INDIVIDUALS ENGAGING IN SOCIETY Citizenship Foundation

Hooper Lecture 2005

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Why Human Rights Matter

Introduction

It's a great honour for me to be here tonight and to have been invited to give this, the first Hooper Lecture.

First because it's been a privilege for me to have associated, as a long-standing trustee, with the important work of the Citizenship Foundation. And second because of my tremendous admiration and respect for Tony Hooper.

The Citizenship Foundation is a charity that is at the forefront of citizenship education in the UK. It fosters understanding and respect for law, justice, democracy, and for different opinions, values and cultures.

Its primary focus is ensuring that young people, especially those who are marginalised or disadvantaged, have the knowledge and skills to participate fully in society. This is done in very innovative ways including the National Youth Parliament Competition and the Young Citizen's Passport – a no-nonsense guide to the law for young people. And only recently, I helped judge the SE regional heat in the Bar Mock Trial competition -— where young people learn about the law by taking part in fictional cases at real courts. I am glad that all of you are supporting the Citizenship Foundation's work by attending the Hooper Lecture this evening.

It is Tony Hooper, of course, who was the originator of the Bar Mock Trial competition – and a great deal more. He is not only a distinguished member of the Court of Appeal, and a founding trustee of this foundation, but he is a thoroughly good and decent human being. So I feel particularly privileged to have been invited to give this lecture which is in his honour.

I have chosen as my subject an issue that I know is close to Tony's heart and that he feels is one of the most important facing public legal education – human rights, what they actually are, what they can and cannot do, and why they should still matter to everyone.

Some of you may feel that this is a strange topic to choose – surely, you may ask, human rights have never had it so good? It seems every time we turn on the TV or radio, or pick up a newspaper, human rights are being talked about. So why, you may ask, do we need yet more focus on the one area of the law that is getting an awful lot of publicity?

My answer to this, and my reason for feeling compelled to talk to you about human rights this evening, is that the current media buzz about human rights is not really doing the concept, or the reality of rights protections, any good. Talk of human rights may be everywhere, but it is , by no means, the consensus view that human rights are a good thing or something to be fought for. There is, for example, plenty of controversy about the Human Rights Act. Even pro-human rights comments seem to have emptied the concept of a lot of its meaning – the term "human rights" is bandied around so often in its generic form, that those who watch the TV news, listen to the radio or read the newspapers no longer associate "human rights" with particular protections relevant to them. The notion of "human rights" has become linked in the public imagination with "rights for terrorists", or "rights for criminals". In our sceptical consumer society, it seems the majority of people feel that human rights are not relevant to their lives.

This is a profoundly worrying trend, and one to which lawyers, activists and legal educators must respond. For when everyday people begin to think that human rights do not really matter to them any more, the whole rights project is endangered. It was a key insight of one of the founding visionaries of the Universal Declaration of Human Rights, Eleanor Roosevelt, that fundamental rights begin "[i]n the small places close to home". She recognised that rights must be felt by every individual, in the neighbourhood they live in; the school or college they attend; the factory, farm or office where they work.

The key challenge before us as people interested in citizenship and legal education, is thus to reawaken people's understanding of how their rights matter in the small places, close to their own lives. In this lecture, I would like to set out what I feel needs to be said about human rights to rebalance their barren public perception and to begin to persuade people that human rights do matter to them in their own lives.

What human rights fundamentally are

The first step is to remind people of what human rights are. They are fundamental protections, afforded to everyone, to safeguard people against harmful state or individual intrusion into areas of their lives that we have come to agree are worthy of staunch protection: their private lives; their family life; their freedom to found and have a family; their freedom to enjoy their property; their freedom to meet and discuss ideas; their freedom to hold peaceful protests; their freedom to think and believe what they decide for themselves is right; their freedom to practice their religion; equal treatment; freedom from the worst abuses, such as torture or slavery; freedom from punishment where the law does not allow it; and not being deprived of their liberty unless by a process fairly set down in the law.

