

2009

The Relationship between Rights and Responsibilities

Liora Lazarus

Benjamin J. Goold

Allard School of Law at the University of British Columbia, goold@allard.ubc.ca

Rajendra Desai

Qudsi Rasheed

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Ministry of
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The relationship between rights and responsibilities

**Liora Lazarus, Benjamin Goold, Rajendra Desai
and Qudsi Rasheed
University of Oxford**

Ministry of Justice Research Series 18/09
December 2009

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First Published 2009

ISBN: 978 1 84099 331 8

Acknowledgements

We would like to express our thanks to our graduate researchers: Ernesto José Félix de Jesús, Gabriel Pereira, and Gregorz Markiewicz. Thanks must also go to Pavlos Eleftheriadis, Tom Hickman, David Petrusek, Elizabeth Prochaska, and Jeremy Waldron, who provided invaluable comments throughout the research and writing process. We are grateful to Lisa Gourd for her help with editing the final draft of the report.

The authors

Liora Lazarus, BA (UCT), LLB (LSE), DPhil (Oxon) is a University Lecturer in Law and a Fellow and Tutor at St. Anne's College, University of Oxford. She is also an associate of the South African Institute for Advanced Constitutional, Public, Human Rights and International Law and was a Fellow of the Max Planck Institute for Foreign and International Criminal Law, Freiburg, Germany from 1994–95. Her research interests are comparative human rights, security and criminal justice. She is the author of *Contrasting Prisoners' Rights* (OUP, 2004) and co-editor (with Benjamin Goold) of *Security and Human Rights* (Hart, 2007). Along with Benjamin Goold and Gabriel Swiney, she co-authored *Public Protection, Proportionality and the Search for Balance* (MoJ, 2007). Other recent publications include 'Conceptions of Liberty Deprivation' (Modern Law Review, 2006). She is currently developing her work on the 'right to security' and the relationship between human rights and good governance.

For further details, see

http://denning.law.ox.ac.uk/members/profile.phtml?lecturer_code=lazarusl

Benjamin Goold, BEc, LLB (Tasmania), BCL, DPhil (Oxon) is a University Lecturer in Law and a Fellow and Tutor at Somerville College, University of Oxford. His major research interests are the use of surveillance technology by the police and the relationship between individual privacy rights and the criminal law. He also writes on aspects of the Japanese criminal justice system and is a member of the Faculty of Oriental Studies and an Associate Member of the Nissan Institute of Japanese Studies. He is the author of *CCTV and Policing* (OUP, 2004) and co-editor (with Liora Lazarus) of *Security and Human Rights* (Hart, 2007). Along with Liora Lazarus and Gabriel Swiney, he co-authored *Public Protection,*

Proportionality and the Search for Balance (MoJ, 2007). He has recently served as a Specialist Legal Adviser to the House of Lords Select Committee for the Constitution's inquiry into surveillance and data collection and as an independent adviser to the Identity and Passport Service.

For further details, see <http://www.bjgoold.net>

Rajendra Desai, BA, BCL (Oxon) is a qualified solicitor. His research interests are comparative and international human rights law. He was recently judicial assistant to the Lord Chief Justice, Lord Judge, and to Lord Justice Carnwath at the Court of Appeal. He will shortly be taking up a position as a researcher in the Human Rights Department of the Victorian Government Solicitor General's Office (Australia), prior to transferring to practice at the bar in England.

Qudsi Rasheed, LLB, BCL (Oxon), is a part-time Tutor in Law at King's College London, teaching public international law, constitutional law, and media law. His main academic interests lie in areas of international and comparative law. He plans to practice at the English Bar in the near future.

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Summary

This report considers the relationship between rights and responsibilities within the context of the ongoing debate on a Bill of Rights and Responsibilities. In keeping with the commitment of the Green Paper 2009 to ensure that any increased emphasis on responsibilities in such a Bill will not erode the protection of rights, this report highlights the potential risks associated with incorporating responsibilities into Britain's constitutional framework.

Key research questions

The central question for this report is whether responsibilities can be incorporated into the existing human rights framework of the United Kingdom (UK) without jeopardising fundamental human rights safeguards. In seeking to address this question, the report seeks to develop a rights-based concept of responsibilities. It explores the meaning of responsibility in the context of human rights, the distinction between responsibilities and duties, and the ways in which responsibilities have been framed in international and domestic laws. The report also identifies the potential problems with drawing a direct association between rights and responsibilities, and explores how existing national and international laws guard against rights becoming contingent on responsibilities.

Scope and analysis

The report develops its analysis at three levels. First, at the level of political and ideological analysis, the report examines the origins of the rise of the responsibilities movement, both internationally and within the UK. Second, at the level of legal analysis, the report surveys international law provisions regarding individual duties and compares similar examples within domestic jurisdictions. Finally, the report takes a theoretical approach to the idea of responsibilities, drawing on well-established legal and moral theories on human rights. The evidence presented in this report was obtained through an in-depth investigation of primary sources (legal documents, official publications, parliamentary debates, United Nations (UN) debates, and publications by relevant non-governmental organisations) as well as academic literature on rights and responsibilities.

