

# "We made a lot of mistakes. They happen. And then you correct."

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Michael Ignatieff Di 14 Mai 2013

*Human Rights have had a hard time in Europe lately. In some countries – particularly in the UK, where you have lived and taught for a long time – the very concept of transnational human rights is met with downright hostility in parts of the public sphere. Why is that? Why has the relation between human rights and some nation states so deteriorated?*

The deterioration in Britain is actually a very old story. That is the deep resistance in parliamentary democracies to constitutionalized rights. The common law traditions are very hostile to something which continental systems take for granted, which is, you put your rights down on a piece of paper in a constitution and take them out of politics and make them into fundamental laws. So much of German post-war constitutional achievement was precisely this constitutionalization of rights so you'd never repeat the catastrophe of Naziism. Well, parliamentary democracy sees the constitutionalization of rights very differently. The problem is a sense that rights contradict the sovereignty of parliament.

*Isn't that exactly what human rights are there for? To protect people against their own sovereign nation state?*

Human rights is the great language of individual freedom against the claims of the nation state, true. But collective self-determination, which is what nation states do, is also a human right. So, we have to understand, the conflict is not simply between outside human rights and human rights, but within human rights itself.

*But it's not only Britain that shows this new hostility towards human rights. You can see the same thing in Switzerland, in the Netherlands, in Denmark. It's all over the place, and I wonder: Why now? What happened?*

Switzerland has a particular tradition of neutrality, sovereignty, independence. These things are very much connected to a populist defense of local sovereignty, a sense that human rights is an intrusion on the capacity of societies to shape their own path and that democratic and local consent should prevail over international norms. Human rights becomes associated with a kind of cosmopolitan political correctness that doesn't have any local legitimacy. Look, I'm a passionate defender of human rights and I don't seek to justify these tendencies. But they need to be understood as something more than just right-wing populism. They tap into a sense that democracy is being whittled away by European integration.

*So you think there is a lesson to be learnt for defenders of human rights, to alter their concepts and strategies?*

I think the lesson would be not to take human rights as above and beyond politics.

*Again – isn't that what human rights are all about? To be above and beyond politics?*

That is what human rights try to do. To take certain normative commitments, rights between people, and take them above politics so that they can't be a subject of contestation. But at the edge, in issues like rights of free speech, there is always going to be contestation of human rights, and in my view there should be. Human rights is a form of politics and will be resisted by other forms of politics. And I don't think we should be alarmed or frightened that human rights are contested. What is required is that those who defend human rights get into the public realm – and defend them. You can't do that effectively, though, unless you understand why human rights causes resentment. And the core of it is the feeling that democratic sovereignty and local self-determination are being put at risk. And the more fundamental point is that collective rights of self-determination have always been in conflict with individual

rights, in principle. And it should be. The wrong way to think about it is that there is some unassailable non-contradictory good which is somehow attacked by a bunch of populist right-wingers. That is not what is going on.

*So, if you were the ECHR what would you do? Back off and appease the infuriated British by giving their government more leeway to violate human rights than others?*

Scandalous as it may be to say it, judges have an enormous amount of highly political discretion. The judges of the ECHR need to be very judicious about what cases they take from Britain. Judges don't like to think in this way. But they build legitimacy for their court by making astute political judgments about what the traffic will bear at any given moment. Managing the prestige and authority of the court is a political matter, not just a legal one. And if they make the wrong political judgments, you know, they are going to arouse resentment. The fact is, British justice and British liberty are things to be respected. They are very old. They are very deep. And they are very good. So, a smart European Court has to be very clever about how it interacts with local systems of justice throughout Europe, but especially with respect to Britain.

*Are you suggesting that Strasbourg should apply double standards when it comes to determining when and how to interfere? If they let go of a British case that would legally qualify as a human right violation, what are they to tell the Turks or the Russians when they demand respect for their collective self-determination in their turn?*

Of course you don't want to have double standards. And when I talk about political discretion you don't want to take it so far as it tips into double standards. Political discretion has to be balanced against judicial consistency. But Russia is not Britain, Britain is not Azerbaijan. I mean, come on! Britain for all its failings is a *Rechtsstaat*, just as Germany. Azerbaijan is not, and neither is Russia. These are authoritarian capitalist oligarchies in which there is precisely so little rule of law that most sensible Russian oligarchs park their money in Cyprus and British banks. Why? Because they can count on British law to secure contract. Whereas in Russia their wealth is at the whim of Putin. Different strokes for different folks, please!

