



A Response to the Green Paper 'Rights and Responsibilities: developing our constitutional framework'.

British Humanist Association, August 2009.

The British Humanist Association (BHA) strongly supports the inclusion of the European Convention on Human Rights in UK law through the Human Rights Act, and would oppose any attempt to repeal the Act. We have also welcomed the subsequent legislation which has entrenched the commitment to equalities and rights in particular areas, by prohibiting discrimination on grounds of gender, race, disability, sexual orientation, age, gender identity and religion or belief. As an organisation representing the non-religious, we have a particular interest in the right to freedom of religion and belief. We support the rights of religious believers to practise their religion, but by the same token we support the rights of the non-religious and we reject any form of religious privilege. We recognise that the right to freedom of thought, conscience and religion includes the right to change one's religion or belief. This is important as a recognition that the rights of religious groups do not entitle them to impose themselves on unwilling members. We would want to emphasise also that the rights of religious believers to practise their religion should not entitle them to exemption from legislation protecting, for example, the rights of women, or of gays and lesbians. In short, the rights of religious believers carry with them a responsibility to respect the rights of others. This emphasis on reciprocity underpins what we say below about the relation between rights and responsibilities.

The Relation between Rights and Responsibilities

As strong supporters of the Human Rights Act we endorse the need to embed the idea of human rights more securely in the political culture of the UK, and we agree that this would be helped by a clearer understanding of the relation between rights and responsibilities. We agree that there has been a tendency to think of rights as commodities, and that this has tended to obscure the social character of rights (2.15). The demand that one's rights should be respected, and the obligation to respect the rights of others, help to define the nature of the relations between members of the society. We agree that thinking of rights in this way requires a proper emphasis on the connection between rights and responsibilities. This connection, however, needs to be clearly defined.

Rights Not Contingent on Responsibilities

The Green Paper is right to say that 'the rights in the European Convention cannot be legally contingent on the exercise of responsibilities' (2.22). They cannot, either, be *morally* contingent on the exercise of responsibilities. They are *human* rights, rights which are possessed by people in virtue of their human needs and human dignity. An asylum seeker arriving in this country, for example, and having had no opportunity to exercise the responsibilities of a UK citizen, has the right not to be 'trafficked' for coerced labour, and if he is threatened with deportation he has the right to a fair hearing. A UK citizen who has defaulted on his or her responsibilities, e.g. by breaking the law or failing to pay taxes, does not thereby forfeit his or her rights. The notion of forfeiture may have some limited application in very specific cases. In cases of self-defence, for instance, if I am being attacked and my life is threatened, I may have the right to use lethal force if necessary, and in that sense my attacker may be said to have forfeited his right to life. But the forfeiture is

temporary and my entitlement to use lethal force must be strictly proportional. The attacker does not lose any other rights, and if I succeed in repelling the attack I am not then entitled to kill him or torture him or violate any other of his rights.

'Balancing'

Having properly rejected the idea that rights are contingent on responsibilities, however, the Green Paper fails to provide a satisfactory positive formulation of the relation between them. It talks vaguely of 'a link between rights and responsibilities', but the nature of this link is not clearly defined. There are frequent references to 'balancing' rights and responsibilities. This way of putting it is also vague, and worryingly so. It can open the way to *ad hoc* restrictions on rights for the sake of, say, administrative efficiency or convenience, in the name of our responsibilities to society. It fails to take rights sufficiently seriously, as setting strict limits to the ways in which individuals may be sacrificed for the greater good. The 'right to privacy', for example, is not something that can be justifiably compromised for the sake of more efficient data collection by government agencies.

There is also the danger that such talk of 'balancing' could be invoked to justify limiting freedom of expression so as to avoid offending certain groups. We have seen instances of religious groups demanding restrictions on free speech and free expression, and there have been worrying moves at the international level to limit freedom of expression in the name of preventing 'defamation of religion'.

Rights Entail Responsibilities

A better way of putting it would be to say that rights *entail* responsibilities. To recognise that we all have basic human rights is at the same time to recognise that we all have responsibilities to respect and promote the rights of others. Rights and responsibilities are not separate things, but two sides of the same coin. This is where the idea of 'reciprocity' comes into play. In the case of some of the rights in the European Convention, we have responsibilities to respect them directly. We have responsibilities not to threaten the lives of others, or deprive them of their liberty or undermine their security, or invade their privacy, or violate their rights to freedom of thought, freedom of religion or freedom of expression. In other cases our responsibilities are indirect – responsibilities, for instance, to support a legal system in which everyone is entitled to a fair and public hearing, in which everyone is presumed innocent until proved guilty, and in which torture is prohibited, and we have responsibilities to protest against violations of these rights. And in the case of the first set of rights too, we have responsibilities to respect them not only directly, but also indirectly, by supporting a legal system which protects them and by doing what we can to ensure that it really does protect them.