The international responsibilities movement

In its examination of the political and ideological debates surrounding responsibilities, the report locates the rise of the 'international responsibilities movement' in a loose alliance of communitarians, faith-based critics of human rights, and representatives of certain states within the UN. The report examines the key arguments and initiatives of this movement, concluding that the reception of this movement by liberal democratic states has been

cautious. Moving on from the international sphere, the report also considers the political factors that have shaped the responsibilities debate in Britain. Although influenced by the international responsibilities movement, the report suggests that the current domestic interest in responsibilities is also a consequence of political objections to rights talk on both the left and the right of the political spectrum. Moreover, the report concludes that the responsibilities debate in Britain has been associated with efforts to balance rights and security. This is identified as a risk to rights protection, especially in the absence of a consensus on concrete proposals for the expression of responsibilities.

Recognition of individual duties

Having examined the political debates surrounding responsibilities both internationally and domestically, the report next surveys how individual duties have been legally recognised in international and domestic human rights instruments. Three different mechanisms for expressing individual duties are identified: duties to respect the rights of others (so-called correlative duties); duties not to exercise rights contrary to certain state or individual interests (rights limitations); and freestanding (so-called non-correlative) duties. The report notes that although most international and domestic human rights instruments accept the idea that 'rights come with responsibilities', liberal democratic states have generally been reluctant to produce definitive lists of duties, either in international law or domestically. Where liberal states do give expression to individual duties, they have normally confined themselves to rhetorical statements or clauses that are either non-justiciable or indirectly enforceable. In contrast, those states that have made explicit provision for justiciable duties in their domestic constitutions – or have supported such initiatives internationally – tend to be characterised by authoritarian regimes, either religious or socialist.

Reconciling rights and responsibilities

The final section of the report takes a theoretical perspective and considers the challenges associated with producing explicit statements about individual duties. In particular, it draws attention to the central problem of trying to reconcile the entrenchment of duties with the essential liberal commitment that state action must be justified in light of human rights, and that citizens should not be required to justify their exercise of these rights. The report suggests that this commitment must – as a matter of both logic and principle – translate into a priority of human rights over individual duties, a priority potentially jeopardised by stating explicit individual duties in a Bill of Rights.

In reaching this conclusion, the report draws an important distinction between duties that are a necessary logical product of a right (the correlative duties) and duties that are not correlatives of rights. It is suggested that the incorporation of non-correlative duties poses

significant risks to the efficacy of rights protection. A further, crucial distinction is drawn between correlativity and contingency, and the report notes that in order to realise the Green Paper's commitment to non-contingency, any enshrined responsibilities (whether correlative or non-correlative) must not be allowed to become preconditions for the exercise of human rights. Finally, the report examines the particular difficulties and risks associated with enforcing duties, in particular those that are too broad to give rise to any specific legal action.

Recommendations

This report ends with three major recommendations. First, there may be value in stating within any Bill of Rights and Responsibilities a general duty to respect the human rights of others. Such a duty could serve to reinforce a shared commitment to the importance of rights and to make clear that the exercise of these rights is constrained by respect for the rights of others. Such a duty to respect the rights of others is to be preferred to a duty to 'exercise rights responsibly', which confuses the moral appeal of living a responsible life with the existence of a legally enforceable duty. Moreover, to the extent that the law exists to protect individual rights, the duty to respect the rights of others might also be said to encompass a duty to obey the law. In this sense, the duty to respect the rights of others is preferable to the more coercive and less rights regarding obligation to obey the law.

Secondly, the report suggests that there is little to be gained from – and significant risk associated with – incorporating lists of specific duties within the body of a Bill of Rights. Any statement about responsibilities should be general and rhetorical only, and preferably located within the preamble. This would ensure that such a statement is seen as educative and aspirational, and also guard against any suggestion that the duty is directly enforceable against individuals. Finally, if individual duties are to be incorporated into the main body of any Bill, then precautions must be taken to ensure that the duties remain non-justiciable, preferably by an explicit statement of non-justiciability.

These proposals seek to ensure that that any future attempt by policymakers to entrench constitutional responsibilities will be framed by an active commitment to the protection of human rights. They safeguard against the possibility that the duties incorporated into a Bill of Rights and Responsibilities will result in an unintentional erosion of human rights protections. Policymakers are therefore advised to approach the development of duties with caution, in particular by adopting a variety of explicit safeguards against rights becoming contingent on responsibilities.

