

RAISING THE PUBLIC AWARENESS ON THE PROTECTION OF HUMAN RIGHTS IN THE FIGHT AGAINST CRIMINALITY

VIVIEN STERN

Undoubtedly we are now seeing in Western Europe a diminishing respect for the human rights of various groups of people who seem to disturb the peace or prosperity of the majority. The consensus about human rights that was established after the Second World War and embodied in the European Convention on Human Rights is no longer so strong. It has become more common to hear arguments suggesting that the human rights protections put in place since 1945 are not sacrosanct and may be flawed in certain respects.

One group whose rights are being seriously questioned are foreigners, be they refugees, asylum seekers or other immigrants. For example, in France and in the United Kingdom new measures are in place to make it more difficult for immigrants or asylum-seekers to come to those countries. A similar impatience with the requirements of the international human rights framework is seen in attitudes to convicted criminals and accused persons. Examples come from several countries. In the United Kingdom a longstanding principle deeply embedded in the legal structure, i.e the right for an accused person to remain silent without this affecting the judgement of the case, has been diminished. In the Netherlands, long seen as a beacon of humanity and decency in its treatment of convicted criminals, prisoners in a top security unit, the *TEBI*, in the prison in Vught have been kept in handcuffs whenever they leave their cells, seemingly in contravention of the requirements of Rules 39 and 40 of the European Prison Rules.

A gulf is opening up between those who understand human rights discourse, and those who do not. Many people who care about society and the way it is going, people who accept an ethical basis for life, do not understand many of the arguments used by human rights

proponents. For example, it is asserted that democracy is the most desirable form of government. Democracy means that the people should choose. But when it is clear that a majority wants capital punishment or corporal punishment, the assertion is made that these methods are an abuse of human rights and unacceptable in a country that wants to be a member of the Council of Europe. This assertion is not readily understood and no consistent programme of work is underway to explain it. No organisation or group has been given the task of working to inform and explain.

1. Justice as a commodity

It is important to ask "How do we explain these developments?" Three factors are important. One arises from the very desirable and necessary development of a movement to campaign for better treatment of the victims of crime. Support for the plight of victims and arguments that the state should recognise the damage done to them and give some recompense to them, has been widely advocated by reformers and human rights proponents for many years. As a result many countries have established victim support schemes and compensation arrangements for those who have been victims of crime. This development represents a very welcome extension of rights in the field of criminal justice.

However, what is essentially a progressive movement has features that are moving beyond the call for better treatment of victims. Some proponents of victims' rights are taking the argument much further. They are asserting that it is in the interest of victims that offenders should undergo more suffering in their punishment. Justice is being seen as a commodity that the state offers to citizens, like health and education. It is also seen as finite and limited. There is only so much of it and offenders get a great deal of it, through all the legal processes and the protection of their rights, whilst victims get very little. In this line of argument victims are entitled to a certain "amount" of justice from the State and not enough is left for them. They feel they should be entitled to more. What this means is that they are entitled to see their offender being charged at a level that reflects the victim's view of how serious the crime is, and if the defendant is found guilty he must be punished severely. If the punishment is not adequate, victims feel cheated. "I did not get a good enough service. I should have got more. Other people have got more when something like this has happened to them. My judge was not as good as another judge because another judge gave more", they think.

The language of rights is used to justify this position. Some victims' representatives begin to argue in the following way: "Defendants and offenders have been given all these rights and they are set down in international conventions. What about my rights as someone who has suffered a crime? What about the human rights of victims? How can someone who has committed a heinous crime be entitled to protection and consideration in the same way as the person who has suffered the crime? How can the criminal be equal to the victim when rights are being considered?"

In a sense a "rights competition" has been set up. Whose rights should win the competition, the victim or the criminal, "decent law-abiding people" or "bad people"?

