

# Sympathy for the devil: human rights and empathetic construction of suffering

David Scott argues that the case for prisoners' rights should not be based on making individuals sympathetic

*In our punitive times, for many people advocating or defending prisoner human rights is considered perverse, unnatural, abnormal, or simply wrong. Such an approach is endorsed by those who believe that prisoners have no rights or that their duties or responsibilities transcend their rights. Presented to us as the natural way of thinking, it is assumed that all talk on prisons and human rights should operate within such self evident, or taken for granted notions. Legitimate claims for human rights, and empathy for human suffering, should apparently be restricted solely to the powerless victims of 'crime' in the community. In conjunction a zero sum mentality is naturalised, assuming that the promotion of the human rights of prisoners must necessarily involve the rejection of the rights of victims. Rights have to be deserved or earned, and consequently, as prisons are inhabited by bad or evil people who deserve to be punished, whatever rights infringements occur behind prison walls are not of public interest or political concern. Such punitive attitudes, however, must be challenged.*

## 'Are you suffering?'

Rene van Swaaningen (1997) provides the most succinct, yet also most powerful, basis for thinking about prisoner human rights: that is simply asking the question 'are you suffering?' Human suffering arises through pains created by something

being taken away. It is a means of ruining the mind, body and spirit and effectively denying claims to a full experience of humanity. Suffering breeds dehumanisation, inevitably doing something negative to those who experience it. The sufferings of those confined in prison can be best understood as both an *absence* and a *presence*. It is an absence in that the suspension of the right to freedom leads to a loss of meaning, dignity, liberty, security, autonomy, and a devalued conception of self, resulting in a senseless waste of human life. But it is also a presence, an acute awareness of what was lost, of what once was, of what will not be, creating feelings of loneliness, hopelessness, guilt, depression, anxiety, fear, and distress. Sometimes unsharable and unspeakable, suffering the pains of confinement can take overt and collective forms or be experienced alone in silence.

Such a humanist approach to prisoner suffering and human rights, of course, is not without its critics. It has often been argued that natural, inalienable or 'human' rights are simply fictions without foundation (Douzinas, 2000). Critics of inalienable human rights have argued that the ideas determining the definitions of human rights merely



reflect specific historical configurations, shaped by the social, economic, and cultural factors dominant in that specific historical epoch (ibid). It is maintained that attempts to identify the *human essence* are shrouded in controversy, with much evidence from the past of exclusionary and partial definitions, justifying dehumanising practices against groups considered beyond the realms of humanity (Bauman, 1989). Yet whilst both of these concerns are important, an acknowledgement of the social, political, and historical construction of the *content* of human rights does not automatically mean that the

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*concept* of human rights and its political desirability should be abandoned. Indeed, there can be no basis for critiquing *dehumanisation* or human alienation, in prison or elsewhere, if we do not have in place a solid and positive sense that there are some human characteristics that must be promoted and protected. The

recognition that our shared humanity exists independently of social, historical, and political constructions provides the baseline from which critical value judgements of the intolerable and inhuman can be located.

## Protect the powerless

One of the leading advocates of human rights in recent times is the critical criminologist Stan Cohen (1998: 2001). For him, human rights have moral and political utility as they provide a dual function, both critiquing the infamies of the present and providing a means to

promote latent visions of social justice. As Cohen (1998) further highlights, talk of inalienable rights, gives us a language that can provide a shield to protect the powerless and vulnerable, through guaranteeing procedural safeguards and minimum legal standards, and can be a means of highlighting the stark, dehumanising and painful realities of imprisonment. For Cohen, inalienable rights can also provide a sword that gives its bearers the opportunity to articulate hidden and radical visions of justice and shared humanity when conservative political cultures dominate.

Significantly, Cohen also maintains that we must be very clear upon what grounds human rights agendas are articulated and defended. Strategies to cultivate acknowledgement of a sufferer's shared humanity have often entailed playing on people's emotions in an attempt to circumvent rationality, utilising sentimental stories to go straight for the jugular of human conscience (Cohen, 2001). The strategy aims to shock the person out of their comfortable existence, and motivate them to *do something, anything* about human suffering. Such a strategy may be a successful tool for some sufferers, but encounters problems when dealing with prisoners. Cohen (ibid) reminds us that archetypal sufferers are portrayed as 'innocent', 'vulnerable', 'blameless', 'defenceless' or 'virtuous'. The closer the victim to such a positive construction, the more likely their rights infringements will be viewed sympathetically, and responded to appropriately.

### Biographical backgrounds

Offenders and prisoners, unless they are confined on political grounds or there is overwhelming evidence of a miscarriage of justice, do not fit easily into the above categories. As Cohen (ibid) indicates, if victims 'are not portrayed as completely blameless, then understanding and empathy are eroded'. Vulnerable, virtuous and dependent sufferers have human rights - we should help these particular people, not because the problems of intentional harm and suffering themselves are

unacceptable, but because they *personally* do not deserve to suffer. These people should be saved, helped, freed, or supported as a result of their specific biographical backgrounds. These humans are the *most deserving* of our attention. They are the *most eligible* for support.

I think we should therefore be sceptical of human rights agendas that become entirely dependent upon sentimental stories promoting the empathetic construction of the victim, for if one is to be helped, one must first pass some kind of humanity test. Those who fail, and many prisoners will, consequently are denied their inalienable rights. Indeed, it can be questioned whether such strategies are in fact promoting universal human rights at all. If the focus is upon the positive personal attributes, or not, of the person, we are in danger of changing from proposing an authentic human rights agenda to one predicated on the empathetic construction of the sufferer. In a similar vein Barbara Hudson (1998) has raised important concerns in the sentencing of offenders and their pleas for mitigation. Some pleas based on an offender's background may lead to lesser sentences, but the end result is not always just. Hudson problematises the creation of the 'sympathetic self', where offenders can be categorised as either 'deserving or undeserving'. Such a strategy is again predicated on the empathetic construction of the offender. This is not, however, the case for those perspectives rooted in social justice. Returning once again to the insights of Stan Cohen (2001):

*The principle of social justice does not depend on your moral awareness of people like you - but your readiness to extend the circle of recognition to unknown (and even unlikeable) people who are not at all like you.*

### Social inclusion

Social justice, shared humanity, solidarity with sufferers and social inclusion must be the dominant strategies for all human rights cases. We all do wrong, sometimes our wrongs are punished. The

distribution and actual justifications of the deliberate infliction of pain should be our focus rather than strategies looking to the biography of the individual sufferer. The empathetic construction of sufferers can only create a picture of the worthy, the deserving people, those who we should help, the principle of *more eligibility*. I think we must follow Cohen when he argues 'that unless "negative imagery" is allowed to speak for itself, the universality of suffering will never be acknowledged' (Cohen, 2001). Human rights cannot be built on the apparent innocence, vulnerability or perfection of those subjected to suffering. Human life is too ambiguous, and such a construction too fragile and precarious to be sustained for long. Nobody is *less* or *more* worthy of human rights. Infringement of rights should not and must not be tolerated and human suffering, whoever the victim may be, fully acknowledged. Ultimately, commitment to prisoner rights and the promotion of the rights of those folk *devils* who have little public *sympathy*, provides an interesting and powerful illustration of the depth of commitment to universal human rights. ■

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