today. That was the Autumn of 2005 and noticing that it was the 196th anniversary of the birth of the great Charles Darwin, I went on then to propose the great naturalist for human rights canonisation as our movement's secular saviour. This is the thought I want to work through some more this evening.

A trail-blazer on the legal side of this is my colleague Professor Dawn Oliver from UCL a draft of whose essay 'What, if anything, do the sciences of human nature have to offer to constitutional law?', I have seen. I agree with Dawn when she says that 'there is no evidence that specific "human rights" (freedom of speech, association, religion etc) are genetically favoured' (pp 12-13). As is already clear I am thinking about underlying dispositions. Here we are in close agreement. Our joint interest is in evolutionary psychology which as she puts it 'seeks to identify the evolved psychological characteristics of humans' with this process generating 'predispositions – psychological traits that are heritable and are manifested in the brain's neural architecture – [which] were adaptive when they evolved, in the sense that they contributed to successful reproduction' (p 3).

Here is an important differentiating aspect of a Darwinian (more accurately neo-Darwinian) as opposed to a traditional approach to our subject: we start with feelings and end with reason rather than the other way round. Jonathan Haidt has the brilliant analogy of an elephant of feeling being controlled by the rider of reason (*The Happiness Hypothesis* 2006). Nature gives us the first draft of our lives and reason, experience and plain luck do the rest.

Which predispositions matter for human rights? If we think of ourselves not as members of a special species but as each of us composed of a bundle of genes on the look-out for survival, then it by no means follows that in this field we have to commit ourselves to the rather loaded idea of the 'selfish gene' – there are many routes to survival and not all of them are marked 'me alone'. The way we are is not all self-oriented: as Adam Smith put it in 1759, 'How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it.'

What Darwin allows us to do is locate an insight of this sort within science and then to see it as part of an animal (rather than uniquely human) approach to living. Far from being something spilt into us at birth from which we then learn how to behave, 'the building blocks of morality' are as the great primatologist Frans de Waal put it in his Tanner lectures, 'evolutionarily ancient' (de Waal, *Primates and Philosophers* 2006 p 7). Tom Stoppard was conceding too much when he thought the child needed to be as old as eight, even that it needed to be a child, as opposed to a gorilla, a chimpanzee, a dolphin or an elephant. Here are some more provocative words from the printed version of de Waal's lecture:

The evolutionary origin of this inclination is no mystery. All species that rely on cooperation – from elephants to wolves and people – show group loyalty and helping tendencies. These tendencies evolved in the context of a close-knit social life in which they benefited relatives and companions able to repay the favour. The impulse to help was therefore never totally without survival value to the ones showing the impulse. But, as so often, the impulse became divorced from the consequences that shaped its evolution. This permitted its expression even when payoffs were unlikely, such as when strangers were beneficiaries. This brings animal altruism much closer to that of humans than usually thought, and explains the call for the temporary removal of ethics from the hands of philosophers (p 15).

Following the logic of this, de Waal asserts that ‘empathy is the original pre-linguistic form of inter-individual linkage that only secondarily has come under the influence of language and culture’ (p 24). The way empathetic tendencies like these influence our behaviour is not conscious in the sense in which we ordinarily use that term. Pascal Boyer describes it in his highly innovative work, *Religion Explained. The Human Instinct that Fashions Gods, Spirits and Ancestors* (Vintage 2001) as being ‘the same as “deciding” how to stay upright. You do not have to think about it, but a special system in the brain takes into account your current posture, the pressure on each foot and corrects your position to avoid a fall. In the same way, [do] specialised cognitive systems register situations of exchange, store them in memory and produce inferences for subsequent behaviour, none of which requires an explicit consideration of the various options available’ (p 209).

So once again where do human rights fit in all this? The intuition to help others that is the product of the evolutionary dynamic I have been referring to, and its offshoot into a more general empathy and outreach to the other that de Waal describes, is clearly close to the desire to help that I have seen year in year out in so many of my MSc applications. But of course it is not the only feeling that bursts through the human subconscious into our active selves. There are and have always been other propensities at work too, powerful ones that assert the primacy of the in-group over the other, that may start with kin-support but then move quite quickly into hostility to the stranger. In fact as we know all too well, even today this sense of the solidarity of the group frequently collides with efforts to engage a wider empathetic response to the plight of others.

I would go so far as to say that the universalistic tendency is a weak one in comparison with that which directs our attention and solicitude in the direction of those we know or at least know of: our family, our kin, our community and consequently which underpins and reflexively legitimises our hostility to others. Indeed it may well be that we learnt morality by bonding with those we knew, thereby rooting such mutuality at least partly in a shared antipathy to the outsider: if so, then as de Waal puts it ‘the profound irony is that our noblest achievement – morality – has evolutionary ties to our basest behaviour – warfare (p 55).