These are the rights that British lawyers took the lead in turning into the European Convention on Human Rights and which Britain was one of the first countries to sign up to over half a century ago. – and which were, if you like, "brought home" to the UK through the Human Rights Act. Despite the criticism that the Human Rights Act has attracted from some quarters, there is nothing alien or new about these rights. **They have covered the citizens of this country for 50 years.** It's just that while before they had to take their case to the Court in Strasbourg to have them upheld, they can now do so through the British courts – something you might have thought would be welcomed by the anti-Europeans rather than criticised as it appears to be.

These fundamental rights in the European Convention, in constitutions and bills of rights in other countries, and now in our own HRA, grew out of the world's collective, almost instinctive, response to the atrocities that led to World War II. They are a reaction against abuse of power, and they protect basic individual freedoms that we have come to understand as worthy of respect: respect from other people and respect by the government. This respect stems from a very important insight: that all people, regardless of what they are or how they look or what they have done in their lives, are worth something simply because they are human. **Fundamental rights protect this common human dignity.**

In some cases, this protection requires going beyond merely asking for respect for a type of freedom – some areas have been identified as being so important, that protecting them requires the state to be pro-active in safeguarding people from harm. So the state is required to adopt legislation to stop other individuals from infringing their rights (criminal law backed up by proper law enforcement is a good example of this). The government may also be required to take certain steps itself, for example by warning people about the health risks of living near a factory that the government knows is giving off dangerous chemicals. Local authorities are also under a positive duty to take measures providing 'effective protection, in particular, of children and other vulnerable persons', including taking 'reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge'

If people gain even just this straightforward understanding of what human rights they actually have, which of their freedoms are actually protected and how human rights sometimes require the government to act, then the foundations of a rights-based society are laid. And once people realise that rights flow not from fuzzy liberal concepts, but from a serious and deep insight about the value of each human being, then we go a long way to inspiring people to assert their rights and, crucially, to respect the rights of others.

What human rights are not: limitation

Once that understanding of what human rights are and where they come from is gained, it is then very important to remind people what human rights are not. For the most part, fundamental rights are not absolute – they can be curtailed in certain ways in times of national emergency, but, more importantly, there are everyday limitations or qualifications read into rights that allow the government to take action that, on a strict reading, might infringe the right. So the government can make laws on slander, which limit the right to free speech, can take away people's liberty if they are properly convicted of committing crime, can make rules about how old you have to be before you can get married. Even the right to life has been accepted as having limitations (though the growing international consensus against the death penalty means that the scope of limiting the right to life is diminishing).

There is one exception to this – courts across the world agree that there cannot ever, in any circumstance, be a qualification of the right to be free from torture. It can therefore never be justified for the government to torture a person, or have a person tortured, because freedom from torture is one of the fundamental values of a democratic society. In 1996 the European Court of Human Rights recognised that the special, absolute nature of the prohibition on torture meant that a state could not deport someone to another country where it was obvious that the person would be tortured. Delivering someone up to be tortured was felt to be tantamount to saying that the torture was permissible, which it can never be. This is the one moral absolute in human rights, and, despite sometimes causing governments difficulty, I think it is an absolute that is valid. The UK has held fast to this abhorrence of torture and, on Human Rights Day 10th December 2003, was the second of only five countries in the world to ratify the Optional Protocol to the UN Convention Against Torture. The aim of the OPCAT is to prevent torture and other forms of ill-treatment by establishing a system of regular visits to places of detention carried out by independent international and national bodies.

Apart from the prohibition on torture, all other rights are limitable and can be qualified. Once we remember that, it casts a different light on attempts by the authorities to put new limits on, or to rein in, human rights protections, because it shows that what they are really saying is that they want to impose more limitations on rights that already permit justifiable exceptions. When fundamental rights were codified in international and national treaties, the entire thrust of the process was to counter the power of the state while also allowing governments to take actions they legitimately needed to. But these treaties are not holy writ, and over the last 50 years, this balance has been developed and honed, to meet the new challenges which face us from time to time so that the protections that fundamental rights offer defend the weak from abuse of state power, but also allow sensible government action.

