

CONSERVATIVE LIBERTY FORUM

A British Bill of Rights & Obligations

by Jonathan Fisher QC

Foreword by Bob Seely, Director of the Conservative Liberty Forum

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About the Conservative Liberty Forum

The Conservative Liberty Forum was founded in April 2006 by Bob Seely, John Tate and Bill Melotti. The forum was established because civil liberty issues such as ID cards, the Human Rights Acts, terrorism legislation, jury trials and judicial reform have moved from the fringes of political debate to the mainstream. The purpose of the forum is to provide a focus for the discussion and debate of civil liberties and human rights within the Conservative Party and for conservatives in general.

The goals of the Conservative Liberty Forum are to:

- Encourage and promote debate on civil liberty issues from all sides of the Conservative Party
- Publish articles on relevant themes by MPs, party members and experts from a conservative standpoint
- Organise events at Conservative Party conferences
- Produce material for constituency associations

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Foreword

Jonathan Fisher's essay is an extremely valuable addition to the debate over a British Bill of Rights & Obligations. His premise is a simple one; a healthy and good society is one in which people ask not what rights their society owes them, but what duties they owe to their fellow men and women.

The essay charts the growth of dutiless rights in the UK and demonstrates how Labour, before taking office, misled the public as to its intentions. Labour's leaders talked of a culture of duties prior to 1997. Once in power they gave Britain a Human Rights Act in which duties were absent.

There is an alternative to a rights-obsessed culture. Conservatives, and Conservative MPs in particular, should be aware that in many countries human rights' declarations are strongly balanced by declarations of duties. Indeed in some countries duties to the community outweigh individual rights from it.

Conservatives should not see Declarations of Rights as being documents that are written in stone. Like all documents and laws, they in part reflect the age that produced them. The European Convention on Human Rights was produced after the evil of World War II. Its words were a first line of defence against the re-emergence of the totalitarian state. The problems of our own age are different. We should not be afraid to say so.

Conservatives should have the confidence to introduce the subject of duties into the civil rights debate and in this essay, Jonathan Fisher makes a powerful case for a British Bill of Rights which includes both a declaration of human rights and a statement of civil duties; that would indeed be a glorious revolution.

Bob Seely
Director of the Conservative Liberty Forum

A BRITISH BILL OF HUMAN RIGHTS & OBLIGATIONS

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Introduction

The inexorable reality is that the European Convention on Human Rights (ECHR) is a fundamentally flawed and lop-sided document, produced as a specific response to the horrors of Nazi Germany, with an entrenched bias in favour of individual rights. The document is hopelessly unbalanced by its omission to incorporate any notion of civil obligation into the text, and unless or until this situation is rectified in the United Kingdom by the establishment of an over-arching British Bill of Rights and Obligations, the imbalance will continue unabated. The primacy of individual rights diminishes the significance of individual responsibility. Yet few would argue with the proposition that the notion of individual obligation in a civilised society is something to be valued and nurtured. It is extraordinary that Labour refused to take this into account when enacting the Human Rights Act 1998 (HRA) which incorporated the ECHR into English law.

History

The ECHR was signed in Rome on 4th November 1950 as a regional response to the atrocities committed in Europe during World War II. The theory was a simple one: if the law of a nation state recognised entrenched individual human rights, the ability of its government to abuse its power would be severely restricted, if not nullified altogether. As one textbook writer explains, the leaders of the immediate post-war epoch knew that “so long as human rights are respected, democracy is secure and the danger of dictatorship and war is remote”.¹

Two years earlier, the General Assembly of the United Nations had adopted the Universal Declaration of Human Rights (UDHR).² This was intended to herald a new global order in which all countries of the world would adopt a basic common standard for human rights and prohibit discrimination on grounds of race, religion or sex.