This understandable way of thinking has consequences that are damaging not only for the process of justice but also for the work of resocialisation of offenders. The view is becoming widespread that people who work for the resocialisation of offenders are in opposition to the people who support victims. In this view it is not possible to respect the rights of victims as well as to respect the rights of offenders. The two would be incompatible. Contempt for convicted offenders extends to contempt for those who work with them to try and resocialise them. This makes the task of resocialisation, which is very important for public safety, doubly difficult.

2. New emergence of evil

The second important basic factor is the widespread view that serious crime has escalated. In the United Kingdom, the case that seemed to symbolise this shift in public opinion was that of James Bulger, the two-year old boy killed by two ten-year old boys. Such an act is so horrific and inexplicable that it leads people to move away from rational responses and enter a framework where reasoned argument holds less sway. The facts, that murder of children by children is very uncommon, that in the United Kingdom there has been about one case a year for the past twenty years, have little effect on the way people respond to such an event.

Sexual abuse of children has also sprung to public attention and the UNICEF conference held in August 1996 in Stockholm has given it worldwide publicity. Abuse of children has undoubtedly always occurred. Now however it seems much more common. What seemed in the past to be innocent is now regarded with suspicion. The recent case in Belgium of the alleged paedophile organisation and the abduction of teenage girls, widely publicised through globalised

television channels, and the case of the Wests in the United Kingdom, who abused and murdered their own children, arouse fear and hatred. People are very shaken by them and they begin to wonder about their neighbours, themselves and the world we live in: "Are there dreadful people in the next street? Has a new form of evil emerged?"

These cases of the torture and murder of children are in a sense the ultimate test of respect for human rights. To argue against the death penalty in such cases and to support the humane treatment of the perpetrators of such horrific crimes is a task of enormous difficulty.

3. Terrorism

The third factor is the increase in political terrorism in West European countries. The Irish question has familiarised the citizens of the United Kingdom with the limitations imposed on everyday activities and the implication of bombing campaigns. The Basque question has had the same effect in Spain. Now in France as a result of the Algerian situation, there are similar experiences. It is becoming commonplace in Europe for main line railway stations to have no litter bins and no place to leave luggage as a precaution against the planting of bombs. People are searched when entering public buildings. There is considerable pressure on Governments facing terrorist situations to bypass the rule of law and move onto a war footing against terrorist crimes. The result of this would be the carrying out of extra-judicial executions. Allegations of such a response are being investigated in Spain.

These events – child abuse and murder, terrorist bombs – induce real fear and horror and seriously affect people's view of the nature of the environment they live in. They begin to see the world as a hostile, threatening, unsafe place. They stop their children going out and they alter their own behaviour so as to feel safer. They resent these changes and they look to politicians to take action to deal with them. In this climate it is difficult for society to restrain itself – or to understand why it should. In a democratic society politicians find it very difficult to resist the pressure and few, if any, have the courage to speak out for the human rights values embodied in the establishment of the Council of Europe and the Convention on Human Rights.

Another factor to be considered is the mass media, which is becoming more a producer of stereotypes about crime and criminals and the dangerousness of the contemporary world. In many countries

crime stories are featured every day on television and in most of the newspapers, and no indication is given of how common or how rare these crimes are. To the consumers of this media the world thus begins to look very frightening. In some countries the concentration of the ownership of the media in the hands of a few powerful people who have no particular commitment to the well-being of any of the countries whose means of communication they monopolise has great dangers for human rights education. The media moguls are committed to the profitability of their businesses and the profitability of business in general. The main aim of much of their media is not to inform and educate but to entertain.

Developments in the United States show where this process can lead. There, rights of offenders are being rapidly eroded. Boot camps have been set up where a form of inhuman and degrading treatment is the basis of the regime. Ritual humiliation is deemed to lead to the recovery of self-respect. Chain gangs were set up in Alabama. According to Amnesty International, prisoners from the Limestone Correctional Facility are taken to a work site wearing white work suits and caps with "Alabama chain gang" emblazoned on the front. There they are linked to each other at the ankle in groups of five. Amnesty International has described the operation of the chain gangs as:

"cruel, inhuman or degrading treatment, in violation of international standards on the treatment of prisoners".

