

Radio Ombudsman #31: Adam Wagner on defending human rights in extraordinary times

Adam Wagner, leading barrister in public law and human rights cases, speaks to Rob Behrens about the importance of protecting human rights.

They discuss the development of the Universal Declaration of Human Rights, the impact of COVID-19 and the important role the Ombudsman plays in defending human rights.

They also talk about Adam's hugely successful UK Human Rights blog and how he uses social media to keep people informed.

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Rob Behrens: Good morning. This is Rob Behrens, welcoming you to my penultimate hosting of Radio Ombudsman. On another sunny day from Manchester, my guest today is the celebrated human rights and public lawyer Adam Wagner.

Adam has acted in a number of public inquiries and was the special advisor to Parliament's Joint Committee on Human Rights and the COVID inquiry. He's well known for his human rights advocacy work. He founded both the human rights charity EachOther and the acclaimed UK Human Rights blog.

He set up and hosts the Better Human Rights podcast and is a distinguished practitioner acting out of Doughty Street Chambers. He's much sought after as a legal commentator on social affairs, television and media, and we're very lucky to have him with us. Adam, thank you for joining us, you're very welcome.

Adam Wagner: Thank you for having me.

Rob Behrens: We usually start out on Radio Ombudsman asking our guests if they could tell us a bit about themselves, their background and the values they were brought up with. Could you say something about that?

Adam Wagner: Yeah. Well, as I say, I'm a barrister. Been a barrister for 15 years now. I generally practice in human rights and public law

and public inquiries. I'm at Doughty Street Chambers now, but I was at 1 Crown Office Row for the first set of part of my career. Moved I think just over six years ago.

I didn't always want to be a lawyer. I decided to be a lawyer in my sort of mid 20s after drifting from one idea to another about what I was going to do. But when I wanted to be a lawyer, I only wanted to be a human rights lawyer. That was my reason for doing law.

In terms of my values that I was brought up with, I come from a Jewish family. I grew up in South Manchester. I was brought up very much a sort of community minded person and with strong values, of volunteering and commitment to community. Community and family are very important parts of my life and I'm very involved in my Jewish community and I'm a trustee of number of charities. I'm a school governor.

So I see sort of life is about obviously doing what you enjoy and what gives you satisfaction, but also giving back some really important part of why and how I live my life.

Rob Behrens: Thank you. I did not know that you came from South Manchester, where I also came from. I was brought up in Didsbury, and so we have more in common than I realise so that's good to note.

What did you study at university? Did you study law or something else?

Adam Wagner: No, I had no inclination to do law at all. I started doing English literature. I did that for about a year and then I changed to politics and philosophy. So I was a humanities student, I guess.

Rob Behrens: Yeah. And so then you went to law school afterwards?

Adam Wagner: I came back to Manchester and worked for a Jewish charity for a year and then I went off to do a Masters in Political Science, partly because I still couldn't quite figure out where I wanted to go. And I thought a couple of years of more studying was sounded attractive and the bar seemed like a good potential option. It wasn't a hugely planned route.

It was a series of smaller decisions which led in that direction.

Rob Behrens: So a number of our listeners should take note of that, particularly the younger ones who are always pressed into

expressing a view about what they want to do when they're at school, and it takes time to decide.

Adam Wagner: Yeah, I wasn't one of those people at school that said I'm going to do this or that or the other. It just wasn't my interest and again, even at university, I was really very vague. I was much more interested in studying than I was in setting up a career.

Rob Behrens: Thank you. Last year commemorated the 75th anniversary of the Universal Declaration of Human Rights. And I went to Kiev in support of my human rights counterpart in the Ukraine to mark this event, which is clearly very significant.

Could you tell us about what you think is the importance of this document?

Adam Wagner: I think it's a hugely important document. I think more than a document, it's a commitment by the states that signed up to it, which is every state, no matter what their political system or their view of democracy or what have you.

It was a rare moment, I think, of clarity by the world after the Second World War and after the Holocaust, where it was decided, or it was thought that what we've just been through - having just been through two world wars, you know, a huge pandemic and economic crash and just instability for decades.