Interestingly, there is a material difference between the contents of the two texts. For unlike the ECHR, in addition to spelling out fundamental human rights and freedoms, the UDHR declared that there were certain duties owed by individuals to the community, as well as to each other. The high watermark is contained in Article 29 which reads as follows:

¹ Robertson & Merrills, *Human Rights in Europe: A Study of the ECHR*, 3rd edition 1993, Manchester University Press, p. 4

² UN GA, Res 217 (III of 1948), 10th December 1948

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms or others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

It is not entirely clear why this important provision relating to civil duties owed by the individual was omitted from the ECHR. Certainly the ECHR was a regional Convention which was intended to have the force of law, and perhaps it was thought that enforcement of a nebulous civil duty would be too difficult to apply in practice. One author has suggested that texts such as the ECHR deliberately avoided legal recognition of abstractions such as “the community” or “society”, preferring instead to use general and specific articles to delineate the boundaries of primary rights.³ If so, a serious error was made, since the protection of individual rights is only one half of the story where the preservation of a civilised society is at stake.

There is no doubt, therefore, that the ECHR is an exclusively rights based document. It protects the right to life, the right not to be subjected to torture, degrading treatment or subject to slavery, the right to liberty and security of the person, the right to a fair trial, the right not to be punished by retrospective legislation, the right to respect for private and family life, the right to freedom of thought and religion, the right to freedom of expression, the right to freedom of peaceful assembly and the right to marry. Although there has been much discussion in academic circles about the horizontal impact of the ECHR on disputes between private litigants,⁴ it is clear that this arises only where the court as a public authority is considering the impact of the ECHR on an individual’s rights where it impacts on the granting or withholding of remedies in the context of private litigation.

Limited impact of Article 17

It is true that the ECHR does contain an anti-abuse provision in Article 17, to the effect that:

“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

³ Sieghart, *The International Law of Human Rights*, 1983, Clarendon Press, p. 42

⁴ Clayton & Tomlinson, *The Law of Human Rights*, Vol 1, Oxford University Press, 2002, pp.204-207, 226-227, 238

Article 17 replicates an almost identical provision in Article 30 of the UDHR, but its effect is limited. The purpose of the provision is essentially negative, to prevent the scheme for the protection of individual rights from being undermined. For example, Article 17 has been used to justify the suppression of literature inciting racial or religious hatred since the literature was aimed at the destruction of rights and freedoms enshrined in the Convention.⁵ However, the language of the ECHR is expressed in the form of a right, or in this case the absence of a right, rather than the recognition of a civil obligation. There is no positive requirement directed to the notion of civil obligation. Article 17 could have declared that every person has an obligation to act in a manner which does not infringe the exercise of another person’s rights and freedoms, but the draftsmen chose not to do so. What is more, where a person has engaged in activities inimical to the ECHR, such as by involving himself in terrorist activity, the European Court of Human Rights has held that Article 17 does not diminish the ability of the terrorist to take the full benefit of the Convention’s provisions in so far as his investigation and trial was concerned:

“In the opinion of the Court the purpose of Article 17, in so far as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage or perform any act aimed at destroying in any activity any of the rights and freedoms set forth in the Convention. Therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms. This provision, which is negative in scope, cannot be construed a contrario as depriving a physical person of the fundamental individual rights guaranteed by Articles 5 and 6 of the Convention.”⁶

The Prince of Wales has plainly appreciated the consequences of the incorporation of the ECHR into English law in the absence of any reference to the importance of civil obligations. He raised his concerns with the then Lord Chancellor, Lord Irvine, in a letter dated 26th June 2001. Irvine agreed with Prince Charles’ principal concern that people needed to be encouraged to accept and fulfil their duties in society. However, in a passage in his reply dated 10th August 2001 which Prince Charles subsequently underlined, Lord Irvine said that he found it “difficult to conceive of a society that is at the same time both more conscious of individual rights but less conscious of individual responsibility”. In a private comment written on the reply, Prince Charles noted that “he [Lord Irvine] may find it more difficult to conceive of but it is becoming a society that is less conscious of individual responsibility!” In a trenchant response to the Lord Chancellor dated February 2002, the Prince cut to the quick, telling Lord Irvine that:

“The Human Rights Act is only about the rights of individuals (I am unable to find a list of social responsibilities attached to it) and this betrays a fundamental distortion in social and legal thinking.”⁷

⁵ *Glimmerveen & Hagenbeek v Netherlands* [1982] 4 EHRR 260; *Garaudy v France (Admissibility)* (15814/02), unreported, 8th July 2003; *Norwood v United Kingdom* [2005] 40 EHRR SE11

⁶ *Lawless v Ireland* [1969-70] 1 EHRR 1

⁷ For an account of the private correspondence between Prince Charles and Lord Irvine, see *The Times*, March 2, 2006, pages 6 & 7

Universal Declaration of Human Responsibilities

In recent years, international awareness of the limitations of a purely rights-based approach to human rights has increased. In 1997, a year before the HRA was passed in England, the InterAction Council invited the UN to proclaim a Universal Declaration of Human Responsibilities as a “common standard for all people and all nations”. The InterAction Council consists of around 25 former heads of state and government who convene to address long-term global issues. The opening section of the text of the proposed Universal Declaration of Human Responsibilities is especially pertinent, since it encapsulates the shortcomings of the rights-based approach which the current Labour administration has been so keen to adopt.

“Traditionally we have spoken of human rights, and indeed the world has gone a long way in their international recognition and protection since the Universal Declaration of Human Rights ... It is time now to initiate an equally important quest for the acceptance of human duties or obligations. The concept of human obligations serves to balance the notions of freedom and responsibility; while rights relate more to freedom, obligations are associated with responsibility. The two are interdependent. Since the enlightenment, the West has been associated with rights and individualism. In the East, the notions of responsibility and community have prevailed.”

The text of the Universal Declaration of Human Responsibilities is particularly apposite in an age where there are real concerns that large sections of the population in Western countries have become disengaged from society, and when the need to foster a greater understanding and commitment to civic responsibility is recognised by the political establishment. Article 5, for example, declares that “every person has a responsibility to respect life”, whilst the articles which follow are clearly directed to the enhancement of a civilised society in a world threatened by global warming, poverty, AIDS, drug trafficking, people trafficking, corruption, and cultural degeneration.

Article 7: All people have a responsibility to protect the air, water and soil of the earth for the sake of present inhabitants and future generations.

Article 8: Every person has a responsibility to behave with integrity, honesty and fairness.

Article 9: All people, given the necessary tools, have a responsibility to make serious efforts to overcome poverty, malnutrition, ignorance, and inequality. They should promote sustainable development all over the world in order to assure dignity, freedom, security and justice for all people.

Article 16: All men and women have a responsibility to show respect to one another and understanding in their partnership.

In point of fact, the articulation of individual civil obligations is hardly a new idea. As the United Nations and the Council of Europe set to work, the American Declaration on The Rights and Duties of Man signalled the interdependence of individual rights and individual obligations. The Declaration was approved by the Ninth International Conference of American States, Bogotá, Colombia, in 1948. Significantly, the Americas (North America, South America, with their associated islands and regions) cover 28.4% of the earth’s land area and 14% of it’s human population. Nine of the ten articles in chapter 2 of the Declaration set out the duties of the citizen in the Americas:

the duty to “so conduct himself in relation to others that each and every one may fully form and develop his personality”.

the duty to “aid support, educate and protect his minor children”.

the duty to “acquire at least an elementary education”.

the duty to vote in popular elections.

the duty to “obey the law and other legitimate commands of the authorities”.

the duty to “render whatever civil and military service his country may require for its defence and preservation”.

the duty to co-operate with the State with respect to social security and welfare.

the duty to pay taxes.

the duty to work.

