

THE
HAMLYN
LECTURES
2005

CONOR GEARTY

**Can Human Rights
Survive?**

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CAMBRIDGE

CAN HUMAN RIGHTS SURVIVE?

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CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge CB2 2RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521685528

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First published 2006

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

ISBN-13 978-0-521-86644-6 hardback

ISBN-10 0-521-86644-8 hardback

ISBN-13 978-0-521-68552-8 paperback

ISBN-10 0-521-68552-4 paperback

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D19155.811

G292

Can Human Rights Survive?

In this set of essays, originally presented as the 2005 Hamlyn Lectures, Conor Gearty considers whether human rights can survive the challenges of the war on terror, the revival of political religion, and the steady erosion of the world's natural resources. He also looks deeper than this to consider some fundamental questions: What are human rights? How can we tell what they are? Why should we believe in their existence? In his first essay, Gearty asks how the idea of human rights needs to be made to work in our age of relativism, uncertainty and anxiety. In the second, he assesses the dangers inherent in the legalisation of rights generally, and in particular how the idea of human rights has coped with its incorporation in legal form in the UK Human Rights Act, arguing that the British record is much better and more democratic than many human rights enthusiasts allow. In his final essay, Gearty confronts the challenge that may destroy the language of human rights for the generations that follow us: the bogus war on terror.

This book will appeal to everyone concerned with the global challenges to human rights today.

CONOR GEARTY is Rausing Director of the Centre for the Study of Human Rights and Professor of Human Rights Law at the London School of Economics and Political Science. He is a founding member of Matrix Chambers in London.

THE HAMLYN TRUST

The Hamlyn Trust owes its existence today to the will of the late Miss Emma Warburton Hamlyn of Torquay, who died in 1941 at the age of 80. She came of an old and well-known Devon family. Her father, William Bussell Hamlyn, practised in Torquay as a solicitor and J.P. for many years, and it seems likely that Miss Hamlyn founded the trust in his memory. Emma Hamlyn was a woman of strong character, intelligent and cultured, well-versed in literature, music and art, and a lover of her country. She travelled extensively in Europe and Egypt, and apparently took considerable interest in the law and ethnology of the countries and cultures that she visited. An account of Miss Hamlyn by Professor Chantal Stebbings of the University of Exeter may be found, under the title 'The Hamlyn Legacy', in volume 42 of the published lectures.

Miss Hamlyn bequeathed the residue of her estate on trust in terms which it seems were her own. The wording was thought to be vague, and the will was taken to the Chancery Division of the High Court, which in November 1948 approved a Scheme for the administration of the trust. Paragraph 3 of the Scheme, which follows Miss Hamlyn's own wording, is as follows:

The object of the charity is the furtherance by lectures or otherwise among the Common People of the United Kingdom of Great Britain and Northern Ireland of the

knowledge of the Comparative Jurisprudence and Ethnology of the Chief European countries including the United Kingdom, and the circumstances of the growth of such jurisprudence to the Intent that the Common People of the United Kingdom may realise the privileges which in law and custom they enjoy in comparison with other European Peoples and realising and appreciating such privileges may recognise the responsibilities and obligations attaching to them.

The Trustees are to include the Vice-Chancellor of the University of Exeter, representatives of the Universities of London, Leeds, Glasgow, Belfast and Wales and persons co-opted. At present there are eight Trustees:

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From the outset it was decided that the objects of the Trust could be best achieved by means of an annual course of public lectures of outstanding interest and quality by eminent lecturers, and by their subsequent publication and distribution to a wider audience. The first of the Lectures were delivered by

the Rt Hon. Lord Justice Denning (as he then was) in 1949. Since then there has been an unbroken series of annual Lectures published by Sweet & Maxwell that from 2006 are to be published by Cambridge University Press. A complete list of the Lectures may be found on pages xx to xx. In 2005 the Trustees decided to supplement the Lectures with an annual Hamlyn Seminar, normally held at the Institute of Advanced Legal Studies in the University of London, to mark the publication of the Lectures in printed book form. The Trustees have also, from time to time, provided financial support for a variety of projects which, in various ways, have disseminated knowledge or have promoted a wider public understanding of the law.

This, the 57th series of lectures was delivered by Professor Conor Gearty at the London School of Economics and Political Science, Durham University and the Queen's University, Belfast during November 2005. The Board of Trustees would like to record its appreciation to Professor Gearty and also the three human rights centres based in these three universities, which generously hosted the Lectures.

