

Human Rights in the Media: Fear and Fetish

Introduction

Eleanor Drywood, Michelle Farrell, Edel Hughes

Human rights law has a significant impact today, globally, and at the domestic level, on law, politics and life. Despite its extensive institutionalisation and its universal, transnational and domestic acceptance and presence, the value of human rights law is highly contested in politics and in practice. In academic scholarship, human rights law has long been – and continues to be – the subject of intense critical scrutiny. The origins and value of human rights law are extensively debated.¹

The role of the media in the discussion of human rights law, in the critique of rights and in both the celebration and denigration of human rights law has, however, been largely neglected in scholarship.² Given the impact of human rights law and the ever-increasing visibility of human rights legal language in the media, it is crucial that we deepen our understanding of the links amongst the law of human rights, the media representation of human rights and the public perception of rights. It is crucial for an obvious reason: the media has an impact on constructing popular debate and it influences public opinion.

¹ There is far too much contemporary critical scholarship on international human rights law to be exhaustive here. Costas Douzinas and Conor Gearty, *The Cambridge Companion to Human Rights Law* (Cambridge University Press, 2012) is a good place to start. That collection deals with contemporary challenges to human rights law and critical perspectives on human rights law. Samuel Moyn provides a rich discussion of the problems with trying to account both for a history of human rights and for the value of human rights. See S Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018); S Moyn, *The Uses of History* (Verso, 2014), S Moyn, *The Last Utopia: Human Rights in History* (The Belknap Press of Harvard University Press, 2010). See also, S Marks, 'Four Human Rights Myths' in D Kinley, W Sadurski, K Walton (eds.) *Human Rights: Old Problems, New Possibilities* (Edward Elgar Publishing, 2013). Marks examines the myth-busting work of a number of authors who challenge the intellectual framework of human rights.

² This collection builds on a small but burgeoning scholarship on the media and human rights. Our collection builds particularly on the pioneering work of Ekaterina Balabanova, Lieve Gies, Susan Marks, David Mead, and Eric Heinze. See, E Balabanova, *The Media and Human Rights: The Cosmopolitan Promise* (Routledge, 2015); L Gies, *Mediating Human Rights: Media, Culture and Human Rights Law* (Routledge, 2015); D Mead, 'You couldn't make it up: Some narratives of the media's coverage of human rights' in K S Ziegler, E Wicks and H Loveday, *The UK and European Human Rights: A Strained Relationship?* (Hart, 2015). On the backlash against human rights by the Government and the media, see S Marks, 'Backlash: the undeclared war against human rights' (2014) 4 *European Human Rights Law Review* 1361. On the media and public consciousness in relation to human rights, see E Heinze, 'The reality and hyper-reality of human rights: Public consciousness and the mass media' in R Dickinson et al, *Examining Critical Perspectives on Human Law* (Cambridge University Press, 2012).

In the United Kingdom, the 1998 Human Rights Act and the European regional human rights system, comprising the European Convention on Human Rights and Fundamental Freedoms 1950 and the European Court of Human Rights, have been subject to intense and fractious political, legal and popular debate. The controversy over human rights in the UK stems largely from its relationship with the European Court. As the contributions in this collection will discuss, the Court in Strasbourg is accused of interfering with UK law and with the sovereignty of parliament due to human rights ‘mission creep’, judicial overreach and interference and influence on multiple issues in the areas of, amongst others, criminal justice, counter-terrorism and immigration. There has always been a certain amount of disquiet in the political institutions about the UK’s involvement with this European human rights system. The enactment of the Human Rights Act in 1998, which gave further effect to the European Convention in UK law, really stoked the fire. The Conservative government has proposed to repeal the Human Rights Act and to replace it with a British Bill of Rights. These proposals are at the heart of the controversy. Withdrawal from the European human rights system has also been mooted, though without serious policy consideration, at least at the time of writing. Of course, the UK’s decision to withdraw from the European Union has affected human rights-related plans. That said, the UK’s relationship with the European Court and the overriding issue of UK sovereignty continue to capture the political and public mind-sets.