It was decided that they would try something different and that there couldn't just be a rule of the strongest states, there had to be something more broad and a broad set of principles and values which states would have to comply with.

The Universal Declaration in itself - you can't enforce the Universal Declaration. You still can't go to a world court. And get your individual rights in force. But what it did is it led to a whole raft of regional agreements, like the European Convention on Human Rights, but also the Inter American Charter of Rights and lots of other similar documents which are enforceable. It's still a very much a work in progress, but that started us on a path.

I'd like to think towards thinking about the law and thinking about our values as something which are universal, rather than being specific to whatever political system or even political leader you happen to have any particular time.

Rob Behrens: So you would regard the current debate about the merit of the European Convention as not being a good idea?

Adam Wagner: I think it's always right to keep things under review and sometimes it's wrong to treat these documents, these texts, as religious artifacts where they're sort of holy relics of a different time which we have to comply with regardless of whether the times have changed.

So I think on that side I think it's fine to review them and they do, the bodies themselves, particularly the Council of Europe and it reviews the European Convention on Human Rights all the time and there's new bits added. The court is also constantly interpreting it so that it remains a living instrument as some of the founders called it and that's part of society's developing.

But what I don't think is the right approach is to say, well look, we need to be totally in control of all of our laws and all of our values and we can take nothing from these international bodies.

I think that's really dangerous because obviously you give away some sovereignty when you sign up to international agreements but you get something back as well. That's what's not talked about enough, that you get an international system which we're part of. We're part of the world system. You get a fairer and a more liberal international system.

That's why Churchill, for example, and Roosevelt - who knew a lot about war and were not lefty liberals - they saw their system as a really important post-war development that would prevent totalitarian states emerging in the way that they'd emerged in the 30s and 40s.

So I just think it's really short-sighted to try and junk these things altogether and stop playing the leadership role which the UK has traditionally played since the Convention came into force in 1953.

Rob Behrens: As the Parliamentary Ombudsman, my mandate does not explicitly mention human rights, but the idea that you could operate as an Ombudsman without constant reference to human rights is absurd.

We look time and time again at human rights issues and I mean there's so much going on in the world that creates attention on

these issues. But specifically, you've done an enormous amount of work around human rights during the COVID pandemic. Could you tell us something about that please?

Adam Wagner: The COVID pandemic was an extraordinary emergency situation the likes of which I don't think we've faced as a country since the Second World War. I think it was a really unique situation because the government - almost overnight, you know, it happened really, really quickly - took the reins of our laws and also our freedoms.

We went from a position on the 25th of March where the law was something that people generally didn't worry about very much unless they were engaged in crime or worried about not paying their taxes, the laws on the edges of people's experience.

Not everybody, there are people who are more vulnerable in society and are hit by the law more often, but for most people they don't.

And then on the 26th of March, when the first lockdown law came into force, you needed to know what the law was. To know whether you could leave your house or see a relative or hug somebody or play sports or go to school or go to work, you know, all of the basic aspects of life.

Life was suddenly being controlled by these regulations and the regulations were changing in that first year, on average, I calculated every three days.

So you had an absolutely extraordinary shift in the way the law was impacting on people's lives and at the same time, the way that Parliament was creating laws. Because all of these laws, the regulations, were created by statutory instruments, so they were created using the emergency procedures in the Public Health Act.

They were created at the same time as the health minister, Matt Hancock, signed the bottom of the piece of paper which had the law on it. And then they didn't have to be debated in Parliament or voted on for another month. So they could be enforced and that could be totally illiberal, could be oppressive, but Parliament wouldn't even look at them for another month, by which time there would have been 10 or 15 more new regulations, so the whole thing would have been

redundant anyway. It was a real danger time for rights, with justification as it was also a very big danger time for public health and for people's lives.

So that balancing exercise was really quite novel and really difficult and I tried as best I could to first of all give people better access to the laws which I thought was an extremely important role to play, given the point that if you don't know the law, you might be committing a crime by leaving the house.