As a mere secondary growth, a spin-off without direct evolutionary purpose, empathy for the outsider will always be delicate and fragile, perpetually at risk of being overridden. To

maintain a commitment to others even within communities is not easy. The reach towards the other is certainly at its strongest where close family is concerned but gets progressively weaker as it move away from our direct relations into wider kin and then into community. How has the wider impulse survived? According to the philosopher Philip Kitcher, with the emergence of language,

there began a process of cultural evolution. Different small bands of human beings tried out various sets of normative resources – rules, stories, myths, images, and more – to define the way in which ‘we’ live. Some of these were more popular with neighbours and with descendent groups, perhaps because they offered greater reproductive success, more likely because they made for smoother societies, greater harmony, and increased cooperation. The most successful ones were transmitted across generations, appearing in fragmentary ways in the first documents we have, the addenda to law codes of societies in Mesopotamia (in de Waal, p 137)

The law codes mentioned here are one of a number of what Pascal Boyer has very helpfully described as ‘commitment gadgets’ (p 211) with which we have tried to tie ourselves down to follow the better (long-term) part of our nature. The point here is about a spin-off from mutual reciprocity that then develops a new head of steam as society evolves and the attractiveness of harmony and smoothness over perpetual violence becomes apparent. This has a strong explanatory power so far as Hobbes and indeed the authority of law are concerned – but neither of these speaks necessarily on behalf of the outsider: mutual reciprocity and smoothness more easily produce walled cities than open societies. To look for a commitment gadget that ties us to that better part of our nature marked ‘empathy’, we need to look elsewhere.

Religion fulfils an obvious function here: my colleague at Birbeck, Costas Douzinas has written about how early Christianity ‘undermined the classical hierarchies’ (‘Who Counts as Human?’: *Guardian Unlimited*) and of course that particular belief system was rooted in the nobility of dying to redeem others and (at a more practical level) stopping to help others: not only Christ on the cross but the Good Samaritan as well in whose unintended reproachful shadow many of us of a certain age lived out our childhoods. Literature too – as the late Richard Rorty believed (with his suggestions about the need for a sentimental education) and as recent work on the Victorian novel has claimed, good writing has ‘helped us to evolve into nicer people’ as the *Guardian* report put it (15 January 2009, p 4).

And also custom: in his most recent book *Moral Relativism*, Steven Lukes speculated that ‘Perhaps when we are in the “grip of custom”, we are motivated by moral emotions that are indeed “natural”, or innate, which developed because they helped individuals spread their genes: they sounded alarm bells, offering reliable, immediate responses to recurring situations’ (p 47).’ And then in one magnificent sentence which I am brave enough to quote but (despite its echoing of earlier remarks in this talk) I would not have been courageous enough to write, he says this: ‘Perhaps we “prop up” these emotional responses by elaborating deontological rationalizations with talk of the Moral Law and “rights” and with categorical and inflexible moral rules’ (*ibid*). Thus is philosophy reduced to the status of a mere flying buttress for the cathedral of feeling, the reins held by the rider of Jonathan Haidt’s elephant. Is this where Ted

Honderich's principle of humanity comes from, or even Martha Nussbaum's capabilities approach – control gadgets put in place by clever people, and believed by other clever people, as reflections not only of their brain power but also less consciously of the ethical fuel that makes their brains work in the particular way they do?

When people talk of common humanity, Steven Lukes says, '[t]hese days they will speak the language of human rights' (p 20). In our contemporary culture, human rights is the best 'commitment gadget' available to those whose life project or immediate ethical task is the generalisation of the propensity to help the other into something beyond kin, beyond immediate community, beyond nation even, into the world at large. It is the habit of mind that flows from the far-seeing activist's capacity to grasp that in our shrunken world we are all affected by actions in a way that requires us all to be seen: the island people whose homes are destroyed by an inundation precipitated by first world greed and recklessness are the contemporary equivalent of the newly arrived neighbour whom some grunting but imaginatively-wired pre-linguistic human types thought it better to befriend and help rather than to kill.

The term human rights works so well to capture this feeling because it is multi-purpose: making sense at the level of philosophy ('here is why you ought to help the stranger'), at the level of politics ('they have a human right to this or a human right to that – therefore arrangements must be made for them to get it'); and at the level of law ('the right is set out in the Charter or the covenant or in the constitution that our forefathers created to keep us in check'). Of course each can then spin off in the wrong direction – philosophy into analytical aridity; politics into an inflation of rights' claims; law into an over-reliance on litigation – but these wrong turnings into cul-de-sacs are inevitable in a journey as ambitious as this – an effort to persuade the world that it is indeed a village and that the unknown stranger is as worthy of my care as my blood brother.