Seeing rights and responsibilities as two sides of the same coin is important when it comes to the idea of balancing them. It brings out that not just any responsibilities can be weighed against rights. The balance to be struck is between our assertion of our own rights and our responsibility to respect other people's rights. So for instance the right to freedom of religion should not be limited by other people's disapproval of certain practices or dress codes or whatever, but it can properly be limited by the responsibility of religious believers to respect other people's right to free expression. A religious believer is not entitled to silence other people's criticisms of his religion, or to ban books or pictures which he finds offensive on religious grounds.

Rights as ‘Trumps’

What this amounts to is that rights can be limited only by being balanced against other rights. Putting it this way better reflects the status of rights. In the felicitous phrase of the legal philosopher Ronald Dworkin, ‘rights are trumps’. Because of their fundamental status in human life and human societies, they must by their nature outweigh – ‘trump’ – other kinds of moral and social considerations. For the reasons which we have mentioned, we think it vitally important for any Bill of Rights and Responsibilities to spell out explicitly that rights, such as the right to free expression, can be limited only for the sake of protecting other rights. The avoidance of offence is not a permissible ground for restricting rights.

A Comprehensive Statement of Responsibilities

Rights entail responsibilities, but that does not mean that our only responsibilities are our responsibilities to respect people’s rights. The Green Paper appears to be exploring not just the relation between rights and their correlative responsibilities, but the idea of social responsibilities more generally. It envisages a Bill of Rights and Responsibilities encompassing a more comprehensive statement of responsibilities.

A fully comprehensive statement would be neither achievable nor desirable. People’s responsibilities will vary depending on their age, gender, place of residence, occupation, marital status, and many other factors. The Green Paper does suggest, however, that ‘it may be desirable to express succinctly, in one place, the key responsibilities we all owe as members of society’. It goes on to offer examples of what these ‘key responsibilities’ might include:

Such responsibilities could include treating National Health Service and other public sector staff with respect; safeguarding and promoting the well-being of children in our care; living within our environmental limits for the sake of future generations; participating in civic society through voting and jury service; reporting crimes and cooperating with the prosecution agencies; as well as more general duties such as paying taxes and obeying the law. (2.26)

This is a mixed bag, and the danger is again of coming up with an *ad hoc* list of responsibilities, lacking any rationale, and at worst reflecting the current concerns of public opinion and the media at the particular time when the list is compiled.

A Fuller Account of Rights: Socio-economic Rights

A more promising and less arbitrary approach, also hinted at in the Green Paper, would be to identify ‘key’ responsibilities by deriving them from a fuller account of rights. The Green Paper refers to T H Marshall’s classification of rights into ‘civil rights’ (such as the right to free speech), ‘political rights’ (such as the right to vote), and ‘socio-economic rights’ (such as the rights guaranteed by the institutions of the welfare state and the education and social security systems (3.5). It goes on to say:

Living in the UK, we enjoy a range of entitlements which go beyond the civil and political rights in the European Convention and sit – as part of our well-established welfare state – firmly in the sphere of social and economic rights. Including provisions which point to key aspects of our welfare state such as the NHS and our rights and responsibilities as patients and staff, could help to paint a fuller picture of the rights and responsibilities we share as members of UK society. (3.12)

This is a helpful suggestion. Although, as the document rightly says, the European Convention is confined to civil and political rights, and excludes socio-economic rights, the latter as well as the former are firmly enshrined in the Universal Declaration of Human Rights. The relevant Articles of the UDHR assert:

Article 22: Everyone, as a member of society, has the right to social security.

Article 23: Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.... Everyone, without any discrimination, has the right to equal pay for equal work....

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability...

Article 26 (1) Everyone has the right to education. (2) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27: Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

A relatively comprehensive statement of 'key responsibilities' could avoid arbitrariness, and could reflect the correlativity of rights and responsibilities, if it were to be based on the UDHR (cf. 2.40-2.43). The precise formulation of the responsibilities corresponding to socio-economic rights would need careful thought, but it would have to go deeper than just being polite to NHS staff, and would have to spell out our responsibilities to support and promote the institutions of the welfare state both by paying taxes and in other and more direct ways.