Within such a framework, governments are not powerless to act but in response to new situations governments are required to show that the action it wishes to take is reasonable, and for a legitimate purpose. Any infringement of basic rights it wants to make should also be the minimum required to achieve that purpose. As long as the government's action falls within these criteria, it will get the human rights thumbs up. This is one of the most important aspects of rights education, because it is empowering knowledge – once people understand that rights, as they appear in laws like the Human Rights Act, are already qualified, they can engage with, and test, claims by politicians that human rights unreasonably stand in the way of what they want to do.

Dispelling the myths – fair trial rights

Rights education also needs to confront head on and dispel certain myths about human rights – particularly that rights are just for criminals. Of course, that does not mean talking down the importance of fair trial rights. It requires three things – getting into the public arena examples of where other rights have improved the lives of ordinary people, re-publicising why fair trial rights are so important, and bringing out the examples of where fair trial rights (and other rights) protect victims of and witnesses to crime.

It would be remiss in a lecture named for such an eminent criminal judge, not to talk about why fair trial rights are important. When someone is accused of a crime, they come up against the full force of a huge and powerful state machinery – the police, the prosecutors, the court system. In the face of those combined resources, a single individual is very weak. And this weakness kicks in at a time when the individual is vulnerable to having his life irreversibly disrupted by his liberty being taken away. Fair trial rights try to mend that power imbalance, by asking the side that has the power and the resources to do the proving of guilt. And in doing the proving, the state has to adhere to certain reasonable standards – it must tell the accused person exactly what he is charged with, and allow the him to defend himself or to have someone else defend him. It must give him adequate time and facilities to prepare his defence, and allow him to ask questions of any witnesses that testify against him. The hearing should be in public, and the accused person must have the free assistance of an interpreter if he cannot speak or understand the language used in the court. Set out like this, without an undercurrent of tabloid hysteria, it becomes obvious that fair trial rights are reasonable, and just, and necessary, and that they do not somehow work against the victims of crime.

Indeed, fair trial rights give victims and witnesses certain protections. The European Court of Human Rights has decided that the principles of a fair trial require that "the interests of the defence are balanced against those of [vulnerable] witnesses or victims [who are] called upon to testify". This has had tangible effects in the way courtrooms are run, because it means that screens are used to make vulnerable witnesses feel physically protected,

and video-links are used where witnesses or victims are too vulnerable to be in the stressful setting of the courtroom. It has also meant that in special cases, like sexual assault cases, there must be respect for the victim, so she should not be expected to answer certain questions about her private life. Indeed, the Court has even held that it is not necessarily unfair to prevent an accused from cross-examining vulnerable witnesses, providing there are other safeguards in place like corroborating evidence.

Other rights have also been developed by the European Court to protect victims. The right to life has been interpreted to include a duty on the state to carry out a proper investigation where someone has been killed (ie where someone has been deprived of their right to life), particularly when that death was caused by an agent of the state or happened while the victim was in custody. An investigation must be prompt and independent, and must have an element of public scrutiny. Importantly, in all cases there must be a level of involvement of the victim's next of kin, so that their interests in finding out what happened can be protected. And the government must not wait until the next of kin complain before they start investigating – they should start on their own initiative.

There is a recent high profile example of the authorities being brought to book for failing their duty to investigate, and of the courts being able to direct that a proper investigation be carried out. It is the appalling case of a young Asian man, Zahid Mubarek, who was placed in a cell at Feltham Young Offenders Institution with a known violent racist, and who was beaten to death, just hours before he was to be released. Although the prison service conducted its own internal inquiry, no other state investigation was completed, so Zahid's family turned to the state's duty under the right to life, and asked the courts to direct the authorities to carry out a proper inquiry. In October 2003, the House of Lords found in the family's favour, and in April 2004, the Secretary of State established a public inquiry into Zahid's murder. While this case aroused significant public interest, the human rights aspect was not well covered, and the fact that the family could rely on the HRA to make sure that a proper investigation took place, rather got lost. It is examples like that this, where human rights protect the families of victims of crime that need more and better publicity.