January 2006

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Chairman of the Trustees

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- 2000 Does the United Kingdom still have a Constitution? by
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- 2001 Human Rights, Serious Crime and Criminal Procedure
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- 2002 Legal Conundrums in our Brave New World by Baroness
Kennedy of the Shaws
- 2003 Judicial Activism by the Hon. Justice Michael Kirby AC
CMG
- 2004 Rights at Work: Global, European and British Perspec-
tives by Sir Bob Hepple QC, FBA

ACKNOWLEDGEMENTS

I am grateful to the Hamlyn trustees for inviting me to give the 2005 lectures, and for their kindness and efficiency in making arrangements for the three lectures to be delivered. The first lecture was given at LSE, and I am grateful to Lord Justice Sedley for chairing the event so well. The second lecture was delivered at the University of Durham where Professor Helen Fenwick was a generous and thoughtful chair. My third and final presentation was held at Queen's University, Belfast: I am very grateful to Professor Colin Harvey for chairing that lecture and to Professor Norma Dawson for looking after me so well during my stay in Belfast. I was received immensely hospitably at each of the three venues for the lectures, and I want here to thank in particular the law departments at each University and also the Centre for the Study of Human Rights at LSE for having done so much to make each of the three lectures into such enjoyable events. The chair of the Hamlyn Trustees Professor Kim Economides has been a tremendous support to me throughout the past year. I cannot praise enough his dedication to the whole Hamlyn idea, his determination that the lectures should be a success and his extremely kind and sensitive handling of this particular lecturer throughout the whole and sometimes (for the lecturer fraught) process of translating some random initial thoughts via three lectures into book form. A highlight of my association with this year's lectures has been the opportunity it has given me to publish

with Cambridge University Press for the first time, the press of the University in which I obtained my graduate degrees and where I spent many very happy years as a teacher of law. The embodiment of the Press for Hamlyn purposes has been Finola O'Sullivan and it gives me great pleasure to acknowledge my debt to her; it is her combination of solidarity with the author (when it is craved), intellectual acumen (when it is needed) and firmness (when it is warranted) that makes her such a pleasure to work with.

These lectures are the product of many years of discussion and conversation in many different classes at both King's College London and (more recently) LSE. I want to thank all the students I have taught over so many years for the many thoughts and ideas that they have given me: I am lucky enough to be able to say that I enjoy teaching as much now as when I gave my first supervision in constitutional law at Wolfson College Cambridge in 1982. I would also like to thank the Rausing Trust, and in particular Sigrid Rausing, for their generosity in funding the Rausing Directorship of the Centre for the Study of Human Rights at LSE. This has been a wonderful position from which to be able to write and think about human rights. It has also been a terrific place to work, for which I am grateful to the Centre manager Joy Whyte in particular but also to the whole team at the Centre – the atmosphere in the place makes my visits to work seem more like pleasure than business.

In thinking through the lectures last summer and then in writing them up for this book, I have had the benefit of comments and suggestions from a number of people. Several of those who attended the lectures either spoke to me at the

ACKNOWLEDGEMENTS

time or wrote to me subsequently, and I am grateful to them all. Special thanks go to Jon Benjamin, Brian Bix, Matt Cavanagh, Christine Chinkin, Stan Cohen, Hugh Collins, Oliver Davies, Abigail Eshel, Jones Hanvey S.J., Carol Harlow, Reuben Hasson, Francesca Klug, Peter Leyland, Martin Loughlin, Niki Lacey, Virginia Mantvelou, Claire Moon, John Phillips, Gerard Quinn, Rick Rawlings, Richard Rorty, Nick Russell, Margot Salomon, Colin Scott, Stephen Sedley, Rabinder Singh, Adam Tomkins and Diane Wales. I would like to dedicate this book to my two wonderful children, Eliza and Owen, who are not only a couple of very lovable individuals but are also great fun to be with.

Conor Gearty

London

February 2006

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Introduction

This book is about one of the great civilising achievements of the modern era. It traces the rise of human rights and explains why it is that their protection is now thought to be so important in so many walks of life, and across so many different continents and cultures. The chapters that follow cover the subject from its various angles, the legal, the political, the international, the philosophical and so on: if a concise account of human rights is what is desired, then these pages aim to deliver. But there is something else going on here as well, revealed by my title, 'Can Human Rights Survive?' This is not a book that celebrates the past while planning confidently for the future: there is no certainty of a happy ending. The idea of human rights is a fine one, and it has clearly been successful, but that does not mean that it is guaranteed to be so in perpetuity. A perspective on the world that is prospering today does not inevitably thrive tomorrow. The subject faces serious challenges. Unless these are squarely confronted and seen off, there is a risk that the idea will be destroyed for ever, or at best subverted out of all present recognition. In what follows I detail what these challenges to human rights are and I also provide a strategy for how I say we can rise above them. The book, therefore, is not only a retelling of the human rights story but is two other things as well: a warning against complacency and an intellectual manifesto for a successful human rights future.