

## **'Human rights are fundamental to social work'**

A study of the history of human rights can rapidly become a study in paradox. How is it that a corporation may have human rights, while not being human, but may evade responsibility for human rights, having insufficient nexus with the State? How is it that a human rights instrument – the European Convention on Human Rights – that is so closely associated in origin with a conservative British Prime Minister Winston Churchill, is so loathed by a conservative British Prime Minister?

But the paradox that is the focus of what I have to say is this: human rights are fundamental to social work. I need briefly to unpick the assertion. Then I will explore why I describe it as a paradox. I will conclude, I hope, with some positive messages about rights-based social work.

The assertion that human rights are fundamental to social work is, I hope, familiar to us all. It forms part of the definition of social work that has been adopted by the International Federation of Social Workers, by BASW, and by the National Occupational Standards for Social Work. Social Work is a human rights profession. It is unsurprising that this profession in particular should wish to celebrate International Human Rights Day. Indeed, our self-conception as a human rights profession may be so embedded in our thinking that we do not see the claim as paradoxical at all.

I qualified as a social worker in 1990. On 2<sup>nd</sup> October 2000, I was additionally admitted to the roll of solicitors. It was a proud day for the law in the United Kingdom. Not for that reason, but because by coincidence of timing it was the same day that the Human Rights Act 1998 came into force, allowing us to directly enforce a group of human rights contained in the European Convention on Human Rights, in the courts of this country.

It was the same year, 2000, that the International Federation of Social Workers in Montreal, first adopted the *definitional claim* that “human rights... are fundamental to social work”. So while our modern conception of human rights largely emerged as a response to the atrocities of the second world war, social work as an international profession was slow to adopt their language; and the United Kingdom as a member of the international community was slow to embrace their remedy.

It may be that having a legal career that spans the same period as the Human Rights Act gives me a particular perspective on how human rights are seen in the United Kingdom. But it does seem to me that my newer profession of law has somewhat appropriated human rights from my first profession of social work. I suspect that many in the country at large see human rights as the natural territory of lawyers. The big human rights arguments – the control of terrorism, the right to die – are fought over in the public consciousness by lawyers. Many of my lawyer colleagues will proudly describe themselves as human rights lawyers.

And if human rights are the territory of lawyers, and human rights are understood within the four corners of the Human Rights Act, then that constrains and limits our understanding of human rights in the United Kingdom, in at least these two fundamental ways:

**Firstly**, human rights are framed within cases. Lawyers assert human rights by bringing cases, largely on behalf of humans. This framework emphasises the individual nature of human rights: human rights asserted by a claimant against a defendant. Note in particular that the legal framework of the courts in this country is not a particularly effective framework for asserting group and community rights. To be fair, it tries: public interest test cases plainly benefit a wider community than the individual who brings them; and there has been a growing practice – in respect of which the current government has brought forward proposals to reverse – of charities and campaigning

groups bringing litigation in the wider public interest. But still, the law develops within the framework of the facts of the individual case.

**Secondly**, human rights are challenges to the State. In fairness, a little reflection on the origins of our modern human rights documents in the aftermath of the second world war may explain this. The preamble to the UDHR reminds us how it came into being because

“disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”

And in signing the European Convention short years later, the United Kingdom did not only look backwards to the dark days of fascism, but also sidewise across the Iron Curtain:

“Our light will be a beacon to those at the moment in totalitarian darkness and will give them a hope of return to freedom.”

So human rights are indeed asserted as between the citizen and the State. But it need not have been thus: if human rights are arguably innate to our humanity, why should they not govern our relationships with each other?

Thus far, I am suggesting that the pre-eminent influence of law over our conception of human rights means that most of us understand that rights are asserted by the individual against the State.

Now, let us turn to the history of social work over the same period. Social work achieved the trappings of a profession by the Care Standards Act in the same year, 2000. It gave us a regulator, Codes of Practice and Protection of Title. In contrast to BASW's Code of Ethics, the Codes of Practice did not draw on human rights, and did not draw upon the international definition of the profession. This was, I venture to suggest, a significant step in the State, in the form of legislation, defining the parameters of the profession.