1. Introduction

1.1 Aim of the report

The Human Rights Act 1998 (HRA) placed human rights at the centre of the legal landscape in the United Kingdom (UK). The Act ‘brought home’ certain rights that had been enshrined in the European Convention on Human Rights (ECHR), by giving individuals access to these rights in domestic courts. Over the past two years, however, a new chapter in the political debate around human rights has begun, culminating most recently in the Green Paper *Rights and Responsibilities: developing our constitutional framework*.¹ Central to the Green Paper is the proposition that the UK might adopt a new Bill of Rights and Responsibilities, which could aim to capture rights that build on the protections in the HRA but also place a greater emphasis on ‘responsibilities’.

This report contributes to the debate on the relationship between rights and responsibilities initiated by the Green Paper by explaining how constitutional duties are currently expressed in a broader global setting. Furthermore, it outlines the potential risks associated with any attempt to incorporate responsibilities into the existing constitutional framework of the UK. The conclusion of the report is that duties are already inherent in human rights, and the risks of giving duties explicit legal meaning are significant. Any move towards constitutional recognition of such duties will need to be accompanied by safeguards against the possibility that they will be invoked with a view to eroding existing human rights protections. Without such safeguards, the Green Paper’s objective of avoiding contingency cannot be guaranteed.

1.2 Structure of the report

Following on from this introduction, the report is divided into five main chapters. Chapter 2 examines the rise of the so-called international responsibilities movement, which has been one of the driving forces behind recent interest in the relationship between rights and responsibilities. Chapter 3 considers the political factors that have shaped the discussion of responsibilities in the UK, specifically the background to the publication of the Green Paper on Rights and Responsibilities. Chapter 4 provides an overview of the ways in which individual duties have been recognised and expressed in both international and domestic human rights instruments. Chapter 5 then considers the conceptual difficulties likely to arise from any attempt to recognise individual duties, and examines their various philosophical and legal meanings. Chapter 6 summarises the main conclusions of the report and offers some

¹ Ibid.

cautionary advice to policymakers and legislators about the risks of placing too much emphasis on duties and responsibilities in the context of human rights.

1.3 Methodology

The research presented in this report was conducted with a view to addressing a number of important issues raised by the prospect of a new Bill of Rights and Responsibilities.

Following discussions with the Ministry of Justice (MoJ) in March and April 2008, it was agreed that the following key questions would provide the basis for the report:

- What does responsibility mean in the context of human rights?
- Is there a distinction to be drawn between responsibilities and constitutional duties?
- How could a rights-based concept of responsibilities be incorporated into the existing human rights framework?
- How have responsibilities and duties been framed in international human rights law?
- How have responsibilities and duties been framed in the constitutional documents of comparable jurisdictions?
- How has international and domestic law in comparable jurisdictions safeguarded against rights becoming contingent on responsibilities?
- What are the potential problems of drawing a direct association between rights and responsibilities?
- How would constitutional responsibilities operate within the UK constitutional setting?

As these questions were agreed almost 12 months before the final publication of the Green Paper on Rights and Responsibilities, much of the work for this report was carried out prior to the release of the Green Paper in March 2009. Given the broad ranging nature of the report, our survey of the relevant material was not restricted by date. In practice, however, many of the human rights documents and academic writings we reviewed were produced in the post-war period. In all other cases, where appropriate the most recent literature on the subject was selected. Following discussions with MoJ, we initially confined ourselves to examining academic materials available in English (all of the national and international constitutional documents were available in English translations). This was due to resource constraints, and in particular the cost of obtaining professional translations of the relevant foreign language materials. With the help of graduate researchers trained in the relevant jurisdictions, however, we did examine a cross-section of the relevant German, Italian, Portuguese, Polish and Spanish literature on constitutional duties, primarily to confirm the accuracy of our English language sources.

The research work began with an in-depth investigative review of the literature review based on key words associated with the research questions set out above. Initially, the keywords **constitutional duties, constitutional responsibilities, constitutional obligations, international law duties, international law responsibilities** and **international law obligations** were used. After reviewing the abstracts of the available literature, the authors narrowed down the literature selection to pieces that focused on the constitutional duties, responsibilities and obligations that apply to (or potentially apply to) individuals rather than states (see section 1.4 below).

The literature review included existing legal provisions in national and international law, as well as analytical and philosophical examinations of the concept of responsibilities and its relationship to human rights. The authors did not confine the literature search to publications within the UK. Rather, we took the view that publications from and about comparable jurisdictions would be equally valuable in providing policymakers with insight into the way in which responsibilities and duties have been constitutionally expressed elsewhere. A number of academic and legal databases were searched in selecting the literature and materials (see appendix 1). The following sources were included:

- books;
- peer-reviewed articles;
- book chapters;
- non-peer-reviewed articles;
- official publications (both international and domestic); and
- NGO publications.

Once an extensive bibliography had been assembled, the sources were evaluated by reference to three general inclusion criteria:

- scholastic reputation in the field;
- political significance in the field (both domestically and internationally); and
- particular relevance to subject area.