In Arizona and Florida chain gangs are also being operated. The death penalty is being applied even more widely, albeit selectively, and legislation has just been brought in to end the funding to the law centres dedicated to working with poor prisoners on death row.

Also of importance in the debate is a view of human rights that comes from the economically very successful countries of South-East Asia. There we see a major questioning of the whole basis of the European human rights ethos. It is suggested that this ethos places a premium on individualism, leading to crime, drug abuse and other Western inner city evils. The attitude of Eastern cultures, stressing collective rights and duties, is said to be much more socially and economically beneficial. It is commonly said in the West, when justifying the human rights protections that surround the legal process: "It is better for many guilty people to go free than for one innocent person to be convicted". The response from the South-East might be: "Why?".

4. The educational process and the need for human rights education

Against this background, those who argue for a fair legal procedure for suspected persons, oppose the death penalty and support humane treatment of people who are in prison, face a complex task in putting the arguments across. It is a long philosophical journey to make, a deep educational process, for people to say they are prepared to respect the rights of all human beings, even child abusers and bomb planters. It is therefore necessary to retrace the steps of the argument which led in 1953 to the entry into force of the European Convention on Human Rights. Fifty years have passed. For a large proportion of the population of Western Europe the Second World War is distant history.

We need to remind ourselves what are the steps on that philosophical journey. We need to ask ourselves why we feel we have to fight for the human rights of, for example, a man who abused and terrorised small children, an activist who planted a bomb that killed many innocent people or a person who murdered in cold blood for financial gain?

One step of the journey is the process of understanding the abuser or the terrorist, not to find an excuse for what has been done, but to have insight into how someone who has carried out terrible acts has been able to do so. Many studies show how terrible childhood experiences can lead, though by no means always do, to the perpetration of terrible deeds later. A detailed study of twenty children who had committed homicide, carried out by a British psychiatrist, showed that:

“they come from backgrounds of unstable family lives, absent fathers with a history of alcoholism, psychopathic disorders, and violence at home. Mothers had a history of depression and found it increasingly difficult to look after the children as they got older”.

Second there is a need to explain how mass abuses of human rights become possible. We need to make it very clear how ignoring the basic human rights of any single group, however undeserving of respect they may seem, leads society down a dangerous path. We can start by accepting that it does not matter what society does to a child abuser. The crime is so horrific that it puts the person beyond the pale of decent treatment and respect. So it becomes acceptable to treat one sort of person, for example child abusers, in this way. The rest are not so bad. It is agreed that it will stop there.

But the idea moves on. It is not just the child abuser who can be ill-treated without any regard to his human rights. Anyone who looks like a child abuser can get similar treatment, even those against whom the case is unproven. Then people ask: “why just child abusers?” Those who break into houses at night and steal belongings are also causing fear and ruining people’s peace of mind. Why should their rights be protected either? Once it becomes acceptable to put one single human being beyond the reach of common humanity many people will be at risk.

The third element in the journey to understanding is an appreciation of what society can be like when the rule of law ceases to be, when everyone can do what they like. Bosnia is a clear example here. Peter Maass, in his book about the Bosnian war, quotes the Bosnian writer Ivo Andric. Andric, writing of the outbreak of the First World War in 1914 says:

“that wild beast, which lives in man and does not dare show itself until the barriers of law and custom have been removed, was now set free. The signal was given, the barriers were down. As has so often happened in the history of man, permission was tacitly granted for acts of violence and plunder, even for murder, if they were carried out in the name of higher interests”.

