

‘Children’s rights’ by Francesca Klug
Speech at Liberty fringe event at Labour Party Conference
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*“Our youth today love luxury
They have bad manners
Contempt for authority
Disrespect for older people*

*Children nowadays are tyrants
They contradict their parents
Gobble their food
And tyrannise their teachers.”*

These young people have no respect these days have they? – or for that matter for the last two thousand years.

That quote was by Socrates by the way, writing in 5BC.

The respect agenda is what I want to say a few brief words about – particularly the contribution that human rights has made to idea of respect – before handing over to my colleagues to talk about specific policies and laws affecting children and their rights.

Talking of children’s rights, my daughter wasn’t too keen on me coming here – she’s 10 now and keeps me on such a tight curfew that I have often thought she’d make a good Home Secretary one day.

Anyway I asked her, what does she understand by children’s rights?

After all the predictable answers about no homework or bedtime she came up with “teaching children with respect”.

What I found particularly interesting about this is that it is one way of summing up the human rights framework post WWII. The 1948 UDHR and all the human rights treaties it spawned, including our very own ECHR (incorporated into our law through the Human Rights Act of course), can be expressed as an equation: liberty over justice PLUS **respect**.

It’s worth restating this at this time, I think, because human rights are so frequently portrayed by the press and politicians – even occasionally by Labour ones dare I say – as an agenda purely concerned with the freedom of the individual against the state

which is fine and noble as far as it goes but does not take account of the fact that we live in a society where communities are at risk from unruly street behaviour and indeed we are all at risk from terrorism, and the right and proper job of government is to take account of all of this to protect us.

The difficulty with this portrayal is not that it is anti-human rights or whatever but that – as a broad statement – it is entirely consistent with the human rights framework only it masquerades as its nemesis. Phrases like Aunt Sally come to mind.

In an abbreviated form, as someone working at LSE is capable of doing, what the post-war human rights movements did in response to the terrible events which unfurled before and during WWII is take the old enlightenment ideals of individual freedom, autonomy and due process – given original formulation in the Magna Carta – and build into them three important additional values; Dignity, Equality and Community.

With dignity we get the idea of respect seeping into every human rights treaty and decent legal judgement i.e. that to fulfil ourselves as human beings it is not enough to be free or even to be well fed and housed; we each of us have, as the UDHR points out a “reason and conscience” and we have to “act towards one another” (that’s a direct quote i.e. human rights are not just about governments not doing things to us) in a spirit which respects the “dignity and worth” of each individual.

Laws and their interpretation of them by judges have to take this fundamental purpose of human rights treaties into account. This is why public services which, though perfectly efficient and non-discriminatory, have fallen foul of the HRA where they have failed to respect peoples’ dignity. For example, requiring severely disabled people to be lifted by hoists in order to leave their own home on health and safety grounds which, on the face of it, sounds right and proper but in fact ignored the disrespect and lack of dignity that was suffered.

With community comes the essential realisation that individuals only flourish and thrive in functioning societies. This fairly obvious statement to those of us on the left was largely absent from the purist versions of the old civil liberties agenda and was driven partly by the many Socialists and social democrats who helped to draft the UDHR. So in Article 29 of the UDHR there is the statement that “Everyone has duties to the community in which alone the free and full development of personality is possible”. This isn’t some abstract injunction of loyalty to the state, please note, but a reflection of the leftist recognition that we are not isolated individuals but live in a community without which “our personality”, let alone our security or social needs, cannot develop. And it becomes the responsibility of governments to draft laws and policies which, whilst strongly respecting individual rights and freedoms, do not so undermine the wider society or community in which we live so that those rights become ineffective or meaningless in practice.

From this injunction we see in the ECHR the recognition that individual rights can legitimately be limited to the extent that is necessary and proportionate and provided these limitations do not destroy the very essence of the right in question. So, for example, ASBOS have not been found to necessarily breach the HRA by courts. Their potential social purpose has been recognised. But when they are used against 15 year old boys with Asperger's and Tourette's syndrome so that the British Institute for Brain Injured Children say that children with diagnosed clinical impairments are being demonised it is highly questionable that they are necessary or proportionate and indeed could arguably be indirectly discriminatory on grounds of disability.