The research team applied these inclusion criteria in reading the abstracts and executive summaries of the materials. Where no abstract or summary of the piece existed, the whole work was read by at least one member of the team (and in many cases by all of them). The research team then identified, based on their professional judgement, the pieces that were most relevant to the study. Once the initial material was selected, the research team also followed up footnoted materials using the same inclusion criteria.

Following on from this comprehensive review of the available literature, the authors undertook a detailed examination of all relevant legal documents on duties and responsibilities. The authors took their initial lead from the materials that had already surveyed the law in this subject area. However, legal materials were also identified directly from legal databases (see appendix 1). Using these resources, a list was compiled of jurisdictions and international law material which included references to duties and responsibilities. The authors then narrowed down this list further to focus on jurisdictions they considered comparable with the UK. The authors took the view that comparable jurisdictions would need in the first instance to be characterised as democratic, liberal states, and should in addition fall under one of the following inclusion criteria:

- Common law jurisdictions;
- Member States of the European Union;
- Commonwealth jurisdictions;
- Anglo-American jurisdictions.

Given that the selection (and exclusion) of all of the material used in this report necessarily involved making choices about their relevance, reliability and independence, the final report inevitably reflects the judgements of the authors. In order to ensure that the report presents a balanced account of the debate on responsibilities, however, a number of independent academics and legal practitioners were consulted during the drafting process, and they contributed detailed comments on early versions of the report. Among those consulted during the drafting process were: Dr Pavlos Eleftheriadis (University of Oxford), Dr Tom Hickman (Blackstone Chambers), David Petrasek (Amnesty International), Elizabeth Prochaska (Matrix Chambers), and Professor Jeremy Waldron (New York University). In addition, the report was also subject to interim and final peer review by MoJ. As a consequence, although the final report reflects the views and expert judgements of the authors, every effort has been made to provide a balanced and comprehensive response to both the Green Paper and the specific research questions set out above.

1.4 Terminology

The terms ‘responsibilities’, ‘duties’ and ‘obligation’ are often used interchangeably, and there is little real agreement over the meaning of these terms within political debate. Responsibility has been used both in the sense of ‘acting responsibly’ and in the sense of being under a duty or obligation to act in a particular way. Similarly, politicians often argue that we should ‘use rights responsibly’ or refer to a ‘duty to obey the law’ as a ‘responsibility’.

One of the strengths of the Green Paper 2009 lies in the distinction it draws between 'responsibilities' and legally enforceable 'duties'. Early on, it acknowledges that 'while the law imposes many duties, it does so in a patchwork way and often without framing them explicitly in the language of responsibility' (para. 2.24). Later, the Paper argues that 'although not necessarily suitable for expression as a series of new legally enforceable duties, it may be desirable to express succinctly, in one place, the key responsibilities we all owe as members of society' (para. 2.26).

To date, political debates over the meaning of responsibility have been marred by a tendency to confuse moral arguments about the value of living a responsible life with suggestions that certain constitutional duties should be enforced by law. Although the term responsibility may well be a useful way to describe a broader moral attitude to the exercise of rights, the idea of responsibility should not be taken to be the same as a legal duty. In this report, an effort has been made to keep these two notions of responsibility (moral and legal) separate, and throughout the term 'duty' is used to refer to a legal obligation and not some broader moral notion of responsibility.

Finally, it is important to note that this report does not consider the duties owed by a state to its citizens as a consequence of the assertion of human rights. While a discussion of such duties is an important part of the debate on constitutional reform,² it is beyond the scope of this report. Instead, this report focuses on the duties owed by individuals to each other, or owed by individuals to the state or community, as contained in international treaties, domestic constitutions or domestic statutes (such as the HRA).

² For a recent and impressive account of the notion of positive duties, see Fredman, 2008.

2. The international origins of the ‘responsibilities movement’

This chapter examines the intellectual and political foundations of the so-called ‘responsibilities movement’. A loose alliance of communitarians, faith-based critics of human rights, and some state representatives at the United Nations Human Rights Commission (UNHRC), the responsibilities movement has called for greater emphasis on individual duties in order to correct a perceived imbalance between rights and responsibilities. It challenges the idea of freestanding human rights, arguing that any discussion of rights must also consider notions of responsibility and the dangers of individualism.

2.1 The evidence

Based on an initial review of the available literature on international debates about responsibilities (see appendix 1), we identified a number of leading works that have traced the origins of the responsibilities movement, and provided background on various debates on duties that have taken place at an international level (Daes, 1980; Hodgson, 2003; Knox, 2008; Saul, 2000). Although each of these works advances a particular view on the relationship between rights and responsibilities, taken together we believe they provide a balanced account of the field. Using these works as a guide, we also identified and surveyed all relevant United Nations (UN) documents, including records of debates, as well as the Inter-Action Council (IAC)’s draft Declaration of Human Responsibilities.