Views on human rights and on the proposals to repeal and replace are polarised. On the one hand, human rights are utterly denigrated; on the other hand, human rights are uncritically celebrated. The media plays a decisive role in constructing this polarity through its representation of political and ideological viewpoints and its, arguably, significant influence on public perception of rights. This is the ‘fear and fetish’ of our title.

This collection sets about untangling some of the knotty issues in the relationship between human rights and the media. We explore the interrelationships amongst the representation of rights in the media (particularly, in print journalism), public opinion on rights, and human rights law and practice. Our discussion is filtered through the media representation of controversial debates around the repeal of the Human Rights Act 1998 and the possible withdrawal from the

European human rights system. The chapters in this collection aim to *explore media representation* of human rights law and issues. The collection is premised on the - of course, contestable - contention that ideological polarity exists in the media on the question of human rights. We try, therefore, to *understand this media polarity*. In addition, the collection is geared towards provoking discussion and debate on the ways in which the media reflects or neglects ongoing and significant academic and legal debates about the salience and value of human rights. As such, we *critique the media's role*.

This is certainly an interesting time to write about the media. In the United States, the current President, Donald Trump, responds to any media reportage he does not like by branding it 'fake news'. In the United Kingdom, the decision to withdraw from the European Union has led to chilling media attacks on the institutions of government: the Daily Mail's 'Enemies of the People' headline was greeted with horror.³ It is unsettlingly obvious how much we need the media. It is also, sometimes, alarmingly obvious how influential the media is. For that reason, it deserves the kind of attention paid in this collection. We want to pry open a space to interrogate the relationship between the media and human rights. We do not, however, want to fall into the trap of either demonising, or being overly protective, of the media. We have not aimed either to achieve some kind of artificial balance on our portrayal and examination of the media in relation to human rights law. Nor have we aimed at, or succeeded in, achieving any form of balance in our discussion of the role and the value of human rights law. The objective of this collection is to understand, explore and critique, whatever the implications may be for balance.

In the 'Headlines', the contributors set the scene, contextualise debates around the media and human rights and remind us of the UK's position within Europe, its politics and its legal frameworks. David Mead's opening contribution points to the skewed and partial approach often taken by the mainstream media to the reporting of human rights. He investigates how misreporting, and the misconception and misconstruction of reality offering us 'slanted interpretations and an unbalanced diet'. In support of these criticisms, he deploys communications theory and content analysis to take us beyond what he calls a 'juriscentric'

³ J Slack, 'Enemies of the People' *Daily Mail* (4 November 2016).

critique of human rights reporting in the media. Stephanie Reynolds tackles the unenviable task of making sense of the media's coverage of, and role in, 'Brexit' (or 'the UK's withdrawal from the European Union' to those who favour dry legal language over snazzy portemanteaux). Her careful and forensic analysis of the reporting of both pro-remain and pro-leave publications around the referendum leads her to conclude that a polarising 'them and us' narrative has stifled any meaningful scrutiny of either the benefits of EU membership, or indeed the pitfalls of its democratic deficiencies, in the UK media. This, she argues, is the result of a long-standing hostility in the media towards UK-EU relations and has profound implications, not only for the scrutiny of the Brexit process, but also for future relations with the entirely separate European Convention. Lieve Gies asks us to cast our eyes towards Europe, reflecting upon how UK human rights scepticism is viewed abroad. She argues that, whilst attempts to reform the European human rights system have been seen as a distinctly British preoccupation in certain quarters of the European press, there is a notable absence of robust defence of the Convention. She argues that there is a striking failure in the European press to engage fully with the strength of anti-human rights feeling in the UK, and the attendant threat to cosmopolitan rights ideals.