*Well, I am not sure about contract security in Cyprus right now, quite frankly, but that is a different matter... What about the other end of the relationship? In Britain there has been talk of introducing a „democratic override“, to let the British Parliament have the last word on human rights cases, or even quitting the ECHR entirely. Do you think that is wise?*

That is grotesque. I am confident that we are not going to roll back the European court system. It is the only transnationally effective human rights system in the world. It's a huge achievement, a great thing. The British need to remember that it was the conservative Churchill government that took Britain into the Convention. The British are extremely anxious to preserve parliamentary sovereignty, but I don't see any reason why you can't combine it with the jurisdiction of Strasbourg. Parliamentary sovereignty isn't perfect. I have been a member of Parliament in Canada, and parliaments make mistakes. In a good democratic system parliamentary sovereignty should be qualified with judicial override. It's a great achievement that you have transnational judicial override. It's good to have democracies subjected to what you could call a continental system of adversary justification, where an individual who does not get justice at the national level can go to a European instance. The issue is, Britain is very unhappy with its membership in the European Union. It's half in and half out. This is politics all the way down. Human rights has been dragged into what is essentially a political battle about the identity of Britain within Europe.

*It's not just the British who seem to be very concerned about their identity within Europe. In other countries, Hungary for example, a much more nasty form of nationalism is rapidly gaining ground. Why is national identity politics on the rise again? What feeds this current?*

A lot of it has to do with quite justified fears not of globalization itself but of the loss of mastery and control. If you go back to the 2008 crisis, what shocked everybody, and it was the greatest shock since the great depression, was that your pension values or your employment could – snap! – be wiped out over night. Globalization looked great on 3% growth. Globalization looks terrifying if over night global capital markets seize up, labour markets seize up and the

chief experience is that you have lost control over the basic and fundamental conditions of your existence. And it raises questions on whether your political system can give you mastery. What is sovereignty? It's the desire to be master in your own house. People have sensed since 2008 that they are not masters in their own house. And they are very sceptical that there is any other way to resecure the mastery in their own house except the reassertion of democratic sovereignty. People don't want to be alone in a global world. So they turn to identities that matter. Linguistic identities, ethnic identities, national identities. They want their states to protect them. They don't believe that their government can shield them from all risk, but they do think that their government should guarantee them against systemic risk – the systemic devastation of pensions, of employment etc. There are very few states in the world now that appear to be able to give that guarantee. Germany is one of them. That is one of the reasons that Germans do not feel they are adrift in a global world. They got control of their deficit, of their credit conditions, they know that the Euro gives them competitive international conditions, and they know basically they got stuff that people want to buy. If all those conditions were lost German democracy would be in a lot of trouble. Thank god it isn't.

*But aren't those who are afraid of globalization doubly in need of a powerful integrated Europe to protect them from China's and Russia's political and economic ambitions?*

People in Germany feel that the path to greater European integration only increases the security that Germans want. But that is not necessarily what people in Ireland, Portugal and Greece feel.

*People may call for the nation state to protect them, sure. But it's not that the nation state has a lot to show for it, particularly not in Greece where the nation state has been and still is totally dysfunctional. Why would anybody put his trust in an institution that has just failed him so spectacularly?*

It has been extremely humiliating for Greeks to discover the extent of the betrayal of their whole political class. The sense that Greeks have is that they did it to themselves, and that is a very painful thing. But for them European integration looks a lot more bitter than for the Germans. It looks like the Troika. It looks like the suspension of their sovereignty. Germans feel that integration can only multiply and increase the effectiveness of their sovereignty and mastery of their own affairs. For the Greeks it is a feeling of increased powerlessness, that they will be integrated as a kind of poor provincial appendage of a Europe that is really run from the north, and they become a province of the empire. That is a severe blow to national pride, and I am not surprised that a lot of Greeks are extremely angry at Germany and the European project. They feel that Europe is their salvation, but they feel humiliated by the salvation that is being offered to them. And humiliation is a very powerful emotion.

*Let's get back to the UK for a moment. You mentioned the mistakes sovereign parliaments occasionally make. Many of those errors have been made in the so called „war against terror“, by the US as well as by its allies, all of them stable democracies with firm rule of law. Can we still make this distinction between traditional „good guy“ democracies on one side and the usual human rights violator suspects on the other side? Don't we need a powerful transnational human rights regime to look into these things no matter where and by whom they are pulled?*

Almost all democratic states after 9/11 have privileged security over liberty in ways that have damaged liberty, there is no question. Britain, France, Canada – my country has done things that we now regret. I think it is inevitable that democratic states will make these mistakes. They are hard to avoid given that a substantial part of the threat is homegrown. The phenomenon of self-radicalization on the internet is not a minor one. 99 percent of our immigrant societies are not only loyal but deeply committed to their new lives. But there are thousands of young 18 to 26 year old males who are actually pretty well integrated into western societies but who adopt the jihadi cause through the internet. We made a lot of mistakes with dealing with that threat, but it is just perfectionism to think that those mistakes won't happen. They do happen. And then you correct.