2.2 The communitarian rights critique

Perhaps the most significant intellectual influence on the responsibilities movement, communitarianism has provided an established philosophical critique of the relationship between rights and responsibilities.³ This critique is based on two central claims. The first is that modern ‘rights talk’ is founded on a destructive individualism that neglects individual responsibilities and undervalues the social dimension of human life.⁴ To correct this imbalance, proponents argue that human rights regimes should acknowledge and promote the idea of responsibilities and explicitly recognise their alleged relationship to substantive rights (Etzioni, 1995).

³ The key academic contributors to communitarianism in the US are Mary Ann Glendon (Glendon, 1991) and Amitai Etzioni (Etzioni, 1995). The writing of David Selbourne has also been influential in the UK (Selbourne, 1994). On the rise of this movement in the UK, see chapter 3.

⁴ According to Glendon, for example, ‘buried deep in our rights dialect is an unexpressed premise that we roam at large in a land of strangers, where we presumptively have no obligation towards others except to avoid the active infliction of harm’ (Glendon, 1991, p. 7).

The second claim is that the failure to place responsibilities on a similar footing as rights is the source of many modern social problems (Saul, 2000). These include the deterioration of private and public morality, the decline of the family, high crime rates and a tendency to claim rights while leaving responsibilities to 'big government' and the welfare state (Etzioni, 1995; Selbourne, 1994).

Despite its growing importance on the international stage, the communitarian critique is not without its critics. They take issue with the claim that there has been a decline in individual moral responsibility coinciding with an increased emphasis on rights. As Ben Saul argues, the assumption that an increased emphasis on rights has led to a decline in individual moral responsibility is unsubstantiated. Furthermore, communitarians make repeated reference to an 'undefined golden age of moral responsibility from which modern society has fallen', but it is not clear 'whether such an age ever in fact existed' (Saul, 2000). Moreover, communitarians have yet to produce any convincing evidence of a causal link between the rise of rights and the decline of modern society.

Another difficulty with the communitarian critique has been emphasised by Cass Sunstein (1995), who has questioned whether rights have somehow crowded out responsibilities. In fact, if anything, the idea of responsibilities has always been part of the social and legal landscape:

[C]onsider, for example, cigarette smoking; corporate misconduct; air and water pollution; sexual harassment; and racist and sexist speech. In all of these areas, people who were formerly autonomous, and free to act in accordance with their own claim rights, are now subject to socially and sometimes legally enforced responsibilities (p. 730).

Even if we discount these criticisms, the precise legal implications of the communitarian critique remain unclear. While commentators such as Amitai Etzioni often restrict themselves to demanding a moral revival rather than legal reform (Etzioni, 1995), the risk remains that rhetorical calls to 'rebalance rights and responsibilities' may be co-opted by those who wish to justify novel and unacceptable limitations on long-established rights.

2.3 The international faith-based rights critique

The responsibilities movement has also been driven by an international inter-faith project that has sought to establish a global ethical standard. In addition to lobbying for an increased emphasis on responsibilities in international human rights law, members of this project have also produced a number of documents that set out models of individual duties

and responsibilities. Released by the Inter-Faith Parliament of the World Religions at its centenary meeting in 1993, the Declaration Toward a Global Ethic identified certain 'broad, ancient guidelines for human behaviour' common to the world's religions, stating that 'action in favour of rights and freedoms presumes a consciousness of responsibility and duty... [and] rights without morality cannot long endure' (Parliament of the World's Religions, 1993, p. 6).

This faith-based critique was crucial to the development of the IAC's draft Declaration of Human Responsibilities (IAC, 1997). Central to this document is a commitment to ideas of obligation and responsibility, and a belief that greater emphasis needs to be placed on ethical principles drawn from the world's major religions. It also maintains that the Universal Declaration of Human Rights (UDHR) is incomplete, and that its insistence on an exclusively Western conception of rights 'can result in conflict, division and endless dispute, and [its] neglect of human responsibilities can lead to lawlessness and chaos' (IAC, 1997, preamble).

The IAC intended that the Declaration be adopted by the UN General Assembly on the 50th anniversary of the UDHR. It contained 19 articles outlining human duties and responsibilities, which roughly mirror the UDHR rights (articles 2–20). The articles were supposed to compliment the UDHR rights by rebalancing rights and duties and encouraging individuals not to assert rights where doing so would harm others. In other words, the aim was to ensure that individuals understand that they have a duty to exercise their rights responsibly (Saul, 2000). The draft was discussed in the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the UN Human Rights Commission (UNHRC), with a view to potential adoption by the UN General Assembly. It did not, however, receive sufficient state support and never proceeded to a formal vote. The draft was also strongly criticised by Amnesty International, which argued that the Declaration would undermine long-established international human rights. According to Amnesty, adoption of the Declaration would result in the restating of well-established rights in terms of vague and ill-defined responsibilities, and potentially frame certain rights in weaker and less precise language than that used in the UDHR (Amnesty International, 1998).