These duties extend beyond the correlative rights set out in the American Declaration. They are free-standing duties which articulate the responsibilities of a citizen, with a guarantee by the State of certain inalienable, irreducible, human rights.

Civil obligations in international conventions

Many of the international human rights conventions drawn up since the UDHR contain references to civil obligations as an integral part of the human rights equation.

The Commission on Human Rights, which was established on the same day as the UDHR was adopted and tasked with the role of converting the provisions of the UDHR into the norms of international law, developed a United Nations Treaty known as the International Convention on Civil and Political Rights (ICCPR).⁸ The Treaty came into force on the 23rd March 1976. When a State becomes a party to the ICCPR, it undertakes to guarantee to all individuals within its jurisdiction the protections contained in the Treaty. It is plain from a reading of the ICCPR that it seeks to give effect to the spirit of Article 29 of the UDHR, since the 5th recital in the preamble to the Convention reads as follows:

“Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”

Other Conventions are more specific in their reference to civil obligations. Article 32 of the American Declaration of the Rights and Duties of Man,⁹ agreed by the Organisation of American States in April 1948, stipulates that:

- (1) Every person has responsibilities to his family, his community, and mankind.
- (2) The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.¹⁰

However, none of these Conventions rival the detailed nature of duties set out in the African Charter on Human and People’s Rights (ACHPR) which was agreed in 1981 with the hope of heralding a new era in the field of human rights in Africa. Intriguingly, in a text which is worthy of careful consideration, Articles 27 to 29 provide that:

Article 27:

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others,

⁸ <http://www.hrweb.org/legal/cpr.html>

⁹ <http://www.cidh.oas.org/Basicos/basic2.htm>

¹⁰ <http://www.oas.org/juridico/english/Treaties/b-32.htm>

collective security, morality and common interest.

Article 28:

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29:

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is strengthened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well-being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.¹¹

The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Rights in Africa which came into force on 20 June 1974 is also interesting, since Article 3 imposes an obligation upon refugees not to undertake subversive activities in their host country:

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.
2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.¹²

¹¹ African Charter on Human and Peoples Rights, http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf

¹² OAU Convention Governing the Specific Aspects of Refugee Rights in Africa. http://www.achpr.org/english/_info/refugee_en.html

For different reasons, the African Charter on the Rights and Welfare of the Child which was adopted in 1990 and came into force on 29 November 1999 is also useful for its provisions in relation to children. Under Article 31 of the Charter:

Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty:

- a. to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- b. to serve his national community by placing his physical and intellectual abilities at its service;
- c. to preserve and strengthen social and national solidarity;
- d. to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;
- e. to preserve and strengthen the independence and the integrity of his country;
- f. to contribute to the best of his abilities at all times and at all levels, to the promotion and achievement of African Unity.¹³

Finally, reference should also be made to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1999, which was adopted by the General Assembly of the United Nations in December 1998. The declaration is designed to protect the rights of human rights defenders from summary executions, forced disappearances, torture, and arbitrary detentions, and to support the rights of those who have exercised legitimately and peacefully their freedom of opinion and expression. Article 18 addresses the issue of civil obligations:

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.¹⁴

¹³ African Charter on the Rights and Welfare of the Child http://www.achpr.org/english/_info/child_en.html

¹⁴ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1999 [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En?OpenDocument)

There are a number of recurrent themes in the nature of the civil obligations which have been incorporated by a range of different countries in their constitutions. The duty of the individual to protect the environment is a popular obligation, included by countries as diverse as Belarus, India, Poland, and Spain in their national constitutions.¹⁵ Both the Cambodian and the Chinese constitutions impose an obligation on parents to educate their children to become good citizens and upon children to support and assist their parents.¹⁶ Interestingly, the Chinese constitution goes further and requires all citizens to “safeguard the security, honour, and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland.”¹⁷ The obligation to vote is described as a civic duty in the Portuguese constitution¹⁸. In Thailand a citizen is under a duty to vote at an election.¹⁹

Labour and civil obligations

After taking power in 1997, Labour proceeded with the incorporation of a human rights convention which made no mention of civil obligations. It did so despite understanding full well that a consideration of individual rights should go hand in hand with a consideration of civil obligations, and despite the considerable body of work on duties as well as rights which has been built up since World War II.

