

RESPONSES TO TRACK 14

AM I BEING TOO OPTIMISTIC ABOUT HUMAN RIGHTS?

Damien Shortt thinks that perhaps I am, in particular: 'about the ability of nations and statehood to encompass the entirety of humanity' within their range of vision or to fairly reflect 'the diversity of moral allegiances evident in the human spectrum.' He wonders about 'what hope' there is 'for Rights in a Post-National milieu?' But I don't think we are in the realm of the 'post-national' to the extent that was expected after the end of the Cold War. Since the attacks of 11 September 2001 it has been oddly the opposite, if anything. And Anthony J Langlois reminds us that human rights need state action: 'All of us who actually have our rights respected, do so because our state and its institutions guarantee them, not because of some more global dispensation.'

So of course it's tough but we need to work with rather than against the grain of national power. That realism must underpin any optimism in this field. That sense of the possibility of a better future even in this field is fuelled by our belief as Christina puts it 'that human kind is naturally good, tending toward empathy and altruism' – as we get to the end of this project our tracks are beginning to converge with their various strands merging into one large meta-theme and perhaps that is it.

I don't agree though with Christina that 'the so-called terrorist won? prescribed our freedoms?' This overstates their effect and also exaggerates the impact they have had on our basic freedoms.

DO I UNDERSTATE THE THREAT OF TERRORISM?

Lee comes in late on this with an acute post. His 'answer is: "I don't know"' and he rightly observes that I can't know either. Without intelligence knowledge 'we analyse the legislative response to terrorism with only half of the picture'. I agree that this is a large problem – but I also agree with what Lee then goes on to say – that this 'is the government's choice.'

It is not only my 'conception of democracy' (Lee) but also my knowledge of the past that causes me, like Lee, to hesitate before giving 'the government the benefit of the doubt.'

History counts for a great deal here: I like Colin Harvey's comment that "'Terrorism' is not new. 'Counter-terrorism' is not new. What have we learned, what should we not forget?' A great deal of my work on terrorism has been about not forgetting, especially not letting go of the origins of the language as much as the events these words have (selectively) sought to describe. Craig Valters writes well in this context about the distracting impact of talk of good and evil – I agree and have been v critical of this terminology in the past.

Power matters as well. Lily Megaw's post is really important here too, reminding us that the polarization of humans by human rights protagonists did not start with the attacks of 11 September 'Postcolonialism (Makau Mutua, Gayatri Spivak, etc) lends insight here, identifying how human rights were used to conceptualise the colonies as Europe's "other".'

So I think we are right to be sceptical about claims of extreme danger made by states.

But there are complicating dimensions to this, as some of your posts brought out.

First Anthony shows how the language of (universal) human rights is rooted in the national and so this reversion to chauvinism in times of crisis should not surprise us overmuch. Anthony's post, drawing on Sam Moyns book which I discussed in [common track one](#), is really helpful (if disturbing) on how and why it is possible for this talk to come from *within* our human rights discourse...

John O'Donnell's comment, that talk of good and evil etc is 'understandable' is relevant here. Absolutely. We must acknowledge this and not pretend it is not the case. We must respect what drives the views of the well-meaning public – understanding is a key to effective responding as well. We must not just patronise but reply and explain. Ad John says we must 'find some way of persuading people that the rule of law is – and should remain – worthy of respect in order to redress the sense of despondency that cannot but cloud the mindset of otherwise right-thinking people.' As is often the case and as the late Richard Rorty might have said it's about constructing convincing stories.

And what of the 'terrorists' themselves?

First a comment on terms. For Craig 'the word "terrorism" itself tends to promote a caricature of the "evil", "them" and the "other" that is not useful in understanding or

tackling its causes.’ I have always thought that in a perfect world this talk of terrorism would be removed altogether but I appreciate it is really hard for us to do. We may with Paul Bernal be ashamed of our inaction in regards tackling certain laws but I think we do need to appreciate the enormous risks progressive politicians take in a democracy when they tackle the excesses of the state in this field. Look how even such a simple and obvious injustice as the control order regime has been so difficult even partially to dilute.

So far as the Global North is concerned, Colin is right that the ‘terrorist’ perspective is a ‘profoundly anti-democratic world view, that has given up on the hard slog of democratic conversation, dialogue and persuasion in favour of a decisionist ethic of practical action and often violent response.’ I have always thought of such violent subversives as crude queue jumpers. But at least in a democracy there is a queue to jump – not the case in an authoritarian culture where dialogue does not exist. So again I think we need to be nuanced in our use of language.

