

# Human Rights – confronting myths and misunderstandings

Andrew Fagan

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Book review by Sally Ramage

Dr. Andrew Fagan is a Deputy Director of the Human Rights Centre, Essex University. He has taught in four separate academic disciplines: philosophy, law, government and social anthropology, at the University of London and Essex University. His human rights teaching focuses upon the philosophical, political and cultural dimensions of human rights' principles and practice. His interests lie in the philosophical foundations of human rights law, the relationship between cultural diversity and human rights, and that between religion and a respect for human rights principles. He is also the author of *The State of Human Rights Atlas* (University of California Press, 2010) and he has written many journal articles and chapters in scholarly editions. He is editor of *Making Sense of Dying & Death* (Rodopi, 2004) and co-editor of *Human Rights and Capitalism: a Multidisciplinary Perspective on Globalisation* (Edward Elgar, 2006). He teaches medical ethics to medical professionals and has a long-standing interest in the development of human rights in the central Asian region and some republics of the former Soviet Union.

This book of 165 pages is a very challenging one. Its seven chapters are terse and straightforward. There is no dawdling in this work. The chapters are titled: 'the basis and scope of human rights'; 'human rights and law's domain'; 'universalism and 'the other''; 'globalisation, human rights and the modern nation-state'; 'democracy and human rights'; 'global economic inequalities and human rights'; and 'accentuating the positive'. Chapter 1 addresses the 'established tendency to confuse social privileges with human rights'. Chapter 2 explores human rights as a distinct moral landscape. Chapter 3 discusses the alleged myth of human rights as a universally valid moral doctrine. Chapter 4 is concerned with human rights and nation-states. Chapter 5 looks at the relationship of human rights and democracy. Chapter 6 explores a misunderstanding between rights and duties and chapter 7 draws together these ideas and hypotheses and concludes positively as to the future of human rights tomorrow.

What is the concept of 'human rights? The author argues that it is not a 'fully comprehensive morality for human life'. He says that the 'social privileges' of goods are not human rights. Human rights are not some things that we deserve; they are not privileges. Human rights protect and promote (but do not ensure) the *conditions* for a certain quality of life for all. Fagan illustrates this idea with the ECtHR class action case brought in 2008 by 200 prisoners against the UK government because they were heroin addicts who, on being imprisoned for offences, were deprived in prison of the heroin-substitute 'methadone'. Although they were successful in their human rights case, Fagan asserts that this case contrasts with the original reasons for the ECHR, ie. the holocaust. The rationale takes on the following hue:-

(i) All humans may claim human rights.

(ii) However, which aspects of human life are human rights?

(iii) Which actions of human life are human rights?

Human rights are prerequisites for human agencies and so they are the *mechanism* through which are secured those interests which constitute us. This is contrary to the view of human rights which sociologist Brian Turner takes - of 'protecting human beings from one another' (See Turner. Bryan (2002) "Outline of a theory of human rights", 2(93), *Sociology*, 489-512).

Going on to the bigger picture of human rights and nation-states, Fagan asserts that the United Nations is a 'contradictory organisation', which has aims of universalism but which fails simply because it contains many nation-states, all of which are self-interested, a contradiction in terms. As to democracy and human rights, Fagan states that they are inter-dependent, and the equality ideal is central to the human rights doctrine and that with rights come responsibilities.

This is where the law enters, for, a right may be a moral or legal right and becomes a legal right when it has secured legal recognition in a jurisdiction. The European Convention on Human Rights ('ECHR') was drafted by the Council of Europe, formed in an attempt at unifying Europe and the objective of the ECHR was to protect against large-scale violations such as the holocaust. The fact of the matter, though, is that it was not triggered in Srebrenica, Bosnia (when 8000 Muslim men and boys were slaughtered in 1995, two years after this town of Srebrenica had been declared a United Nations Safe Area) and other genocide eradication of humans, but instead is being used primarily to address isolated weaknesses in legal systems with the commonality of freedom and 'rule of law'. Essentially, the ECHR is concerned with civil and political rights. However Ireland did bring an action against the United Kingdom (See *Ireland v UK*, E Ct HRR A 25 (1978); 2

EHR 25) concerning the policy of internment and detention that applied in Northern Ireland between 1971 and 1975. The British had used five techniques of torture on Irish suspects, namely 'standing spread-eagled for many hours against a wall'; hooding the suspect during interrogation; subjecting suspects to continuing loud and hissing noise pending their interrogation; depriving the detainees of sleep and food and drink pending interrogations. However, by rule of law, the UK was not found guilty of torture because the UK gave notice of derogation in time of emergency under article 15. This book is a stimulating read and gives much 'food for thought'.