Indeed, even before winning the 1997 election Tony Blair acknowledged that rights should be balanced by duties. He told an audience at Southwark Cathedral in January 1996:

“People increasingly recognize that to move forward as individuals we need to move forward as a community.¹⁹ We are social beings, nurtured in families and communities and human only because we develop the moral power of personal responsibility for ourselves and each other. Britain is simply stronger as a team than as a collection of selfish players.”²⁰

In June 1996, the then Home Secretary, Jack Straw, continued with this emphasis on duties, saying:

“Intellectually we all know that rights cannot exist without responsibilities, freedoms without obligations, liberties without duties. But it is crucially important that we spell this out ... Putting rights and responsibilities together brings our constitutional agenda down to earth, gives it real relevance to Britain’s families and communities.”²¹

¹⁵ Steiner & Alston, cited above, *International Human Rights In Context*, 2nd edition, Oxford University Press, at p. 348-350

¹⁶ Cambodian Constitution, Article 47; Chinese Constitution, Article 49

¹⁷ Article 54 ¹⁸Article 49 ¹⁹Article 68

²⁰ Tony Blair, Speech, “Faith in the City - Ten Years On”, Southwark (29 January 1996), cited in Francesca Klug, *Values for a Godless Age: The History of the Human Rights Act and Its Political and Legal Consequences* (2000) at page 59

²¹ Jack Straw, Charter 88 Lecture, Church House, London (26 June 1996). Cited in Klug, *Values for a Godless Age*, p 63

In a pre-election speech in Cape Town in October 1996, Blair continued with this theme of duties within the community, saying:

“At the heart of everything New Labour stands for is the theme of rights and responsibilities. For every right we enjoy, we owe responsibilities. This is the most basic family value of all. You can take but you can give too. That basic value informs New Labour policy.”²²

In 1998 when the pamphlet, *The Third Way: New Politics for the New Century*, was published, Blair wrote that:

“For too long, the demand for rights from the state was separated from the duties of the individual and institutions. The politics of ‘us’ rather than ‘me’ demands an ethic of responsibility as well as rights.”²³

Even as the Human Rights Bill was passing through Parliament, Jack Straw acknowledged that individual rights should not be divorced from civil obligations. Winding up the debate at the Third Reading he said:

“I talk about a human rights culture. One of the problems which has arisen in Britain in recent years is that people have failed to understand from where rights come. The philosopher David Selbourne has commented on the generation of an idea of dutiless rights, where people see rights as consumer product which they can take, but for nothing. The truth is that rights have to be offset by responsibilities and obligations. There can and should be no rights without responsibilities, and our responsibilities should precede our rights.”²⁴

The Prime Minister has recognised the deficiencies in the Government’s approach after nearly 10 years of Labour rule. Introducing his Respect Action Plan in January 2006, Mr Blair acknowledged that society lacks the self-reinforcing bonds of traditional community life, and that the problems experienced as a result of crime have one root cause:

“All of this, in the end, ... comes down to how we view our obligations to each other in the society we live in. Respect is a way of describing the very possibility of life in a community. It is about the consideration that others are due. It is about the duty I have to respect the rights that you hold dear. And vice-versa. It is about our reciprocal belonging to a society, the covenant that we have with one another.”²⁵

²² Tony Blair, Speech in Cape Town, South Africa (14 October 1996), cited in Klug, *Values for a Godless Age*, p 59

²³ Tony Blair, *The Third Way: New Politics for the New Century* (Fabian Society, 1998) pp4 and 12. Cited in Klug, *Values for a Godless Age*, at p.60.