We need to understand the importance of creating and maintaining institutions strong enough to resist populist calls for vengeance and respected enough to be accepted by the public when they carry out their functions without succumbing to populist pressure. The importance therefore of the War Crimes Tribunal set up to deal with the atrocities committed during the break-up of the former Yugoslavia is immense. Radovan Karadzic is not being hunted down to be shot. He is being sought in order to go on trial. Lawlessness is not being met with lawlessness but by a firm reassertion of the supremacy of the rule of law.

Is there a need for human rights education? Would such education be effective? Some survey results from the United States may throw light on this question. The results come from public opinion surveys on the death penalty. Opinion on this topic is surveyed in the United States every year. In 1995 the question was asked: “Are you in favour of the death penalty for a person convicted of murder?” 77% were in favour. Another question was asked: “In your view, what should be the penalty for murder – the death penalty or life imprisonment with absolutely no possibility of parole?” The proportion supporting the death penalty fell to 50% with 32% supporting life imprisonment

without parole. The figures also show that attitudes can change greatly over time. In 1995, 77% were in favour of the death penalty. In 1966 only a minority of those questioned, 42%, were in favour and the figures of those in favour and opposed were very similar until 1972 when the number of death penalty supporters started to increase.

These figures show that attitudes on these difficult human rights matters are not fixed, inborn, fundamental, deeply rooted in human nature. People can respond and react to debate, facts, discussions and campaigns. They can listen to arguments and change their minds.

Since the coming of democracy to countries of the former Soviet bloc, and their inclusion in the Council of Europe, many programmes of human rights education have been developed and supported. Lawyers and teachers have been trained and materials produced. The process cannot stop there. Western Europe is in similar need of a major programme of human rights education. The commemoration of the end of the Second World War in 1995 was an excellent opportunity that was well-used to remind those who might have forgotten, and tell those who had never known, what happened in Europe between 1939 and 1945 and why an international framework to protect human rights had been put in place. But such opportunities are rare. A planned and consistent programme is needed that ensures frequent exposure of the arguments and the debate. Governments should consider establishing human rights education units to stimulate such programmes.

An impetus must be given to start a substantial educational campaign with five elements.

First, it must be based on people's understanding of the world as it is today. The human rights arguments must be made as relevant to people growing up in 1996 as they were in 1949 when the Council of Europe was established. Second, the teaching of history provides an excellent opportunity for analysis and thought about man's inhumanity to man, the circumstances that lead to major human rights abuses and the safeguards that need to be put in place. Third, courses on the basic international human rights framework and the mechanisms in place need to be established and supported in colleges and universities. Fourth, teachers need to be trained to use literature and drama that throw light on human rights abuses and the processes that lead to them. Fifth, funds should be found to support media projects that debate and develop the arguments about protecting the human rights of criminals, why corporal punishment is wrong, why the death penalty is wrong.

5. The role of non-governmental organisations

The international organisations that promote human rights are very detached from the citizens of the member states and can seem remote and irrelevant. The bridges between the international level and the people in the member states are the non-governmental organisations (NGOs). A major role can be played by NGOs working to protect human rights. There are many international, regional and domestic NGOs in the human rights area. NGOs have taken the lead in the struggle against the death penalty. Amnesty International has campaigned for many years against the death penalty and has supported the production of films and other materials to support the case. Through its groups and donors in 170 countries and territories and a world membership of over 1.1 million people it campaigns in many different and imaginative ways to draw to the attention of the public the abuses that occur throughout the world and the many cases of individuals sentenced to death.

Penal Reform International (PRI) works throughout the world to strengthen existing NGOs which work for penal reform and to help set up new organisations. PRI has been experimenting with new ways of bringing an awareness of the need for penal reform to the public. In 1992 PRI joined with the Hungarian Association for Penal Reform to organise a three-day festival of prison films. Films which highlighted the possibilities for human rights abuses in prison were shown and the films were followed by debates with film-makers and leading thinkers about the intentions and implications of the films. The event aimed to bring to the attention of the public the human rights problems associated with imprisonment and to promote penal reform. A similar international event, this time about women in prison, was organised in London in 1993 by the National Association for the Care and Resettlement of Offenders, a United Kingdom-based NGO and opened by a senior official of the Council of Europe.