*Really?*

The US denied habeas corpus to the Guantanamo people, then the Supreme Court granted them habeas corpus.

My country Canada sent a guy to be tortured in Syria, we had a parliamentary and judicial inquiry, we paid him ten million dollars and decided we won't do that again. The Poles were involved in black sites with the CIA, parliamentary inquiries have wrinkled that out. Britain has done things they regret, the law lords have come back and reasserted the rule of law. What do these stories tell you? Nobody's perfect. Under the perceived threat of terror societies get the balance wrong, and then they have to row back. To come back to your point – what is important is that no national judicial system does this in isolation. Every society is subjected to the criticism of international legal bodies. The UN special rapporteur has made very useful criticism about the American and British conduct. Civil society organizations like Human Rights Watch and Amnesty have done vital work. All of this is part of the process by which societies hold to the rule of law. We are slowly learning to live with a low level of terrorist threat that is more or less permanent. We learn to live with increased security at airports, increased invigilation of our privacy, but we are also learning to accord detainees and people we arrest better human rights protection. We're in a new normal. But I don't think the new normal is the authoritarian secret police state. I don't think we're there at all.

*That is a surprisingly serene outlook, I must say.*

What does concern me is the technological change. Everybody is aware that the police can track all of your cell phone calls, all of your e-mail. There are some serious privacy threats laid bare by the coincidence of technological change and increased terrorist threat. What do we do about that? We fix it. We have to. I want to protect the privacy rights that are at the core of liberal freedom. But my point is, that's always a moving target. The law needs to adapt. The security institutions will be pushing the boundary this way, and civil libertarians and law professors and judges need to push back, and in that adversarial battle liberty gets preserved. And it's never secure.

*The people of the United States have actually elected a law professor for president in 2008, on his promise to fix the problems with Guantanamo and the war against terror. But he hasn't. He wasn't able to. And he was re-elected anyway. Is there something systemic going on which undermines – at least if you cling to the notions of American exceptionalism and of executive power – the optimistic idea that you can fix these problems politically?*

Guantanamo is a real problem. And he's failed, there's no question about that. I don't think that Canada, where I come from, is in a position to give Obama a lecture as we weren't even willing to repatriate our Guantanamo prisoners. A lot of countries are only too happy to criticize the United States for keeping Guantanamo open while doing nothing to repatriate their own people. So, there is a very important form of hypocrisy going on here. The second thing is that new technologies make it possible for Obama to make target assassination a critical feature in his war against terrorists. That is a really legitimate source of enormous concern. But again, Human Rights Watch, pretty much everybody is pressuring the Obama administration to disclose the grounds on which it makes these decisions so that it becomes more explicit. My point is that we live in a constant adversarial battle over this. They push one way, we push back the other, and somewhere in the middle we get to a balance we can live with. But you can't face up to the reality of this unless you understand that the threat is out there. It's not that liberal democracies have invented it. The enemy exists. And we have to do the minimum required to keep ourselves free, and what that is is a matter of fierce political debate. I just came from Boston. It was a shock, believe me, to live in the small town Cambridge, Massachusetts, and to realize that a person determined to kill and injure hundreds of people lived half a mile away, a successful student, fully integrated, had every opportunity and chose to make war on it. That's our modern dilemma. Responsible states have to take responsibility to do something about it.

*You declared yourself a sceptic on transnational constitutionalization. But isn't that exactly the forum where this adversarial battle, as you put it, ought to take place? As opposed to what the US government thinks, and the British government too, most of the time?*

Justice is universal, but also national and local. The idea of sovereignty is deeply connected with the idea of justice. In a global world, thank god, no state can afford to be an island. All states are forced to justify themselves to their allies and friends, and we should do everything we can to strengthen that sort of adversarial justification. I don't think any state can say, well, this is just the way we do it here and you can all go to hell. Certain states tried to do that in the 30s, and we know where that lead. No state can be a law unto itself in the international order.