People needed to understand that and I became, not deliberately, but just because there was no one else doing it, sort of a public explainer of the laws and at the same time working with the Joint Committee on Human Rights on a series of live reports of what was going on and the human rights implications. I was also working in the courts on a whole range of issues, from detention in hotel quarantine to the right to protest to these large, fixed penalty notices where the people could travel to see their partners. It was a very busy time like that.

Rob Behrens: It's important work that you did. We've submitted evidence to the public inquiry on COVID about the themes which we've seen in the COVID and post-COVID situation, where there's been a dramatic rise in complaints following a pause. One of the big themes that we've noticed is about the DNACPR's (do not attempt cardiopulmonary resuscitation). What we found from our complaints is that disabled people and older people were most likely to be affected by an arbitrary application of this procedure in a way which is entirely unfair to the individuals concerned.

Do you think the Joint Committee and the public inquiry is going to come up with solutions or suggestions about how to prevent this in the future?

Adam Wagner: They will definitely be looking at these issues. I'm acting in module three and four of the inquiry at the moment. Module three is the healthcare module, the healthcare response to COVID-19 and module four is vaccines and therapeutics.

And I know that in module three do not attempt CPR, those forms that that were filled in or not filled in are going to form a big part of the evidence. And I think you've highlighted with that issue something which was specific to people, particularly

in care homes, in hospital settings, but also something that was more universal to that period. Which is that when you have this extreme emergency situation happening and you have laws being made very regularly, lots of changes to the way our liberties are protected and also a lot of safeguards taken away.

And because of the speed and the extreme danger of what was happening, the groups that tended to suffer were, as you'd expect, the people with the least access to the law, to lawyers, the people with who were already vulnerable. So people disabled people, people who were from poor socioeconomic backgrounds who were given disproportionate, hugely disproportionate, fixed penalty notices. People with learning difficulties couldn't understand the laws as they were changing. All of the groups you would expect.

I acted in a case about the Napier Barracks and the fact that asylum seekers were being housed in these inhuman conditions, where they were being prevented from leaving despite a COVID outbreak and hundreds of COVID cases. And the problem was I could see it in real time and not do very much about it.

So much was going on and there's so much fear and people are so busy and so worried about their own welfare that a lot that would normally be brought to the fore in our system (of Ombudspersons and lawyers and legal aid and parliamentary committees and MP's, all of those sort of safeguards), everybody's so flat out and there's so many different pressures on time and resources that I think a lot of things went under the radar that would ordinarily be given huge public attention.

So I think that's absolutely part of that picture.

Rob Behrens:

Thank you. Could we move on to talk about the Ombudsman and human rights? The Joint Committee on Human Rights in Parliament held an inquiry which we gave evidence to, to see whether it was worthwhile creating a separate human rights ombudsman in the UK.

I thought this was a bonkers idea because we already have 16 different public service ombudsmen. We don't want to create another one. What we want to do in my view, and I said to the committee, is reform the existing structures to make sure they properly incorporate human rights mandates which most of my

colleagues in Europe, in line with the Venice Principles, actually have.

And happily the committee agreed with that. So they argued, along with the other select committees, that there's an urgent need to reform Ombudsman law to make it more modern and up to date.

One of the critical weaknesses of the scheme is that citizens have to go through their Member of Parliament before they can lodge a complaint about public affairs to my office. I know from the Windrush affair and the limited number of cases that came to me, that less advantage people, vulnerable communities are less likely to make a complaint if they have to go to their MP because they feel intimidated or they feel that it's alien to their understanding of what works. And so they just go away rather than bring the complaint.

So do you agree that there should be Ombudsman reform along with getting rid of the MP filter?

Adam Wagner: It seems very paternalistic. To me it seems like something from a different age. I suspect that was what was behind it, this idea that you don't want members of the public using important public resources without some sort of chap looking him in the eyes and seeing if they've got something to them.

It really sounds completely barmy to me that you would have to go to an MP because, like you said, I deal with quite a lot of cases where people come to me after somebody has been to an MP. Particularly when I used to do asylum law and lots of MP's deal with asylum issues, detention issues and they often do a really good job when they get involved, they're usually very dedicated and their teams are very dedicated, but they are their own thing.