Douzinas describes the 'human rights movement' as 'the ongoing but failing struggle to close the gap between the abstract man of the Declarations and the empirical human being' (*Guardian Unlimited*). It is difficult and will never be perfect but I don't think it has to fail. The word 'struggle' is important here and introduces a further but crucial dimension to human rights that I cannot end this lecture without taking explicitly into account. Human rights would not have succeeded in the way it has if all it were was the law and practice of niceness, of Comtean altruism (see T Dixon, *The Invention of Altruism. Making Moral Meanings in Victorian Britain* (British Academy, 2008)). The human rights story is not all about givers, it is about takers too: there is a large-scale subaltern tradition to take into account, a tradition of solidarity, of resistance to the abuse of power and of the assertion of right in the face of immoral might. The 'visibility project' is about the powerless stepping into the light as well as about getting the powerful to have better eyesight.

This is why Magna Carta is so often appropriated as a human rights achievement: the chief barons stood up to King John. And why, too, we can regard Kant's reworking of the Christian ethic into secular shape as a breakthrough for human rights – notwithstanding the various differentials in the status of many humans that he rather coldly contemplated (active and passive citizens; the ones able to make life plans against the second division ones who can't;

and so on). This is not embarrassing because Kant's innovation is mainly about power: wresting authority from the church in favour of the people. The revolutionary dimension to human rights becomes explicit with the American Declaration of Independence in 1776 (not even the fact that some of its signatories were slave-owners has been able to dampen the enthusiasm of later generations) and then of course – and quintessentially – the French Declaration of the Rights of Man and of the Citizen, a document still celebrated as a founding text despite not only its vacuities but also the violence which the new regime sanctified by it very soon unleashed.

This connection with agitation, protest, destabilisation, even violence has always been part of the human rights story. The Universal Declaration of Human Rights in 1948 acknowledges as much when in its preamble it might not explain where human rights come from but it does announce the necessity of their protection by the rule of law 'if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression'. This perceived necessity drove the anti-colonial insurgents of the 1950s and 1960s, just as it does many of the climate protectors and eco-warriors of today. It is because of a concern about human rights that many have come to accept, perhaps even argue for, intervention in the affairs of human-rights-abusing states: a live issue until the Bush presidency showed how easily it could be abused but unlikely to remain for ever off the agenda of human rights activism: as with Christianity before it, the human rights crusade follows logically from belief in a universal dream, and one that *in extremis*, is sufficiently important to warrant imposition.

This strand to human rights is founded in a discourse of power. It is because of it that we feel so comfortable in LSE's department of sociology. Power must be harnessed, controlled and reduced. The new power structures that rise up to replace the old are then subjected to the same process of criticism and required to be reworked in still fresher ways. George III is replaced by the founding fathers who are replaced by the Supreme Court; the landed are superseded by democratic parties whose exercise of power gives rise to calls for counter-majoritarian mechanisms in the form of bills of rights which led to anxiety about judicial power, and so on seemingly endlessly.

There is a connection between the two strands. Even Michel Foucault felt compelled to protest for Solidarity and against Franco. Human rights make resistance to power possible, give a name to a feeling of deep antipathy. But since it is too glib to say that all power is always wrong, we need to know why certain exercises of power are bad, and to know this we need further to have some underlying sense of right and wrong, some way of knowing why we should protest against this 'abuse' while not regarding some other action either as an abuse at all or as one that should warrant our attention. I am not talking here about protest to protect self-interest: hunting folk, Fathers for Justice, fuel-protestors and the like. Rather I have in mind the kind of people who see the need for change on behalf of others and who are brave enough to take the risks required to seek to achieve it.

Revolution is rarely a sensible option for a person whose DNA is made up only of selfish genes. Resistance, and even political violence, in pursuit of the rights of all can be a dramatic example of ethics in action. So too is a march in support of an occupied people whom most have never met, or a gathering outside an embassy in the name of the disregarded citizens in the country

of which that building is a part. Our understanding of what it is to be human makes sense of the affront we feel at an abuse of power, whether directed at our own community, or at a people whom we merely know off – it is what legitimizes our anger, possibly even (as the Universal Declaration saw) our violence.

Of course and famously the drafters of that declaration were determined not to enquire into the meaning of the document they were drafting. That is exactly what I have been trying to do here. Right at the end of *The Descent of Man*, Charles Darwin wrote this:

We must acknowledge ... that man with all his noble qualities, with sympathy which feels for the most debased, with benevolence which extends not only to other men but to the humblest living creature, with his god-like intellect which has penetrated into the movements and constitution of the solar system – with all these exalted powers – Man still bears in his bodily frame the indelible stamp of his lowly origins.

And a good thing too, for this is our salvation!

Conor Gearty
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