2.4 Shifts in the United Nations and the Martinez Draft Declaration on Human Social Responsibilities

Alongside the activities of the IAC, signs of a growing interest in human responsibilities started to emerge in various international forums during the 1990s. In 1995, the UN Commission on Global Governance published *Our Global Neighbourhood*, which called on the international community 'to unite in support of a global ethic of common rights and shared global responsibilities' (chap. 2). Following a motion introduced by Egypt (and sponsored by

Algeria, China, Cuba, India, Indonesia, Iran and Malaysia) in 1999, the UNHRC (referring directly to the IAC's work) mandated a study on human responsibilities (UN, 1999). The Economic and Social Council then authorised the appointment of a Special Rapporteur, Miguel Alfonso Martínez (UN, 2001), whose work culminated in a final report and a pre-draft Declaration on Human Social Responsibilities (Martinez, 2003). This pre-draft Declaration was eventually rejected by a narrow margin in a vote in the UN Economic and Social Council (UN, 2005).

The Martinez Report lamented 'the neglect suffered by human responsibilities' in international human rights law, concluding that it was 'absolutely necessary to create and develop a new individual and collective awareness of the ... balance between the rights of the individual and his/her social duties or responsibilities' through a new international standard (Martinez, 2003, pp. 3–4). Martinez's rationale mirrors that in the IAC draft Declaration by suggesting that favouring the rights of the individual leads to 'conflicts, divisions and interminable disputes' (Martinez, 2003, p. 21). Interestingly, Martinez alleged a clear division between developed countries 'of the North,' which he found generally opposed the formal establishment of any correlation between rights and responsibilities, and those of the 'underdeveloped South', which supported such a connection (Martinez, 2003, p. 8). However, it should be noted that among the countries that eventually voted against the pre-draft Declaration were not only Canada, the United States, Japan and the European Union but also Brazil, Costa Rica, Mexico, Nicaragua, Senegal and Turkey (UN, 2005, pp. 8–9).

Like the IAC draft Declaration, the Martinez pre-draft Declaration is ambiguous as regards the possible legal effect of 'rebalancing rights and responsibilities'. Despite the fact that both drafts state that the proposed responsibilities 'correspond to social ethics and human solidarity' and not those 'dictated by law' (Martinez, 2003, p. 22), John Knox argues that any such declaration of responsibilities by the UN could affect how states interpret existing international human rights standards (Knox, 2008). This certainly appeared to be the view of the UK representative in the final Economic and Social Council debate, who argued that the pre-draft Declaration was capable of 'undermining the very foundations of human rights' by implying that 'the state could determine which rights, if any, an individual might enjoy in return for the exercise of responsibilities' (UN, 2005, p. 8). It is with this concern in mind that state support for such duties has been critically assessed: 'notwithstanding the undoubted cultural differences between countries as to the proper balance between rights and duties, the primary division in the declaration is not between different cultures, but between democratic and authoritarian governments' (Knox, 2008, p. 36).

2.5 Conclusion

As with the communitarian and faith-based rights critique, the risk here is that some states may support the international responsibilities movement not because they are keen to expand or improve upon the existing international rights framework but instead because this represents an opportunity to introduce new restrictions on human rights. It is for this reason that the work of the international responsibilities movement has been approached with caution and with some reticence as to the political – as well as principled – motivations of those states that have been its most vocal supporters.

3. The move to ‘responsibilities’ in the United Kingdom

This chapter examines the responsibilities movement in the UK, with a view to providing background to the current debate on the relationship between human rights and responsibilities. In addition, it provides a political context for some of the key constitutional questions raised by the Green Paper 2009.

3.1 The evidence

The evidence presented in this part of the report was gathered in a number of distinct stages. First, we completed a key word search of all relevant databases (see appendix 1) as well as Hansard to identify any reference to duties or responsibilities by a member of parliament, government official, or adviser from 1997 to the present. We also searched the online archives of five national newspapers – The Times, The Guardian, The Telegraph, the Independent, and the Financial Times – for articles on political statements on the question of duties and responsibilities. We also completed a keyword search of political party publications and speeches made by representatives of the major political parties in the UK. Although this produced a long list of references, statements, and articles (over 100), the overwhelming majority lacked depth and provided little in the way of a detailed discussion of the relevant issues. Looked at together, however, they did provide us with a useful overview of the way in which the political debate on the relationship between rights and responsibilities has developed over the past decade, and provided a general background to the issues raised in the Green Paper. In constructing our account of the background to the political discussions that have surrounded rights, we also relied on two leading analyses of constitutional politics in the UK (Griffiths, 1991; Loughlin, 1992).

Following this broad survey, we then conducted a detailed review of two recent reports on rights published by the Joint Committee on Human Rights (JCHR) (JCHR Report, 2005-6; JCHR Report, 2007–08a), focusing our attention on those sections that discussed the issue of responsibilities. These reports were selected for their rigour, and because they offer a detailed and independent account of the relevant issues. We also read and reviewed all of the material cited by the Committee in each report. Finally, following the publication of the Green Paper in March 2009, we also reviewed all of the material cited and discussed in the Paper.