And this brings me to the third paramount human rights principle, equality, arguably the strongest of the three new post-war human rights values. Virtually every article in the ECHR talks about 'everyone' having the right to free speech or liberty etc. The whole purpose of human rights, I would argue, is to ensure that these rights do not just apply to the privileged few but indeed to everyone and that they are real effective not just formal or legal. The problem was that although everyone includes every individual living in the jurisdiction of the state, regardless of citizenship, age etc, children and young people were included implicitly rather than explicitly and the original case-law often sidelined them in practice.

The United Nations Convention on the Rights of the Child 1989 (CRC) was partly drafted to give recognition to the particular needs of children and young and our courts increasingly make reference to it when interpreting the HRA.

New concepts were explicitly included like 'best interests of the child', now fairly well established in our law through the Children's Act, together with other principles which help to unpack how 'best interest' can be applied in practical situations. For example:

- 'evolving capacities of the child' to recognise that children become more capable of making decisions as they mature;
- 'the responsibilities and duties as well as rights of parent' i.e. the state has a role in ensuring these responsibilities are capable of being fulfilled, just as this government would say
- respect for the views of children and ensuring they are heard.

These are all there to help us all through minefields where tensions and conflicts exist as of course they always do in reality.

When I look at what material from the government's new respect agenda I could lay my hands on, some – I wouldn't say all – of the language overlaps with the human rights

framework, maybe was even drawn from it (we'll never know as the government rarely admits publicly the extent to which human rights principles have been helpful for them in developing a range of policies). There are references to "ensuring the culture of respect extends to everyone, young and old alike" and includes "respect for others and the community".

It is just so regrettable that the laws and policies which are promoted under the umbrella of the respect agenda do not reflect this human rights approach.

As Justice Brooke recently declared when upholding a 14 year old boy's legal challenge to being automatically dispersed from parts of his local area in Richmond after 9pm, this ignores the country's international human rights obligations to treat each child as an autonomous human being. This cannot be, of course! So what Parliament must have intended by this legislation, he said, is to confer on the police "the very welcome power to use police resources to take young people home if they are willing to be taken".

It is just so regrettable that this government of all governments, which after two hundred years of debate finally gave us a Bill of Rights or nearest equivalent, a Children's Commissioner, and is legislating for a Commission for Equality of Human Rights takes little or no credit for any of this most of the time, often betraying what commentators describe as an attitude of embarrassment and regret about it, and that was before the current ominous warnings about withdrawing from the ECHR altogether.

The view seems to be that only woolly liberals or left wing intellectuals care about this agenda anyway and it has little practical purpose, few measurable outcomes etc. Setting aside the now hundreds of elderly, disabled, mentally ill, gay people and women who have directly benefited from case law under the HRA that simply would not have been possible before, there are innovative projects developing which would never have happened without this government's rights measures and which the new Human Rights and Equality Commission will be empowered to promote and encourage.

Funded by the DFE, Hampshire County Council have piloted a Rights, Respect and Responsibility Initiative – note the title – which is based on the UN Convention on the Rights of the Child.

The stated aim is to help children achieve their potential and become "responsible citizens". It is impossible to do justice to this but the initiative has been externally evaluated with teachers reporting that the project has boosted their morale, been a very effective behaviour management strategy with "notable change from confrontational and adversarial approaches to conflict resolution to the use of rights-based explanations and increased respect for the protection and rights of all children".

The starting point is that children are taught they are already citizens and as they learn they have rights, says Hampshire CC. Within the context of a democratic classroom the value of rights spreads to support the rights of others and children become more responsible. A similar successful project also based on the CRC has been tried and tested in Canada. One Hampshire head teacher said "If I told my teachers we were not going to do the rights work anymore, I'd have a riot on my hand".

In Socrates' day they hadn't yet drafted the Universal Declaration of Human Rights or its progeny the CRC. The human rights framework reflects the wisdom of the ages. It also reflects the proud heritage of the labour movement; hard worn struggles that if we, of all people, ignore then who can we expect to listen?

Thank you.