In our 'Features', critiques of the relationship between the media and human rights are developed in the context of a series of issues relevant to the current debates (our selection of issues is, in no way, exhaustive): prisoner voting rights, immigration and the right to a fair trial. Colin Murray's contribution addresses the issue which has perhaps most tested the relationship between the UK state and Europe's human rights frameworks, that of prisoner voting. He asks us to situate newspaper campaigns for tougher sanctions within the criminal justice system – and their accompanying critique of the European Convention on Human Rights – within the wider context of the relationship between the UK media, politicians and think tanks. This, he argues, is essential to understanding how *Hirst*, a judgment which might have been relatively uncontroversial, has been transformed into a 'monstrous' example of judicial overreach in popular rhetoric. Eleanor Drywood and Harriet Gray consider treatment of immigrants in the UK press, arguing that, somewhat counter-intuitively, a human rights angle to stories actually exacerbates media demonisation of this group. They support this argument by pointing to the way in which the role of human rights claims in UK immigration law actually structurally favours negative reporting. They go on to argue that there is a wider failing of human rights to imbed at a grassroots level, which sheds further light on the hostility of the UK press towards immigrants. Yvonne McDermott offers a rigorous overview of reporting around cases that

concern a right to fair trial in criminal law under the European Convention. She observes that press reaction to these cases varies considerably, concluding that the opportunity to cast criminal defendants as villains, thus invoking accusations that the ECHR is a villains' charter, best explains where the press chooses to target its attention. She notes the absence of meaningful engagement with more profound questions about criminal procedure, or, indeed deficiencies in the Strasbourg court's own fairness towards applicants.

The 'In-depth' contributions shift our focus to profound questions around the role of the media in a democratic society. Ekaterina Balabanova draws our attention to media-state relations in the context of human rights, asking us to consider whether this relationship is one of watchdog or lapdog. She uses theories developed within the field of media studies to help us unpack questions of balance, focus, selection and salience in human rights reporting. Her chapter ends with a reminder that internet-based communications are changing the face of all news reporting, human rights included. Jake Rowbottom's chapter looks at press freedom, itself a human right, and one that, unsurprisingly, newspapers have been less critical of. He highlights the double standards of a press that is, on the one hand, constantly critical of 'foreign', activist judges, and, on the other, keen to embrace the legal protection of press freedom.

The 'Op-Eds' aim to provoke: they are critical, they are sceptical and they challenge, not only the media's representation of human rights, but also the very foundation of these rights. Colm O'Cinnéide's chapter tackles the controversial nature of UK human rights law head on. Exploiting the Brexit-induced hiatus in the long running debates over repealing or retaining the Human Rights Act, the chapter assesses the current state of play. O'Cinnéide provides a critique of the arguments in favour of retaining the status quo and concludes that its proponents should focus on providing answers that persuade the public of the merits of our current arrangements. Emphasising the authority and the special status of human rights law is insufficient. Michael Gordon provides a democratic rights sceptical take on the current debates. He evaluates how media representation of legal human rights is framed in what, he argues, are binary terms; the 'good' press embracing the principles underpinning human rights law and the 'bad' press distorting and rejecting rights claims. According to Gordon, both the 'good' and 'bad' press instrumentalise human rights claims – unsurprisingly, as rights are an instrumental tool – for different ends and, as a consequence, little space is left for public debate to be influenced by democratic scepticism about human rights law. Gordon argues, ultimately, in

favour of embracing democratic rights scepticism as a means of thinking through the limits, problems and shortfalls of human rights law. In the final chapter, Michelle Farrell and Edel Hughes argue that hostility towards the Human Rights Act is underpinned by its perceived foreignness, due to it giving further effect to the European Convention. They examine how the political establishment has invoked Magna Carta and Britain's tradition of rights, paradoxically, to argue for repeal. But British rights are an 'invented tradition', one that has been embraced by the media. This is particularly evidenced in the run up to the 2015 celebrations of the 800th anniversary of Magna Carta. The disdain for the Human Rights Act but, equally, the fetishisation of that Act, filtered through an invented tradition, crowds out the space for critical engagement with history and with rights.

Not all readers will agree with the questions asked of the human rights framework – its foundations, its philosophy, its evangelism, even – but that is the purpose of an Op-Ed: to make us think, reflect and question our own positions. So, perhaps it is appropriate to end by returning to the final line of Billy Bragg's *It Says Here*, the inspiration behind the title of David Mead's opening chapter: 'Just remember there are two sides to every story'. The chapters brought together in this collection demonstrate that when we scrutinise, critique and nuance, there are *many more* than two sides to this story.