A few years later, the body it established, the General Social Care Council, sought more proactively to define social work, and did so by reference to "the Roles and Tasks of Social Work".

Meanwhile in response to the work of the SWRB, Task Force and Munro Reviews, the profession in England has been developing a Professional Capabilities Framework, a framework of standards against which to measure each stage of our social work careers, including social work training. For today's purposes, I don't wish to criticise that document for any reason but one, which is this: in England, if not in Scotland, Wales and Northern Ireland, it has supplanted the National Occupational Standards for Social Work. And while the NOS had as their core definitional starting point the international definition of social work, including the claim that "human rights are fundamental to social work", the PCF does not. So a new generation of social workers will not have the same exposure to constant reminders of the international dimension.

I hope that by now you can see where this analysis has taken me. The international community of social workers sees itself as a human rights profession. But here in the UK, human rights are defined by lawyers in confrontations with the State, while social work is defined by the state without reference to human rights. Therein lies the paradox of the claim that human rights are fundamental to social work. How can human rights be fundamental to social work in the United Kingdom?

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I'm going to try to answer my own question, and thereby to offer a positive way forward, by unpicking two further issues: which human rights are fundamental, and which side are we on?

So first, which human rights are fundamental? Here, a quick romp through the significance of different documents might assist. My starting point is one I showed you earlier, the Universal Declaration on Human Rights. This document contains rights that have traditionally been placed in three classes:

Classification	Meaning	Examples
Negative	Rights to ensure freedom from curtailment of liberty	No torture; no slavery; no death penalty outside of war
Positive	Economic, Social and Cultural Rights	Right to social security; right to work; right to rest and leisure; right to an adequate standard of living
Collective	Right to a social order in which rights can be realised	Right to a social order in which rights can be realised
Adapted from Centre for Human Rights <i>Human Rights and Social Work</i> (1994) United Nations		

Among the most significant of the positive rights is 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, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

I pause to highlight that positive rights such as these to food, clothing, accommodation and indeed social services are not to be found in the Human Rights Act. That is because this document aspires to a broader understanding of rights. When lawyers in this country want to assert such basic positive rights, they have to scramble round to see how best these can be framed in the terms of the Human Rights Act.

Sometimes the lawyers succeed. Famously in relation to destitute asylum seekers, life would be so easy if we could assert a right to food, clothing and housing. Since we couldn't, we had to frame the argument in terms of Article 3 of the ECHR (torture, inhuman and degrading treatment), and in countless cases, the courts have been persuaded. Sometimes the lawyers fail. When Elaine Macdonald, the former ballerina who wanted a carer rather than incontinence pads, asserted a right to dignity, she too had to frame this in terms of Article 3 and failed – it wasn't inhuman and degrading enough that she had to wear incontinence pads.

But whether the lawyers succeed or fail ought to be neither here nor there for social workers. We simply are not confined to the four corners of the Human Rights Act as the lawyers are. When we see ourselves as part of an international profession, we don't just mean a European one. When we say that human rights are fundamental to social work, we don't just mean the European Convention. BASW makes this transparent:

## **2.1 Human Rights**

Social work is based on respect for the inherent worth and dignity of all people as expressed in the United Nations Universal Declaration of Human Rights (1948) and other related UN declarations on rights and the conventions derived from those declarations

So while I admire the ingenuity of those lawyers who seek to secure positive rights by shoehorning them into the framework of the Human Rights Act – and have done it myself, many times – still I want to make the call to social workers to break free of the narrow understanding of human rights that it gives us. When we say we are a human rights profession, we mean so much more than that we are a profession bound by the Human Rights Act.