3.2 A Bill of Rights and Responsibilities?

Over the past few years, an ‘unusual cross-party consensus’ on the need for a new ‘British Bill of Rights’ has arisen in the UK (JCHR Report, 2007–08a, para. 1). Despite considerable disagreement over what such a Bill might include, the Labour government and the Conservative opposition both share a commitment to balancing rights with ‘responsibilities’. A recent parliamentary JCHR report characterised the Government’s use of ‘responsibilities’ as a rhetorical device through which to defend human rights to a population unfamiliar with or hostile to rights (JCHR Report, 2007–08a, para. 263):

[T]he Government’s interest in ‘responsibilities’, like its interest in characterising the rights in the Human Rights Act as ‘British’, is primarily for presentational reasons: it is motivated by a concern to educate the public.

In the view of the JCHR, government ministers have now turned their attention to responsibilities and duties, having previously ‘failed to explain the basic philosophy of the Human Rights Act to the people’ (JCHR Report, 2007–08a, Francesca Klug Ev. 1).

However, the growing emphasis on ‘responsibilities’ in the UK is not simply a ‘presentational’ political attempt to educate a public distrustful of rights. On the one hand, this movement towards responsibilities is a reflection of the broader international movement outlined in chapter 2 of this report. In arguing for a Bill of Rights and Responsibilities, the Labour government has frequently referred to other jurisdictions that have adopted the ‘responsibilities’ model (MoJ, 2009).⁵ Similarly, in its document on the British Bill of Rights and Obligations, the Conservative Liberty Forum refers to the IAC Draft Declaration on Human Responsibilities (Fisher, 2006). On the other hand, the conditions in the UK that have given rise to the ‘responsibilities’ movement are also locally generated. The movement reflects deeper political traditions on both the left and right of British politics that were already evident when the HRA was introduced.

Labour’s support for the HRA represented a significant departure from the party’s traditional approach to constitutional rights. Not only had Labour been reluctant to entrench the power of a conservative judiciary (Griffiths, 1991), but socialists had traditionally viewed rights as dangerously ‘individualist’ and ‘atomistic’ (Loughlin, 1992, p. 197f). This view was reflected in Jack Straw’s statement in Parliament during the passage of the HRA that ‘there can be no rights without responsibilities, and our responsibilities should precede our rights’ (House of Commons, 1998a).

⁵ See also JCHR Report, 2007–08b, Jack Straw Ev. 78.

Conservatives have also commonly expressed concern that rights have a moral and social danger because they lead to atomism, individualism and a break down of social cohesion (Willets, 2006, cited in Fisher, 2006). This concern was evident in the objections voiced by Conservative critics at the time the HRA was introduced into Parliament. John Gummer MP, for example, argued at 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' (House of Commons, 1998b).

3.3 Recent debates and recurring doubts

The doubts expressed when the HRA was debated in Parliament have not disappeared. While the HRA has been characterised by the Government as 'a received part of our constitutional arrangements' (JCHR Report, 2007–08b, Jack Straw Ev. 78), the concern that rights have led to unlimited individualism with the potential to erode communal bonds continues to exist.

Not only is this concern evident in the Green Paper 2009 (MoJ, 2009, pp. 8–9, chap. 2), but it is reflected in the broader constitutional debate. Both the Labour and Conservative parties have sought to place 'responsibilities' and the rejection of perceived unbridled individualism at the centre of their political legacies.⁶ Thus, Gordon Brown, when proposing the development of a British Bill of Rights and Responsibilities, has argued that the 'British interpretation of liberty ... rejects the selfishness of extreme libertarianism and demands that the realm of individual freedom encompasses not just some but all of us' (Brown, 2007).

The Conservative Party is even more emphatic. It has placed 'responsibility' at the centre of its vision of 'Modern Conservatism' (Cameron, 2006b; Osborne, 2006). In his foreword to *Built to Last*, the Conservative Party's summary of its aims and values, David Cameron called for a 'responsibility revolution' (Conservative Party, 2006). Equally, the Conservative Liberty Forum and the Conservative Lawyers Association have cast Thatcherism as a libertarian deviation from the true Conservative legacy, arguing that 'the importance of civic responsibility has lain at the heart of Conservative thinking for the last 200 years' (Fisher, 2006).

⁶ Not all political parties have turned to 'responsibilities' in this pursuit, however. The Liberal Democratic Party's document on constitutional change *For the People By the People* uses the word 'responsibilities' mainly in relation to state duties to its citizens. Only in one paragraph is the word mentioned in the context of a criticism of the Government's model of 'active citizenship', arguing that the government needs to develop greater incentives for citizen participation rather than imposing a responsibility of participation on citizens (Liberal Democrat, 2007, para. 7).