NGOs have many strengths and a great deal to contribute to public education on human rights. They are composed of committed people. They have an ethical basis for their activities. They are able to draw on much volunteer effort and creative ability. They are often free of cumbersome bureaucracy and can respond quickly and flexibly to the needs of the moment. They often find it easier than state agencies to relate to minorities and to young people.

If they are to make their maximum contribution to dealing with the human rights crisis faced in Europe they will need support. It is

always much easier for NGOs to raise funds for their practical project work aimed at concrete changes than for the less tangible but equally vital task of influencing public opinion. NGOs active in penal reform for instance are more easily able to find the money for specific projects such as improving prison conditions and resocialising offenders than for their education work, which aims to bring to the attention of the public the human rights questions involved in the treatment of offenders.

The engine that promotes the educational campaign for human rights must be the Council of Europe. The importance of the Council of Europe is enormous and it is regarded as a source of inspiration and strength by those concerned with human rights. In 1999 the Council will be fifty years old. It is an appropriate time to renew and reformulate the basic ideas and concepts that have guided its development so far and to find new ways of working that reflect the 21st century.

6. Conclusions

The situation in Europe is moving rapidly towards a worsening of human rights protections for convicted criminals. Public attitudes are hardening. Prison populations are rising. The search for scapegoats is intensifying. The individualisation of justice and the move towards seeing it as a commodity bring great dangers. These developments diminish the balancing power of the state and open the door to mob vengeance and lynch law. The agreement that there is a need to treat people with a minimum of humanity, whatever they have done, is wearing very thin.

However, whilst developments in the United States have moved very far from the human rights consensus of the post war world, in Europe many protections are still in place. The punitive and exclusionary attitudes prevalent in the United States are not so deeply embedded in European traditions. A philosophy of re-integration into society for offenders still underpins legislation and practice. A philosophy of social cohesion governs institutions. The assumption is that offenders, although they must undergo criminal sanctions and pay back in some way for what they have done, keep their citizenship and must be welcomed back into society.

These beliefs are part of European democratic ideals. They have considerable strength. In some countries activists put their lives at risk by fighting for them. If they are to remain strong, much energy will need to be put into supporting and maintaining them in penal

policy in the years ahead. A major education programme should be launched by European institutions, working with governments and with NGOs, to heighten awareness of the reasons why there is a human rights framework and the horrors of a world without one.

The events in Bosnia have shown how fragile are the values of tolerance, respect for others, humanity and decency firmly believed to be the basis of European civilisation. As Peter Maass says:

“the wild beast had not died. It proved itself a patient survivor, waiting in the long grass of history for the right moment to pounce”.

Vivien Stern is Secretary-General of Penal Reform International and is member of the Advisory Council of the Cambridge Institute of Criminology in England amongst others. She has also published *Imprisoned by our Prisons and Bricks of Shame, Britain's Prisons*.

References

- Amnesty International, (1) *United States of America: Reintroduction of China Gangs – Cruel and Degrading* (2) *Report 1996*; London, Amnesty International, 1995.
- Christie Nils, *Crime Control as Industry* London and New York, Routledge, 1993 revised 1994.
- Coyle Andrew, *The Prisons We Deserve* London, Harper Collins, 1994.
- Donziger Steven R, *The Real War on Crime: The Report of the National Criminal Justice Commission* New York, Harper Perennial, 1996.
- Maass Peter, *Love Thy Neighbour: A Story of War* New York, Knopf, 1996.
- Maguire, Kathleen and Pastore, Ann, eds, *Sourcebook of Criminal Justice Statistics 1994* Washington DC, US Department of Justice, 1995.
- Penal Reform International, *PRI Newsletter no. 20* London, 1995.