And the universal human rights to which we aspire include collective rights too. Social workers across the globe understand that, and I anticipate you will hear something more about that in the Workshops later today. Indeed arguably that is what makes social work social, we are supremely a profession in which relations between people matter. If we adopt an understanding of human rights, that they are fundamentally asserted by the individual against the state, we stand to lose the relational element of social work. Happily, we don't need to do so. This wider understanding of human rights embraces the collective, and enables us to aspire to the claims of the completed sentence,

Human rights **and social justice** are fundamental to social work.

There is yet more to human rights even than this. BASW refers to “other related UN Declarations”. Some of these have the potential to cause significant waves in future. It is perhaps good news that the more recent UN Conventions, such as the Convention on the Rights of the Child, and than on the Rights of Persons with Disabilities, mark a shift in language. Instead of the earlier language, “everyone shall have the right to”, these more recent Conventions start to say, “state parties shall ensure”.

I envisage that the requirements of Article 12 of the CRPD will make waves in relation to how we deal with mental capacity issues in the near future. That Article, without distinguishing between physical and mental disabilities, asserts that everyone has legal

capacity on an equal basis in all areas of life – or at least requires us to secure that this is the case. I see the possibility that paternalism albeit driven by best interests, and the absence of the authentic voice of the service user in proceedings about them, will have to give way to Article 12.

I said I would be asking two questions, which human rights are fundamental, and which side are we on? Turning to the second question, I have to confess that it grieves me how often it has indeed been the case that the scope of human rights has been enlarged through challenges to social work decisions. Notably in relation to the human rights of immigrants, we have been willing to deny people assistance until or unless a legal ruling tells us that human rights require our assistance. I am pleased that that has been changing in recent years with a real focus on developing the skills within social work to make proper human rights assessments. But it is certainly unfortunate for a human rights profession to have been on the wrong side of the argument so many times.

My real point about which side we are on, however, is that there is yet another way of conceiving of human rights: not just that we may promote positive rights as well as liberties; not just that as agents of the State we may properly remind others that the State must secure rights; there is the additional fact that when rights are asserted against the State, it is all too common that others are simultaneously asserting other competing rights. Lawyers use the language of “qualified rights” to refer to rights that may be balanced against the rights of others. Examples include balancing the rights of the child against those of the adult; freedom of expression against respect for private life; freedom of thought, conscience and religion against freedom from discrimination.

As social workers we are not just dealing in human rights, we are intervening at the point where there are contested and competing human rights. We ought to have the courage to state clearly, whichever side we are on, that we are promoting human rights and not riding roughshod over them.

I have begun to develop a simple mantra: “consent or necessity”. Wherever possible, we work with consent. Frequently, if we are truly promoting positive rights, freedom from want, squalor, disease and ignorance; or if we are undertaking our duties to ensure the rights and freedoms of others, we ought to be able to work with consent. Frequently where we work without consent, we ought still to be able to confidently assert human rights are fundamental to our work because of our duty to bring them about, or because we are dealing with contested and competing human rights.

If ever we find we are working with neither consent nor necessity driving us, we ought to be asking serious questions about our human rights credentials. All too frequently, I dare to say, imposition of best interests decisions, in relation to both adults and children, where these are driven neither by consent nor necessity, ought to be prompting such questions.

But my bleak outlook at the halfway point – that human rights may be primarily asserted against us – simply does not stand up to scrutiny. Our vision of positive and collective rights which extend far beyond the scope of the European Convention makes this so. Our realisation that modern human rights instruments require us proactively to secure the rights of others makes this so. And our appreciation of our role to advance rights where those with whom we work have competing and contested rights makes this so.

Human rights are indeed fundamental to UK social work.



This is the text of a speech by Allan Norman for Human Rights Day 2013's JUCSWEC/BASW conference 'Social Work and Human Rights'. It is made available by Celtic Knot under the terms of a creative commons license that you can view here: <http://creativecommons.org/licenses/by/2.0/uk>. This imposes certain conditions on free re-use, including acknowledging the source. [Celtic Knot](#), The Warehouse, 54-57 Allison Street, Birmingham B5 5TH, tel: 0121 286 8785, email [celtic-knot@phonecoop.coop](mailto:celtic-knot@phonecoop.coop).