²⁴ Commons Third Reading, 21 October 1998, col 1358 http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo981021/debtext/81021-45.htm#81021-45_spnew2

²⁵ Tony Blair, Respect Action Plan launch speech, 10th January 2006. www.number-10.gov.uk/output/Page8898.asp

Conservatism and civil obligations

The importance of civic responsibility has lain at the heart of Conservative thinking for the last 200 years. Addressing the issue in a seminal address in February 2006, David Willetts MP sought to articulate the essence of Conservative thinking:

“Conservatism is not some sort of political code that we have to crack. It really is the distilled wisdom of the British political tradition over the past two centuries. It is an organic growth and that is why its truths are not to be found in any single canonical text. ... Central to our sense of national identity is personal freedom. It is why Britain is the home of the classical liberal tradition. Since the war, the expansion of personal freedom, and of course market economics has given Conservatism its dynamism and its cutting edge. But there has always been something else too, a recognition that free British men and women are not atomistic individuals floating in a moral and cultural vacuum. They are not just consumers whose only moral obligations are ones they have freely chosen, we have inescapable obligations to members of our family and to all of our fellow citizens. That is why a strong civil society is so important. And indeed the state itself is one very important way of discharging those obligations. That is why Conservatives have never been mere libertarians. Personal freedom has always been rooted in a strong society.”²⁶

Conservatives see liberty and duty as two sides of the same coin, as John Gummer MP said during the Committee stage of the Bill:

“I am unhappy about the concept of rights; I happen to believe that we have obligations, and that in our obligations lie other people’s rights - as a matter of fact, I do not think, philosophically, that created beings can have rights. It is a pity that we have not understood the distinction, which we have never before had in our laws. We have always seen that there is a matter of duties and obligations, and that has been the key to our handling of the sort of issues with which the European convention is concerned.”²⁷

Gummer’s comments were entirely consistent with traditional Conservative philosophy. As Peter Osborne has recently written:

“... there is a rich and dominant Conservative tradition - it dates back through Oakeshott and Macmillian to Shaftesbury, Wilberforce, Burke and Coleridge - which argues that it is precisely the role of a Conservative government to enable a strong and compassionate civil society.”²⁸

²⁶ Modernising is a Conservative tradition, 3.2.06 <http://www.davidwilletts.org.uk/record.jsp?ID=92&type=cchPress§ionID=2>

²⁷ Commons Committee, 3 June 1998, col 445 <http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo980603/debtext/80603-47.htm>

²⁸ *The Spectator*, 4th February 2006, p. 12. Osborne demonstrates in his article how Margaret Thatcher’s single remark in 1987 to *Woman’s Own* that “there is no such thing as Society” was taken out of context and unfairly used as a political smear. Thatcher was making a profoundly moral point that pressing problems could not be solved by an abstraction of the State. Individuals must act morally and responsibly in response to such problems.

Certainly the notion of a strong and compassionate civil society fits snugly within One Nation Conservatism which harks back to the era of Benjamin Disraeli. Conservatives have little difficulty uniting around a belief in civic responsibility which spawns social cohesion and harmony between peoples irrespective of class, religion or race. Certainly Disraeli's approach has considerable resonance today. In the recently published pamphlet "Built to Last", David Cameron noted that the Conservative Party's enduring values mean:

"We believe in trusting people, sharing responsibility, championing freedom and supporting the institutions and culture we share as one nation."²⁹

Cameron also made the point that:

"The more we trust people, the stronger they and society become. We're all in this together - government, business, the voluntary sector, families and individuals. We have a shared responsibility for our shared future."

In point of fact, the notions of individual responsibility and civic obligation can be found at the heart of the Judeo-Christian tradition. The legal culture of Judaism stresses the importance of obligations imposed on the individual; indeed, the essence of the ceremony when a child comes of age, the bar/bat mitzvah, is that the child reaches a level of maturity whereby he or she becomes bound to perform the series of obligations (commandments) which Judaism espouses.