Where the HRA has mattered and where it has not – case examples

Indeed, there are many examples of how fundamental rights have mattered in significant ways in the small places, close to people's lives, and it is the task of legal educators to ensure that more is heard of these cases. Looking through the cases, there are a few stories that stand out as needing to be swept off the pages of the law reports, and retold in a much more public arena. I will give only four examples.

Take the case of Mr and Mrs Gunter, who had provided constant nursing care for six years for their daughter Rachael, who had been rendered severely disabled when she was just 15 years old. Her physical condition, which was quite life-threatening, required 24 hour nursing support, but she also needed proper mental stimulation, and her parents had been able to increase her confidence and ability to communicate by allowing her to make decisions and engage in community activities. Unfortunately, Rachael's parents reached a stage where they no longer felt they were physically able to give her the care she needed, and so they approached their local primary care trust, who knew about Rachel, to develop a care package that would allow her to continue to live in the family home. The primary care trust wanted to remove Rachael to a residential facility, but her parents felt this would deprive her of the crucial mental stimulus she needed. The primary care trust had broad powers to provide Rachael with care in her home, but ignored the parents and chose not to use them. A court held that removing Rachael from her home would interfere with her right to respect for her family life, and ordered the primary care trust to reconsider its decision. The Court did not tell the Trust what it should decide – it merely asked the Trust to take proper account of Rachel and her parents' right to a family life.

The right to family life was also relied on by Mrs Bernard, a 48 year old woman who was rendered severely disabled and wheelchair bound by a stroke, to make her local council find suitable housing for her. The council had recognised she urgently required housing adapted for her needs, but her case had fallen into the cracks between different departments, and she had waited over 20 months in deplorable conditions. The High Court found that this breached Mrs Bernard's right to privacy and family life. Suitable housing was found, and compensation was paid.

Or a very different type of case, in which Mr Robertson relied on his right to a private life to challenge the fact that his name and address, as they appeared on the electoral register, were being sold to direct mail companies. Under the legislation dealing with electoral registers, Mr Robertson could not object to this practise, so he turned to his Convention rights to argue that his ability to vote should not depend on his willingness to receive junk mail. And he won.

Or a very different case again. Reading Borough Council decided to close one of the two main roads into the town centre. Mr Andrews, who lived on the other main road, raised concerns at a series of public meetings that there would be an intolerable increase in traffic on the remaining road. He repeatedly requested detailed projections for the increase in traffic, but the Council closed the road without conducting a noise assessment. Mr Andrews immediately experienced a dramatic rise in noise levels from traffic, but was refused a grant for alterations to his house to lessen the impact of the noise. He turned to the courts for help, relying on the way the noise infringed the quality of his private and family life. He succeeded. The court decided that, even though the Council was entitled to decide that the

benefits of the road closure scheme for the general public outweighed its disadvantages for the residents on Mr Andrews' road, there was no justification for the Council's failure to consider compensating Mr Andrews for the serious negative impact the road closure actually had on him. The Council could not just ignore Mr Andrews' plight, and so he was awarded compensation.

It is unfortunate that this in not the face of human rights that we see on TV or read about in the papers.

Where the HRA has mattered – beyond the cases

Even less likely to be publicised is the final area that I would like to address, in which fundamental rights have a very important effect, and the story of which needs to form part of rights education – how, away from the courts, human rights play a part in the everyday running of public bodies, and how people can rely on their rights to effect positive change. By their very nature, it is a little harder to find these examples, which are largely anecdotal, but we must ferret them out and use them to remind people that fundamental rights are not only, or even primarily, enforced through expensive and drawn out court cases. If people know their rights, and are prepared to insist that public bodies fulfil their duties under the HRA, then change can, and does, happen. I have two examples, which arose after an NGO ran human rights training sessions with the voluntary and community sector.

