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978-0-521-68552-8 - Can Human Rights Survive?  
Conor Gearty  
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## 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.

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#### 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

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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

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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 ix to xii. 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**

**KIM ECONOMIDES**  
*Chairman of the Trustees*



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- 1949 Freedom under the Law by the Rt Hon. Lord Denning  
1950 The Inheritance of the Common Law by Richard O'Sullivan  
1951 The Rational Strength of English Law by Professor F.H. Lawson  
1952 English Law and the Moral Law by Professor A.L. Goodhart  
1953 The Queen's Peace by Sir Carleton Kemp Allen  
1954 Executive Discretion and Judicial Control by Professor C.J. Hamson  
1955 The Proof of Guilt by Professor Glanville Williams  
1956 Trial by Jury by the Rt Hon. Lord Devlin  
1957 Protection from Power under English Law by the Rt Hon. Lord MacDermott  
1958 The Sanctity of Contracts in English Law by Professor Sir David Hughes Parry  
1959 Judge and Jurist in the Reign of Victoria by C.H.S. Fifoot  
1960 The Common Law in India by M.C. Setalvad  
1961 British Justice: The Scottish Contribution by Professor Sir Thomas Smith  
1962 Lawyer and Litigant in England by the Rt Hon. Sir Robert Megarry  
1963 Crime and the Criminal Law by the Baroness Wootton of Abinger  
1964 Law and Lawyers in the United States by Dean Erwin N. Griswold

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- 1965 New Law for a New World? by the Rt Hon. Lord Tanley  
1966 Other People's Law by the Rt Hon. Lord Kilbrandon  
1967 The Contribution of English Law to South African Law: and the Rule of Law in South Africa by the Hon. O.D. Schreiner  
1968 Justice in the Welfare State by Professor H. Street  
1969 The British Tradition in Canadian Law by the Hon. Bora Laskin  
1970 The English Judge by Henry Cecil  
1971 Punishment, Prison and the Public by Professor Sir Rupert Cross  
1972 Labour and the Law by Professor Sir Otto Kahn-Freund  
1973 Maladministration and its Remedies by Sir Kenneth Wheare  
1974 English Law – the New Dimension by the Rt Hon. Lord Scarman  
1975 The Land and the Development; or, The Turmoil and the Torment by Sir Desmond Heap  
1976 The National Insurance Commissioners by Sir Robert Micklethwait  
1977 The European Communities and the Rule of Law by Lord Mackenzie Stuart  
1978 Liberty, Law and Justice by Professor Sir Norman Anderson  
1979 Social History and Law Reform by Professor Lord McGregor of Durris  
1980 Constitutional Fundamentals by Professor Sir William Wade  
1981 Intolerable Inquisition? Reflections on the Law of Tax by Hubert Monroe

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- 1982 The Quest for Security: Employees, Tenants, Wives by  
Professor Tony Honoré
- 1983 Hamlyn Revisited: The British Legal System Today by  
Lord Hailsham of St Marylebone
- 1984 The Development of Consumer Law and Policy – Bold  
Spirits and Timorous Souls by Sir Gordon Borrie
- 1985 Law and Order by Professor Ralf Dahrendorf
- 1986 The Fabric of English Civil Justice by Sir Jack Jacob
- 1987 Pragmatism and Theory in English Law by P.S. Atiyah
- 1988 Justification and Excuse in the Criminal Law by  
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- 1989 Protection of the Public – A New Challenge by the Rt  
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- 1990 The United Kingdom and Human Rights by Dr Claire  
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- 1991 Introducing a European Legal Order by Sir Gordon  
Slynn
- 1992 Speech & Respect by Professor Richard Abel
- 1993 The Administration of Justice by Lord Mackay of  
Clashfern
- 1994 Blackstone's Tower: The English Law School by Professor  
William Twining
- 1995 From the Test Tube to the Coffin: Choice and Regulation  
in Private Life by the Hon. Mrs Justice Hale
- 1996 Turning Points of the Common Law by the Rt Hon. Lord  
Cooke of Thorndon
- 1997 Commercial Law in the Next Millennium by Professor  
Roy Goode
- 1998 Freedom Law and Justice by the Rt Hon. Lord Justice  
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- 1999 The State of Justice by Michael Zander QC  
2000 Does the United Kingdom still have a Constitution? by  
Anthony King  
2001 Human Rights, Serious Crime and Criminal Procedure  
by Andrew Ashworth QC  
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

## ACKNOWLEDGEMENTS

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

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Conor Gearty  
London  
February 2006

## TABLE OF CASES

- A and others v Secretary of State for the Home Department*  
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- A and others v Secretary of State for the Home Department*  
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