

STRATEGIC VISIONS FOR HUMAN RIGHTS

ESSAYS IN HONOUR OF
PROFESSOR KEVIN BOYLE



EDITED BY
GEOFF GILBERT,
FRANÇOISE HAMPSON
AND CLARA SANDOVAL



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The common introduction

Putting together a collection of essays in honour of an esteemed colleague has both easy and difficult aspects. It is easier than normal when trying to obtain agreement from hard-pressed academics to give of their time and contribute a piece because of the esteem in which the person to be honoured is held. It is more difficult because the first idea is always to put together the collection and draw up the list of contributors, before one tries to determine how to make the finished book a coherent whole. In this instance, because Kevin Boyle and Nigel Rodley would reach retirement age within 12 months of each other, and given the fact that their careers had been inextricably linked at Essex for the past 20 years, the editors gave themselves the additional headache of putting together two collections at the same time – especially since several people who were approached could easily have contributed a chapter to either book. This introduction is common to both books so that the complementary nature of these two giants of human rights can be more readily understood.

Strategic Visions for Human Rights: Essays in Honour of Professor Kevin Boyle

In 1998, the then-Vice-Chancellor of the University of Essex asked Geoff Gilbert to take over as Director of the Human Rights Centre for 15 months while Kevin was on sabbatical. Initially, the request was declined because Geoff Gilbert was ‘not a visionary like Kevin’ – the VC’s response was that many people who have visions are just hallucinating. Kevin is a visionary when it comes to human rights, but he never hallucinates, hence the title, *Strategic Visions*. Kevin has spent his academic life inspiring people to push human rights further than they have gone before and into areas where they had not previously been applied – something that was to the fore in his own life when he started as Senior Adviser to Mary Robinson, then United Nations High Commissioner for Human Rights, the day after the attacks on the United States of 11 September 2001. However, he has always advanced a human rights based approach on the basis of rigorous legal analysis. The chapters in this book reflect his own strategic visions that leave human rights

far more developed than they were when he first started using them in the late 1960s in his native Northern Ireland.

It is the peace process in Northern Ireland that forms the basis for Tom Hadden's chapter, 'War and peace in Northern Ireland: Reflections on the contribution of academic and human rights communities'. Hadden and Boyle were synonymous with the academic involvement in promoting paths toward peace. The chapter is an honest assessment of the achievements and failings of the input of academics and human rights actors to bringing in the Good Friday Agreement of 1998. One is left to reflect on the undoubted stimulus that academic and human rights communities gave to the process, but also to acknowledge that it is difficult to discern how far there was direct advancement as a result of their participation. It is clear that they pointed the way but that other actors had more influence. It is difficult to believe, though, that the Good Friday Agreement could have been shaped the way it was without the contribution of Tom Hadden and Kevin Boyle.

Geoff Gilbert's chapter, 'Law and human rights rather than international human rights law', deals obliquely with one of Kevin Boyle's greatest achievements, the spread of human rights teaching at the university level, particularly to postgraduates. Kevin had established the subject as one worthy of study at the University of Galway before taking leave to establish and direct Article 19, the London-based non-governmental organization focusing on freedom of expression. The founding Head of Law at Essex consulted Kevin who encouraged the School of Law to establish its own Centre for International Human Rights Law, led by Malcolm Shaw, and to start the LL.M. in International Human Rights Law. Kevin joined the School of Law in the late 1980s and immediately brought academics from disciplines outside Law into the mix. In 1989, the Centre for International Human Rights Law was replaced by the interdisciplinary Human Rights Centre and, at Kevin's instigation, Onora O'Neill, Michael Freeman, the late Debbie Fitzmaurice and Geoff Gilbert put the institutional 'flesh' on Kevin's very detailed vision of the MA in the Theory and Practice of Human Rights that allowed students to study human rights from the perspectives of not just law, but philosophy, political science and sociology. Geoff Gilbert's chapter addresses the question of the theory/theories of law in an interdisciplinary context: is it simply a set of rules and procedures, or does law provide a framework or context for the interaction of various actors, actors that the law itself seeks to define? The traditional view is that states are the primary, if not sole, actors in international law, but that is clearly inadequate and inappropriate with respect to international human rights law. This chapter considers natural law and legal positivist approaches to international law, and whether a formalist or instrumentalist analysis better explains how international human rights law should be understood.

Kevin Boyle has strongly asserted the indivisibility of rights and their universality throughout his career. David Beetham's chapter, 'Universality, historical specificity and cultural difference in human rights', provides new

insight into the priorities given to civil and political and economic, social and cultural rights by different political systems in the context of western and non-western cultures.

Conor Gearty's chapter, 'Doing human rights: Three lessons from the field', sees human rights as a vocation, which is probably the best summary of how Kevin has lived his academic life. The chapter is about taking human rights beyond mere law and considers the relationship between law and justice. In the context of the United Kingdom's Human Rights Act 1998, he examines three instances of how law and justice might interact: the right to protest, the right to liberty, and in relation to Northern Ireland. In all three instances, he looks at how human rights law should empower people, secondly the fragility of law and the problems of relying on judges alone to provide protection, such that, finally, in human rights law politics should always matter. He asks how we practitioners of human rights law should be doing our subject in the age of our hegemony, a time when (having been marginalized and distorted by the demands of the Cold War) the idea of human rights has finally come to enjoy the near pre-eminent position that was originally designed for it in the system of international governance that emerged at the end of the Second World War.

The following few chapters all focus on Kevin's expertise in civil and political rights, in particular, in the area of the four freedoms. Francesca Klug's chapter, 'Rights and righteousness: Friends or foes', examines whether rights go against the faith idea of duties to each other. The chapter provides a wide-ranging discussion of the issues from a legal and historico-religious perspective, before moving on to consider the limits on freedom of religion and freedom of expression. The conclusion asserts the links between human rights and a spiritual framework: our ability to think and reason and our capacity to care, to feel empathy for others.

Sheldon Leader in his chapter, 'Human rights, power and the protection of free choice', addresses whether rights should simply be seen as a way of constraining power, usually state power, or rather, as he argues, that they should be seen as intervening when alternatives facing individuals are brought into relation with each other. The question is not one of human rights stepping in to protect the individual in a situation of unequal power, but rather how the European Court of Human Rights, the focus of the study, perceives there to be a restriction on the freedom to choose that is deemed wrong in certain circumstances.

Rachel Brett and Laurel Townhead examine the related topic of 'Conscientious objection to military service'. It is a comprehensive review and analysis of the 'right' to conscientious objection as found in international and regional human rights instruments and the developing jurisprudence and other norm-setting activities by European and international bodies. Recent case law has led to a divergence in interpretation and practice between the European Court of Human Rights and the Human Rights Committee, and this chapter carefully examines the various positions of all the international actors in this