Interestingly, very similar notions of civil obligations can be found in the African tribal heritage. As Jomo Kenyatta noted, writing before he became President of Kenya:

"[The children] are also taught at circumcision the theory ... of respect to their parents and kinsfolk. Under all circumstances they must stay with them and share in their joys and sorrows ... They must give them clothes, look after their garden, herd their cattle, sheep and goats, build their grain stores and houses ... Owing to the strength and numbers of the social ties existing between members of the same family, clan and age-group, and between different families and clans through which the tribe is unified and solidified as one organic whole, the community can be mobilised very easily for corporate activity."³⁰

The same point was made more recently by one African academic writer who explained:

"The African language of duty ... offers a different meaning for individual/state-society relations: while people had rights, they also bore duties. The resolution of a claim was not necessarily directed at satisfying or

²⁹ <http://www.conservatives.com/pdf/builttolast.pdf#search=%22conservative%20party%20liberty%20responsibility%22>

³⁰ Jomo Kenyatta, *Facing Mount Kenya: The Tribal Life of the Gikuya*, 1965, at p. 109, quoted in Steiner & Alston, cited above, at p. 345

remedying an individual wrong. It was an opportunity for society to contemplate the complex web of individual and community duties and rights to seek a balance between the competing claims of the individual and society."³¹

These points are not lost on writers in this country too. As Rod Dreher recently wrote in an article in the *Sunday Times*:

"We conservatives have a rich treasury of philosophical wisdom, custom and tradition on which to draw. Conservatism did not begin with Thatcher or Reagan, whose libertarian philosophies were right for their times but outlived their usefulness. We now know that the free market is not enough; that there is, as Cameron has said, such a thing as society. We need to recover what the Romans called *pietas*. That is, respect for authority, respect for our obligations to family and community, respect for the generations that came before us and which will come after us."³²

There is no better way to achieve this goal than by including civil obligations in a new Bill of Rights.

The impact of civil obligations in a new Bill of Rights

It is right for the Conservative Party to investigate the merit of a Second Bill of Rights. The relationship between the State and the people has changed dramatically during the last ten years and, building on fundamental principles established in the Bill of Rights of 1689, a new compact is needed to reassert British core values in a way which is relevant for the present age. The new document would declare the fundamental duties and responsibilities of people living in Britain both as citizens and foreign nationals, and it would permit an efficacious balance to be struck between individual rights and individual responsibilities.³³

Identifying civil obligations requires much careful thought, but without doubt Articles 27 to 29 of the ACHPR provide a useful precedent on which the Conservative Party could usefully draw. The language of the text could be altered to make reference to some specific British core values, such as an obligation to obey the Rule of Law, to treat people civilly, to respect other people's human rights, to vote, to undertake jury service, to volunteer and assist charitable causes, to respect the environment.

The inclusion of civil obligations in a British Bill of Rights would serve two extremely important purposes. First, it would unambiguously declare to each and every British citizen the importance of individual responsibility and promote societal cohesion. It would place before them the notion of exactly what it means to live in a

³¹ Makua Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 1995, 35 *Va J Int L* 339 at 344, quoted in Steiner & Alston, cited above, at p. 357

³² *The Sunday Times*, News Review, Mr and Mrs Crunchy, 1st January 2006. See also Dreher, *Crunchy Cons*, *Crown Forum*, February 2006.

³³ David Cameron, *A Modern British Bill of Rights*, speech 26.6.06, http://www.conservatives.com/tile.do?def=news.story.page&obj_id=130572

democracy, and it would create a milieu in which notions of good citizenship, social and environmental responsibility, civil engagement and community involvement could properly thrive. It would instil in every British citizen a sense of direction and responsibility to be passed down through the generations. Today's children are tomorrow's responsible citizens, but there needs to be a framework in which the core values of human rights and individual obligations can be transmitted. A British Bill of Rights incorporating civic responsibilities is the most appropriate vehicle to facilitate these core values to be transmitted.