Craig comment that ‘the threat of terrorism can be nullified by the elimination of key “evil” individuals’ reminded me of the obverse – the theories of 19th cent revolutionaries that assassination of the head of state was all that was needed. Each perspective is of course simplistic and (as a result) wrong. Leadership is invariably hydra-headed or it wouldn’t have got as far as it already has, whether state or anti-state.

Richard Buck asks an important question: ‘isn’t abuse of human rights a big cause of terrorism?’ Yes I’d say, defining human rights broadly. If we are human rights idealists we have to believe that a just world – one in which respect for human rights is embedded – is one in which terrorism (however we define it) would be a sideshow and never a main act.

Two caveats on my optimism about the threat of terrorism.

Craig may be right when he reminds us that ‘the cost of containing the growth of radical ideologies’ may lie ‘within other states’, far away but full of disorder as a result of our success.

And Favio Farinella: there is ‘uncertainty about the evolution of the terrorist menace.’ I agree – in this field we are always only an atrocity or two away from a new crisis.

AM I TOO READY TO SEE THE CRIMINAL LAW AS THE ANSWER TO THE CHALLENGE OF TERRORISM WHEN IN FACT NEW KINDS OF LAWS ARE REQUIRED?

Broadly you have been in agreement with me on this one. Favio has some good ideas about the use of international criminal law, and even the ICC. National is not enough he says – I agree with him there. Reacting to Richard Buck, if there are defects in international criminal law then we must fix these, and not move immediately to the extra legal – as Richard himself says ‘this is a slippery slope indeed.’ I agree with Richard’s second post expressing the wish ‘to treat terrorist acts as crimes and to use international mechanisms for policing and justice.’

This works for the internet too as Richard says, building on remarks by Paul ‘surveillance of internet activity should be allowed only by court order based on probable cause. Back to basics.’ We need to be unafraid of arguing for the basics of our criminal system and not let go by default the assumption that old systems are inevitably ineffective. This is where our knowledge of history (discussed above) really helps. It is as true for the national as the international: we must be very wary of all claims that are made for brand new approaches in this field.

PERHAPS HUMAN RIGHTS REALLY ARE PART OF A PARTICULAR CULTURE AND IT’S STUPID OF ME TO KEEP ON TRYING TO UNIVERSALISE THEM?

I suppose I phrased this in a way that made it hard for you to agree with the criticism, it might be thought rude to agree that I am ‘stupid’!

I agree with Christina that ‘Only by examining their application and recognition in our own culture can we point to others and hold them to account.’

Colin points to the natural law turn in law, of great interest generally and obviously particularly so here. As earlier tracks have made clear by now I hope, I agree with Colin we need to root our understandings in more than simply a statement, ‘here it is; this is the law’. By now I imagine it goes without saying that I am with Lily that an international counter-terrorism approach must go hand-in-hand with a universal conception of human rights.

Christina 'cannot conceive of a culture which would not recognise' human rights. Well sadly I can, or at least one in which the term is crudely abused: see [track six](#). I don't think we can take anything for granted.

IF HUMAN RIGHTS ARE REALLY UNIVERSAL, MIGHT OUR ADHERENCE TO THEM IN FACT MAKE OUR CULTURE SO WEAK THAT IT IS BROUGHT DOWN BY ITS ENEMIES – SO NO ONE WILL HAVE ANY HUMAN RIGHTS ANYWHERE AT ALL?

None of you really argued that this might be the case.

The last point about potential abuse is important here as well, albeit in a new way. I am with Anthony that 'Our real vulnerability is from within our political system, not from our adversaries (real or imagined) outside it.' Tackling bad faith use of the language can be a way of resisting the enemy within, ie within human rights itself.

But – and I make no apologies for returning to this - for this to work, rights need to be universal and we need to know what they involve. When Colin talks of 'realising rights' and puts in parentheses '(and all that this means in terms of confronting human suffering and privileging the needs of those who objectively need rights most – the vulnerable and marginalised)' he is showing us what *he* means – we must work to make it is the case that this is what *everybody* means as well as Colin (and ourselves).

LAST WORD

From Richard this week for a really neat summary of where I am and perhaps most of you as well:

'Fighting terrorism in a way that preserves human rights takes courage. There has to be a willingness to go only so far in the interests of safety. We should not protect ourselves through wholesale violation of the human rights of others. A police state is too high a price for safety.'