

Denis MacShane

Human rights and human dignity

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Getting human rights right should now be easy. When the UN and European Convention on Human Rights were written at the end of Europe's 30 years' civil war (1914-1945), it was thought that with the worst of Nazism buried, protecting human rights would become a lot easier. The opposite turned out to be the case. New ideologies or systems of authoritarian government rose up as bad as anything that European dictatorships or imperialisms had invented. Even the worst crime of the Nazis, that of seeking to deny Jews their rights to live by their faith, culture and history, came back to life as anti-Semitism resurfaced in many different ways, as highlighted by the fact that the President of Iran felt secure in starting his term of office by denying the Holocaust and then calling for the eradication of Israel from the face of the earth.

After 1945 the disgusting racism of white supremacists in the United States mocked the UN Declaration of Human Rights, as did the McCarthyite system that led to distinguished professors being denied the right to work because at some stage in their student days they had made some remarks opposed to capitalism. The Soviet Union became a giant prison camp with many more locked away than in German concentration camps, even if Stalin and his successors did not go as far as Hitler did in terms of organised mass murder on an industrial scale.

And even when communism was formally over, the world woke up one

day to learn that modern Europeans, obeying the orders of a Serb politician, Slobodan Milosevic, had in 1995 taken out 8,000 fellow Europeans who were Muslim and shot them one by one. Exactly the right number of plastic ties to bind the hands, the right number of cartridges for the weapons, the right number of excavators to dig the mass graves, the right lengths of timber had been brought to the forests, for the mass killings to take place as Europe, the United States and Russia just turned to look the other way.

In Latin America, in South Africa under apartheid, and in the Arab states, the crimes against human rights continued to take place despite the elaboration of UN protocols, the work of the Council of Europe, the creation of the UN Human Rights Council or the rise of new NGOs that use the techniques of modern public opinion forming to campaign against human rights abuses, such as Amnesty, Human Rights Watch or ARTICLE 19.

And even when apartheid was ended, Soviet communism buried, Latin American generals back in their barracks, and greedy kleptocrats like Mubarak and Ben Ali toppled, the cause of human rights remained to be fought. The greatest honour the world can bestow on someone is to award them the Nobel Peace Prize. Sometimes the prize has gone to a superior world statesman who concluded a peace settlement but still had much blood on their hands. But no-one can say that of Liu Xiaobo, a Chinese writer and pro-democracy activist, who has simply, persistently argued for the right of his fellow Chinese citizens to speak their minds.

Liu Xiaobo was flung into prison for his pains, and he languishes there as a reminder to other Chinese citizens that not even a Nobel Peace Prize guarantees democracy or freedom if the interests of the state are perceived to be under threat.

The example of China validates one of the early points made by human rights theoreticians and campaigners – namely that market economics cannot co-exist easily with human rights. Indeed, we are seeing the growth of states' indifference to human rights issues whenever they clash with the profit principle. As a former member of the House of Commons in London, I tried to get the British Prime Minister, David Cameron, to condemn the imprisonment of Liu Xiaobo. He refused. His predecessor, Margaret Thatcher, had

no such qualms about calling for the release of Andrei Sakharov, the Russian Nobel Peace Prize winner, imprisoned by Soviet Communists. Indeed, when President of France, François Mitterrand, mentioned Sakharov's name at a Kremlin banquet in June 1984 when he talked of "the emotion in Europe over cases that concern Russian citizens such as Professor Sakharov," the then Soviet leader, Konstantin Chernenko, became angry and attacked the French President. But the decision of Mrs Thatcher and President Mitterrand publicly to call for Sakharov's release by name had an impact and by 1986 Sakharov was a free man. Compare this with the pusillanimity of both Prime Minister David Cameron and President François Hollande, who are unwilling to name the victims of modern denial of human rights in Russia or China.

For the British government, the interests of the City of London and British trade with China far outweigh any obligation on the British Prime Minister to raise in public the case of China's imprisoned Nobel Laureate, Liu Xiaobo. Had Russia been an authoritarian but capitalist state in the 1980s, open to business from France or the UK, it is doubtful that François Mitterrand or Margaret Thatcher would have bothered to seek Sakharov's release. Indeed, we know that the then British Prime Minister described the South African black liberation movement, the ANC, as a "terrorist organisation" in order to please apartheid rulers seeking to keep South Africa in the hands of a minority of white supremacists. When money is to be made, human rights considerations fly out of the window.