Second, it would assist the Legislature and the Courts in balancing human rights in the public interest, by allowing the recognition of individual rights to be viewed contextually, through a prism of individual obligations owed to society. In this way, for example, a British Home Secretary would be afforded more flexibility in making a judgment in the public interest as to whether a foreign national should be deported to his country of origin in cases of terrorist or criminal activity. For as Mr Justice Potts said, with reference to the present position established by the Labour Government:

“Law abiding citizens of the United Kingdom might reasonably feel disquiet about a state of affairs which permits international terrorists to be a danger to the national security here.”³⁴

More specifically, the inclusion of civil obligations in a Second Bill of Rights would permit the UK and European Courts to take into account the nature of these duties when determining whether derogation from a qualified ECHR right fell within the Legislature's margin of discretion. For as the Court of Appeal said recently in the Countryside Alliance case:

“... [it is a] basic principle of Convention law that in respect of policy decisions that directly or indirectly touch on Convention rights the democratic decisions of domestic policy makers should be accorded a significant margin of discretion.”³⁵

In point of fact, the Court of Appeal was doing little more than echoing the remarks of the European Court of Human Rights in the Hatton case, to the following effect:

“In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy maker should be given special weight.”³⁶

Similar considerations apply in European Community jurisprudence where the ability of a member State to derogate from its obligations under Community law is subject to careful examination. The European Court

³⁴ Quoted by David Cameron in his speech, A modern British Bill of Rights, 26.6.06 http://www.conservatives.com/tile.do?def=news.story.page&obj_id=130572

³⁵ R (on the application of Countryside Alliance) v Attorney-General and Secretary of State for Environment Food and Rural Affairs [2006] EWCA Civ 817, per Sir Anthony Clarke MR at para 118

³⁶ Hatton v United Kingdom [2003] 37 EHRR 28, at paragraph 97

of Justice has recognised that:

“... in principle it is for each Member State to determine in accordance with its own scale of values and in the form selected by it the requirements of public morality in its territory.”³⁷

A recent illustration of the significance afforded to a provision in a written Constitution was afforded in the Omega case where the European Court of Justice declined to strike down legislation passed by the German Parliament which prohibited the commercial exploitation of a shooting game involving the simulated killing of human beings.³⁸ The European Court was much influenced by the fact that the German Parliament had taken the view that the prohibited activity constituted a threat to public policy because “it infringed a fundamental value enshrined in the national Constitution, namely human dignity”.³⁹

Referring to this decision, the Court of Appeal in the Countryside Alliance case remarked that, as compared with other European models:

“In the English legal system basic values are more elusive, because we do not have the benefit of a written constitution.”⁴⁰

The enactment of a Second Bill of Rights incorporating civil obligations would rectify this deficiency and ensure that British core values become highly visible to the Legislature, the Courts and the populace at large.

Conclusion

In its Review of the Implementation of the Human Rights Act published in July 2006, the Department of Constitutional Affairs (DCA) complained that “too much attention has been paid to individual rights at the expense of the interests of the wider community”.⁴¹

The answer to the problem identified by the DCA is crystal clear. It is high time that a British Bill of Rights and Obligations is enacted, in order to restore the balance between individual rights and individual responsibilities. Its enactment would send a clear message to the British public by affirming the core values of British society and the nature of the historic relationship between the citizen and the State.

³⁷ Case 121/85 Conegate [1986] ECR 1007, at paragraph 14

³⁸ The prohibited conduct was limited to activity at a “laserdrome” where laser guns were aimed at tags placed on clothing worn by live players. The prohibition was proportionate because it did not extend to the use of laser guns shooting at tags placed on a target in a shooting range.

³⁹ Case C-36/02 Omega [2004] ECR I-9609, at paragraph 32

⁴⁰ Ibid, fn 35, at paragraph 165

⁴¹ DCA 38/06, page 1

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