I see ombudspersons and MPs as two important elements of the representation of public interest. I don't see how they link and in fact I can also see it as being a bit of a conflict of interest. Because what if there's a party political element to the complaint, or there is a local element to the complaint, which I guess generally there will be, the MP might want to deal with it in a different way than the independent Ombudsperson.

But I think most fundamentally it's just the intimidation factor. It's difficult to overemphasize how intimidating public

authorities are to vulnerable individuals and how terrified they are generally of public authorities because if they need to go to an ombudsperson like you, they're going to have had a very bad experience of the public authority. And I think they're very distrustful as well. And the idea that they would just go to an MP, just turn up to the surgery or write to them, how would they get in touch with them?

Rob Behrens:

I know that's the case because we now have regular Ombudsman roadshows where I go out to communities that wouldn't otherwise get to me, and the conversations are often very difficult because making a complaint is not something that people do on a daily basis.

So usually they want to talk and express their frustration rather than say something explicitly, and we have to understand that and find ways of making ourselves accessible.

But the other thing is you use the word patronizing. The Wyatt Report from Justice in 1961 was the founding document for the 1967 legislation, and it talked about the need to provide a service for the 'little man' in inverted commas who couldn't look after himself. There was a gender bias in it. There was also the view that MP's could do the job properly if people were capable of rising to their levels. So I think all of that needs to be thought about again.

Can I just move on to... what's quite interesting for barristers, many barristers are quite brilliant, focused on what they do in a legal context and not necessarily aware of the public implications of their role, I say that as a former Complaints Commissioner to the bar. But you're different. You run a life which embraces social media and campaigning, and that's very important and very interesting. Could you say something about that? How interesting it is, whether there are any tensions in doing it?

Adam Wagner:

So I didn't exactly plan to do it like that, but it was always my intention, as I said, to be a human rights lawyer and a public lawyer, but also a lawyer in public.

I lived in America for a year before I went to the bar and I think that there's much more of a sense in the States of lawyers as public figures, and that as being part of their job, particularly lawyers that take campaigning cases. And obviously that's just one way of doing it.

I don't have any issue with people who do a more traditional version of my job, and when younger barristers or new barristers asked me, "how did I do that?" I say, "it's really not necessary to get on".

And in fact, as you say, there can be tensions. I mean, certainly in the in the earlier part of my career when I was acting from a more public authority. I used to do government work for five years or so on a government panel and at the same time I was building the human rights blog, which I set up when I was a pupil, just because that was a sort of right place, right time - legal blogging was just starting. It was before Twitter and nobody was doing it. There was just a few chambers that had set up subject specific blogs.

I set up the human rights blog because I'm quite technical. I always used to do a bit of graphic design and I thought I can just do all that, the software that was there, I could just do it very easily. So I did it and I convinced my chambers to put their name on it because I think mainly they didn't know what it was. I said it wouldn't cost anything and if we don't someone else will. They said fine have a crack.

It was a time when newspapers got rid of a lot of their legal journalists and the court reporters for financial reasons and there was a lot of controversial human rights cases coming through the pipeline, people like Abu Qatada, the prisoner voting case, those sorts of things.

There was a need and there was a thirst in the public and in the press for reliable legal information that wasn't from a journal that could be read and understood and it was in plain English.

That was always the focus of the blog. I gave sort of guidelines, four rules:

- 1) plain English
- 2) short paragraphs
- 3) always quote and link to primary sources
- 4) if you get something wrong, correct it quickly and just own up to it.

And that was the premise of it, and it was quite revolutionary because that's not how legal writing is. Lawyers write about law. They tend to write - I think now it's quite a bit better -

but especially at the time, to be very technical and very practitioner focused and that wasn't it at all.

Then when Twitter came along, again that was the right place at the right time. There's a lot of need for it. Then it became a bit of attention as I was getting involved in more controversial cases on the government side. I knew that I couldn't carry on doing both things because it was going to become more of a potential conflict.