This is clear from the behaviour of today's European leaders. Mr Hollande, like Mr Cameron, has refused, for example, to speak publicly on trips to Moscow of the case of Sergei Magnitsky, even though the deceased man is probably the best known Russian in Western Europe after Vladimir Putin and some of the better known Russian oligarchs. There is big money to be made in Russia, in China, in Saudi Arabia and the Gulf States, and in the struggle between the bottom line of profits and the universal obligation to promote human rights, the latter comes off a poor second.

So what can be done? Human rights organisations themselves are less certain in what they ask for. In an important new book, *Human Rights Without Democracy. Reconciling Freedom with Equality* (New York, Berghahn, 2013) one of Switzerland's most distinguished human rights campaigners

and theoreticians sets out a framework for new thinking. Gret Haller is a jurist, a former Speaker of the Swiss Parliament, a former delegate to the Council of Europe and was OSCE Human Rights Ombudsman for Bosnia and Herzegovina from 1996-2000, when military intervention by Western democracies put an end to the Serb originated genocidal killings associated with Srebrenica and the Slobodan Milosevic era.

Gret Haller has written a complex book and asked many tough questions, not the least of her own country, Switzerland, whose record on respecting the human rights of Swiss (Muslim) citizens as well as sheltering the money of human rights criminals and profiteers from human rights abuses is more than questionable.

But she does lay emphasis on the need to return human rights questions to those charged with democratic accountability. To paraphrase a complicated argument, she says that human rights is too important to be left to human rights jurists and should become a question of permanent democratic debate.

“Since internationally codified human rights hold for all nations that have signed the pertinent agreements, every debate on basic rights that take place in a national parliament automatically includes the discussion of international rights. Although it means indirect participation, parliamentary debate at least influences how governments will act in future international negotiation... When it comes to international negotiations on human rights, procedures in national parliaments or, if necessary, national constitutions could provide a formal mandate for a government to act in these negotiations. Since national parliaments would have to discuss the aspects of the mandate that are relevant to human rights – and only these – prior to taking up international negotiation, such procedures could decisively further the democratic legitimacy of those rights at the international level.” (Haller pp143-144)

This crucial role attributed to national parliaments is central to the global campaign to obtain justice for Sergei Magnitsky. It has been the US Congress, both the Senate and the House of Representatives, that has taken the lead in putting into US law the Act that seeks to require Russia to accept responsibility for the terrible death Magnitsky suffered when actually under the Russian state's protection as a detained, arrested prisoner.

The campaign against corruption at the highest levels of the Putin state as well as the naming of the officials complicit in Magnitsky's death are in a sense side issues, although central to the campaign and especially to Magnitsky's former work colleagues who have given so much money and time to insisting on the need for justice. What is important is to uphold the dignity, indeed sanctity, of human life once freedom is removed. The British invention of habeas corpus was not intended to mean habeas corpse. It was that the state can never detain anyone without due process and anyone arrested by the state must be kept in reasonable physical and mental health.

None of this mattered to the US government and the State Department. The executive arm of American power actively discouraged the elected or legislative arms of American democracy from pursuing this case. Why bother about another dead Russian in a Russia where murder is part of business and political life? It is precisely because human rights in the Magnitsky case had moved into the realm of parliamentary debate and decision that democracy could wrest control of the human rights aspects of the Magnitsky case from the unelected state bureaucracy. The latter wanted to do business with the Putin bureaucracy. The former sought to connect with Russian democracy to insist in Terence's formulation: "Homo sum, humani nihil a me alienum puto."

The debates in many European parliaments on the Magnitsky affair, or the interventions by European parliamentarians including the open letter sent to French President François Hollande by a group of deputies and senators, have added a new dimension to the need to rethink human rights campaigning and widen it beyond the important work of jurists or the better known human rights NGO. So far, the executive bureaucracies of key EU member states have preferred to defend their fellow functionaries in Moscow. No European parliament has yet managed to summon up the will and impose into law an act similar to that signed by President Obama, after the US Congress legislated on the Magnitsky case.

The European Parliament elections in 2014 could be a good moment to ask all candidates if they will promise, once elected, to insist that the European Union adopts similar legislation. The argument of precedent needs to be overcome. To insist that a handful of named state employees should no longer

have the privilege of visiting democratic European or North American countries, of owning property or bank account assets, or sending their children to elite private school and universities is a novel way of highlighting human rights abuses. It requires neither sanction nor state-to-state *démarche*. It is modest and targeted and should encourage other state functionaries to desist from corrupt practices or human rights abuses that end in a human's life being terminated simply because he sought to see the law of his land respected.

Involving parliamentarians in modern human rights for the 21st century is a new procedure. It is a welcome modern tool to add to the not always sharp or tempered tool-box of advancing human rights as part of international relations.