Equality

As well as socio-economic rights, there are other rights which we should like to see highlighted in a fuller statement of rights. As stated above, we welcome the legislation which has been enacted on equality and discrimination. We view positively the suggestion that a Bill of Rights and Responsibilities should include 'an accessible and straightforward statement of equality to embody its central place in UK society' (3.38). Such a statement might help to prevent the principle of equality from being eroded by unjustifiable exemptions, including the exemptions sometimes demanded by certain religious groups.

Of course it is natural that churches and other religious groups will make their own decisions about who should be eligible for the priesthood or appointment to other strictly internal offices. When it comes to the wider sphere of employment, however, and to education and the public provision of goods and services, it is essential that the prohibition of discrimination should prevail. We maintain, for instance, that religious schools which are in the public sector should not be allowed to discriminate, in their employment practices, on grounds of religion and belief, or sexual orientation, nor should their admissions policies discriminate on the basis of parents' religious beliefs. In view of the proposals which the Government has been considering for contracting out the provision of public services to private organisations including religious groups, we consider it all the more important to

emphasise that religious groups should not be exempt from equality legislation. We would therefore welcome a clear statement of the paramount importance of equality and non-discrimination, and an affirmation that exceptions must be very strictly limited.

Children

We would welcome the inclusion, in a Bill of Rights and Responsibilities, of a special emphasis on the rights of children. There are inevitable tensions between the rights of children and the rights of parents. In the UDHR, for instance, the statement that ‘everyone has a right to education’ is followed by the statement that ‘Parents have a prior right to choose the kind of education that shall be given to their children’ (Article 26). The tension is especially apparent in the area of religious education. Parents will understandably want to pass on to their children their own most fundamental beliefs and values, and will want this to be reflected in their choice of their children’s education. We would maintain, however, that this has to be balanced against children’s right to make their own judgements about their beliefs and values, as they become increasingly capable of doing so. Children are not their parents’ private possession. This means in particular that religious education should empower pupils to think for themselves. In the words of the QCA Non-Statutory Framework for Religious Education:

Religious education promotes an enquiring approach in which pupils carefully consider issues of beliefs and truth in religion. It also enhances the capacity to think coherently and consistently. This enables pupils to evaluate thoughtfully their own and others’ views in a reasoned and informed manner. (p.8)

A respect for the rights of children requires that the same approach should apply to religious education in faith schools.

We would therefore view positively an explicit endorsement of the *UN Convention on the Rights of the Child* in any Bill of Rights and Responsibilities (3.68). The Convention recognises the primacy of the rights of the child (Article 3). It recognises that children, like adults, should have the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds (Article 13). It requires respect for ‘the right of the child to freedom of thought, conscience and religion’ (Article 14). It does go on to acknowledge that ‘States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child’. That last phrase, however, recognises that, as children become capable of making their own judgements and decisions, the parents’ ‘direction’ should respect this. We would welcome the assertion of these principles in a Bill of Rights and Responsibilities.

Environmental Limits and Sustainable Development

The Green Paper refers to the challenges posed by ‘the threat of dangerous climate change’ (3.76), and suggests that a Bill of Rights and Responsibilities could include ‘principles of sustainable development’ (3.84). More needs to be said about how such principles could be articulated in the vocabulary of rights. We suggest that it requires the explicit acknowledgement of two kinds of rights: (a) the rights of future generations, and (b) the rights of all human beings in the global community. Stressing this in a fuller statement of rights would be a welcome recognition that the basic rights are universal human rights, not just the rights of UK citizens.

A requirement of public-sector bodies to promote such principles (3.85) would also be welcome. It would encourage local authorities, for instance, to take account of issues of global trade justice and sustainable development when inviting tenders for contracts, e.g. in catering.

Legal Effect

As the Green Paper says, a Bill of Rights and Responsibilities would not be the kind of document which could be legally enforceable – socio-economic rights do not lend themselves to implementation through the courts (4.25) – but it could be more than just a declaratory and symbolic statement. In particular, we would like to see appropriate legislation issuing in a document which could play an important role in education. It would have an obvious place in citizenship education. The BHA acknowledges the role which a broadly-based religious education can play in promoting pupils' moral and social development, but would welcome the convergence of religious education and citizenship education to provide an open and inclusive education in beliefs and values. The study of a comprehensive statement of rights and responsibilities could play an important role in such education.

Professor Richard Norman
British Humanist Association
August 2009