A lot of the stuff that I was writing was quite critical of the government, so I knew that I would need to move over to the other side and do what I do now, which is more sort of claimant-focused and now there tends not to be much of attention at all. I try and keep within certain rules that I've set myself. I try never to get involved in personal arguments or be personally critical of people. Always keep it on this sort of level of what's the law, what are the concepts here, what's the substantive debate?

At the same time I will never write about or tweet about any cases that I'm involved in unless my client has asked me to, and unless that's part of the approach we're taking to publicity around the case - a more campaigning type case - and that seems to keep me out of trouble more or less, but not entirely.

Rob Behrens: Yeah, it's very important to demystify the professional role that you have and you're very successful at doing that. But I just wanted to ask you, I know a number of barristers on Twitter who get abused horribly when they raise issues and the challenge or the problem is how to deal with that abuse or whether or not to deal with it. Do you ever experience that?

Adam Wagner: Yes, definitely. I've done that and I've been involved in certain issues where it's led to a lot of abuse. Probably the most sustained was when I was working on the anti-Semitism in the Labour Party issue when Jeremy Corbyn was in charge of the Labour Party, and I was acting in the equality and Human Rights Commission investigation and I was acting for the organisation that lodged the complaints. It was an issue which I was campaigning on and I was working on at the same time. I did get a lot of abuse.

In the same way that you know, like you say there's certain issues that become very trendy. People are very trenchant about and, you know, trans rights, for example, at the

moment. Anything to do with party politics can get people into a sort of war footing.

The way I think about it now is if there's a particular issue, first of all, can I add value to the public conversation? That means not something that I just have a side interest in, but do I actually have expertise that I can offer that will help like you say, demystify what's going on. If not, I generally won't get involved.

The second question is - I like to think of myself as a bit like having an energy bar, like in a video game. And I've got a sense now of how much energy have I got on the bar, and how much is this going to take up if I get stuck into it? And is it worth it? What's the cost and what's the benefit?

You can't always predict that, but I try to weigh that up and decide whether to leap in. I think a few years ago I probably would have leapt in a lot more without thinking of that. It's such a mental load taking that public role that, for me and for my family, I try not to deplete myself too much.

Rob Behrens: Some very good, informed, pragmatic answers. Thank you very much. My last question - we've got 500 colleagues working in our offices in Manchester and in London. The vast majority are young graduates or in the mid-20s, many with legal degrees, interested in human rights issues. What advice would you give them at this stage of their career?

Adam Wagner: The main bit of advice I always give for people who are interested in public law, human rights, those sorts of areas, is just be flexible. If you think about a career, think about five or ten year increments. Don't get too het up about what's going to happen in the next year or two years because it's such a difficult and complex area of law. There's so many different ways of practicing it. There's a huge amount you can achieve working in public authorities, like ombudspersons or government or health authorities.

I think there's a lot of students that I meet who are very fixated on the bar, because the bar is seen as the most glamorous or the best paid which it's not. They've seen a film and it looks exciting, but I think people have got to think of careers as a series of different building blocks. You don't always know what you're actually building.

It's so hard to get any kind of opportunities in this world and you go towards the things you're offered and get the best you can out of them and keep an eye on that sort of five-year plan. Start putting in place the extra things you're going to need to move at some point towards the general direction that you're trying to move to. But try not to get too upset or worried if you're not where you wanted to be in a couple of years or even in three or four years because that's just not the way.

If I look at all the people I was at law school with, none of them has followed a straight path or line through what they wanted to do or where they wanted to be. Things change. Your life changes. Other things come in like families and life generally. So be flexible and just keep an eye on the long term rather than the short term.

Rob Behrens: That's brilliant. Adam, it's been a delight. Thank you so much for joining us. It's been very interesting and very useful. We're really grateful.

Adam Wagner: It's a pleasure.

Rob Behrens: So my next guest is the young Instagram doctor, Doctor Sooj, who has taken medical advice to a new arena in social media. He'll be with us in a couple of weeks, but for the moment with great thanks to Adam Wagner, this is Rob Behrens, signing off, wishing you a good day from Radio Ombudsman.