*But this is precisely what the US say, and what the US constitution prescribes them to say in the view of the current Supreme Court majority, isn't it?*

Well, the legitimacy of international law, of international invigilation doesn't seem to me beyond question either. The one thing I would say about American constitutional doctrine is that it's founded on fundamentally democratic principles: We, the people. What they are referring to is not the human race. It's the people of the United States. Of course I would like a US Supreme Court, which like the Canadian court, would look at German and South African and other jurisprudence, and I think incrementally over time it will begin to do so. But people forget the strength of the American tradition as well. We now have habeas corpus at Guantanamo and didn't have it ten years ago. Germany didn't have an attack like 9/11 with 3000 people dead, the worst attack since Pearl Harbor. It doesn't surprise me that the United States has traditionally connected its vision of justice to democratic sovereignty. I think that is an enormous strength. I, as a Canadian, want to live in a world in which Germany criticizes Canada for the way it treats aboriginal Canadians, for the manifest injustices that you can see every day in my country, just as I want to be free to criticize Germany. That's what cosmopolitan internationalism ought to mean. But in terms of coercive authority – I want it correlated to democratic states, period!

*You have been a politician for six years. That ended two years ago when your attempt to lead the Liberal Party back to power at the federal elections and to replace Steven Harper as Prime Minister of Canada ended in a historical defeat for the liberal camp. How would you describe that experience?*

It was pretty extreme. In 2005, I went from teaching a human rights class at Harvard at noon to being chosen as a candidate for a federal election in the evening. I went directly from the frying pan into the fire in one day. The change that occurs is that when you are a professor you speak for yourself and your responsibility is to be true to your discipline and the truth as you see it. But the minute you are elected you are responsible to your constituency, to a political party, you don't have the same freedom of expression as before, and that's good. It's the responsibility you accept to put a filter between your brain and your mouth and serve a cause. I found that difficult at times. But if you want to change anything in this world you have to accept that responsibility. We were in opposition during the whole time of the financial crisis, and the responsibilities of opposition are difficult. Everybody says opposition is there to oppose. Well, in an economic crisis that didn't seem to me the right thing to do. So, in certain crucial moments we decided to support the government because we didn't want to add political instability to economic crisis. That might be the right thing for the country but not for the party because the government then gets the credit for decisions that you have made possible. So, there are some painful choices you have to do.

*What did you learn that is useful to you as a political thinker?*

I learned a lot of respect for politicians, actually. Politicians do a dirty and difficult job. There is a lot of cynicism about what politicians do. But a good one is a treasure, even a moderately good one. I came out of the experience also much more of a democrat than when I came in. Professors are quite elitist. We think we are smarter than the general public. There is a tendency among academics to be very scornful about the judgment of ordinary voters. I think on balance that's a mistake. The Canadian people did not chose me as their Prime Minister, but I came out of it nonetheless with a very strong respect for the democratic judgments of my fellow citizens, and a very strong faith in democracy.

*Did you find the gloves-off aspect of politics, the brute power game hard to stomach sometimes, too?*

It's a very dirty game, sure. The aspect of politics which is most troubling to me is that you almost never argue about policy. All battles in modern politics are about standing. You don't attack what people say, you attack who they are. Or more precisely, you attack their right to say anything at all. I had a ferocious battle over that. Standing is the chief battle ground in modern politics. Standing in law means the right to make your case in court, but there is an equivalent in politics, your right to be heard. And you have to fight for that right. And I lost that battle. So I understand now, too late, what politics is actually about. It's a battle to be heard. We have so many problems to solve in the 21st century, terrorism, climate change, social justice, you name it. But they are all political. Our capacity to solve them

depends entirely on the strength of our political systems. It depends crucially on getting good people into politics, on citizens believing in their political systems and their legitimacy. It's one of the reasons that I am more sovereigntist than internationalist. Because I think it is just so important to have legitimate, credible, national political systems.

*Did being a political philosopher help you in politics? Did that make you a better politician? Or rather the opposite?*

I think it gave me a sense of vocation for politics, in the Weberian sense. I don't think politics is a profession or a game or show business. It's a calling. Of all the things I learned from political philosophy I learned most from Max Weber's unforgettable lecture given to frightened Munich students in January 1919. That's my master text for modern politics: the boring of hard boards. You are in service to the public. Democracy is a form of public service, very arduous, very difficult, very exasperating, very brutal. Very brutal. And absolutely necessary.

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*Questions were asked by Maximilian Steinbeis. We thank the American Academy in Berlin, where Michael Ignatieff resides as a visitor and will give a lecture on "[Sovereignty and Intervention 1993-2013](#)" tonight.*

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