In the first example, the parents of two patients in a mental health hospital asked questions about bruising and rather brutal treatment on the ward. After they had raised the issue, they were told they were no longer allowed to visit. They challenged this, relying on principles taken from fundamental rights training, and the ban on visiting was rescinded.

In the second example, a patient in a special hospital, who had been placed in a seclusion room, kept soiling himself. The man's community-based advocate used human rights arguments to challenge the hospital's refusal to move him to a different room, and succeeded - the patient was moved.

One of the most important aspects of the HRA is that it imposes a duty on all public bodies and people who perform public functions to respect the rights in the Convention. This means a new sort of thinking has to come into public decision-making. Public bodies and officials now have a duty, in what they do, to ensure they respect people's fundamental rights. They now have to put human dignity at the heart of the way they deliver their services. The rights values of reasonableness and proportionately have to provide a framework for the way they make decisions. The Lord Chancellor tells a story that delightfully illustrates how the duty on public bodies to act proportionately can effect their everyday decisions. There was an ancient and beautiful walnut tree in a man's garden, but, as trees do, its branches

grew over his fence, and over a park owned by his local council. He asked the council not to do serious damage to the tree by cutting off of all the branches that overhung the park – instead, they could only cut off the dangerous branches. Initially, the council took a hard line: they had the rights of any neighbour, and could cut off as many branches as they wanted to. But that was not quite right, because the council also had a duty to act compatibly with the man's basic right to peaceful enjoyment of his possessions, and to act proportionately if it had to interfere with that right. So, in the end, only one branch came off.

When public authorities embrace human rights thinking, it will be one of the most powerful ways that the HRA can have a direct and positive effect on people's lives, but it relies on two things – public officials have to understand and appreciate what human rights thinking involves, and the people who come into contact with those officials also need to know that their fundamental rights entitle them to treated with respect and with reasonableness. And both these things depend on a level of rights education and training. While organisations like the Citizenship Foundation play a crucial part in giving some of that rights education, they cannot bear the task alone.

A new commission supporting rights education

That is why I particularly support the establishment of a new Commission on Equality and Human Rights (CEHR). The draft legislation is before parliament, and it is envisaged that the Commission will become operational in 2007. It will have a duty to promote human rights, and there is already some indication of how it will do this. The Commission will develop a database of good practice case studies, that will be distributed to public authorities as practical examples and guides on how to act. It will also provide general advice facilities through a helpline and on the web. And it will develop schools and public education initiatives. It is my sincere hope, in carrying out these functions; the new Commission will focus on making rights understandable by publicising tangible examples of real change affected by the HRA such as those I mentioned above. Much good will flow from the Commission telling people what their fundamental rights are and how they impact directly on their lives.

Conclusion

In the interim, the challenge to perform that function rests with those of us who are passionate about citizenship and legal education. The young people I saw last week at he Mock Trial Competition were doing far more than play acting, they were learning first hand what the human rights under democracy and the rule of law mean in this country, how it works, the values it embodies and why it matters. Their experiences had in turn an impact on their teachers, their friends and their families. In a month when

newspaper surveys found that many existing British citizens could not answer the simple question "in which court would you be tried by jury?" which is now asked of all applicants for citizenship, it is clear how vital it is that all our people not just the young understand these concepts. We must remind people, in the clearest and most practical terms, why human rights matter. If we do, then we can put "human rights" back where they deserve to be – in the centre of all our lives.

If I can conclude with the words of Eleanor Roosevelt when launching the Universal Declaration of Human Rights that I mentioned at the beginning, she said this:

"Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of an individual person; the neighbourhood he lives in; the school or college he attend; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

Her words are as powerful and relevant today as they were more than half a century ago.