The Labour Government and the Conservative opposition have, to differing degrees, also cast 'responsibilities' as a means of balancing the protection of rights with the pursuit of security. For Cameron, one of the main arguments for a Bill of Rights is the possibility of providing judicial guidance when 'the lack of responsibility of some individuals [threatens] the rights of others' (Cameron, 2006a). The Labour Government has also been criticised for making this link between responsibilities and security (JCHR Report, 2005–06; JCHR Report, 2007–08a, para. 262), most notably in the paper *Governance of Britain* (MoJ, 2007, para. 210). It is interesting to note therefore that the Green Paper 2009 places great emphasis on the link between security and a new Bill of Rights (MoJ, 2009, foreword, para. i, chap. 1).

3.4 Conclusion

In summary, the responsibilities movement in the UK has been influenced by the international responsibilities movement as well the broader political culture on both the left and right of British politics. It is also associated with an attempt to balance rights and security. Although the Green Paper 2009 states that 'fundamental rights cannot be legally contingent on the exercise of responsibilities' (MoJ, 2009, p. 17), there is as yet no concrete policy proposal on the table as to how responsibilities might be reflected either in a Bill of Rights or our social institutions. This absence of clarity is viewed as problematic by the JCHR, who fear that the concept will be used against the development of a human rights regime in a broader political environment antipathetic to rights and increasingly concerned with security (JCHR Report, 2007–08a). In short, the constitutional emphasis on 'responsibilities' remains contested in the UK.

4. Individual duties and responsibilities in international and domestic law

This report has described how the notion of responsibilities has gradually become a focus for discussions about the future of human rights both internationally and in the UK. In this chapter, we examine how individual duties have been expressed in international and domestic law. The second section explores the background of a number of key international human rights instruments, while the next considers various domestic constitutional references to individual duties.

Typically, we can identify three different ways of expressing individual duties:

- 1 duties to respect the rights of others (correlative duties);
- 2 duties not to exercise rights contrary to certain state or individual interests (rights limitations); and
- 3 freestanding (non-correlative) duties.

While states vary in their approaches, there has been a general reluctance within liberal democratic states and under international law to set out definitive lists of freestanding duties. When states do seek to emphasise duties or 'frame them explicitly in the language of responsibility' (MoJ, 2009, p. 9), they have normally confined themselves to rhetorical statements or general clauses.

4.1 The evidence

For the purposes of this section, we undertook a broad key word search (see appendix 1) to identify any international treaties and instruments, as well as constitutions in comparable jurisdictions that refer to duties and responsibilities. Given that few international human rights instruments predate the establishment of the UN in 1948, for the purposes of our review we confined ourselves to the post-war period (1945 onward). We also examined any available supporting documentation – such as UN debates and preparatory documents – relating to the instruments, and a number of leading academic commentaries in the field (Knox, 2008; Morsink, 1999; Petrasek, 1999). With respect to domestic constitutions, we were guided in the first instance by the comparability of the jurisdiction (see section 1.3 above), although we do occasionally refer to non-comparable jurisdictions (eg China and Cuba) as a counterpoint. Once identified as comparable, we examined the leading academic commentaries on the constitutions of each particular jurisdiction.

4.2 International human rights instruments

The Universal Declaration of Human Rights (UDHR)

Although the UDHR does not set out the duties owed by individuals to the state or community, article 29(1) contains a general statement of principle regarding the role of individual duties in international human rights:

[E]veryone has duties to the community in which alone the free and full development of his personality is possible.

Following lengthy discussions during the UDHR drafting process state delegates agreed to limit any reference to duties to those owed to the community rather than exclusively to the state.⁷ There was considerable discussion as to how these duties should be expressed. Although various countries from Latin America (as well as Egypt and China) wanted the UDHR to include a list of individual duties, countries such as France and the UK argued instead that a statement of general principle was adequate. In the end this latter approach prevailed and is reflected in the final text of article 29(1) (Morsink, 1999; Petrasek, 1999).

Individual duties also find expression through the general limitation clause in article 29(2), which states:

[I]n the exercise of his rights and freedoms, everyone shall be subject to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

This clause lays down the boundaries within which a state may create individual duties in domestic law that limit UDHR rights.

International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR)

The statement of principle on individual duties contained in the UDHR was also adopted in the preamble to both the ICCPR and ICESCR. Both preambles state: '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 ... rights'.

⁷ This section draws on the discussions during the intricate 8-stage drafting process of the UDHR. The various UN documents connected to this discussion are cited and considered in Petrasek (1999).

The rationale for these individual duties was summarised by the Australian delegate during the ICCPR drafting process: ‘states being the sum of individuals, the latter must co-operate if the Covenant was to be implemented’ (Petrasek, 1999). This individual duty to promote human rights was recently reaffirmed and developed in 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’. This declaration was adopted by the UN General Assembly in 1998 (see appendix 2). Interestingly, efforts to insert a detailed list of individual duties into this Declaration were resisted by many democratic states. Although they acknowledged the importance of duties, democratic states feared that specific duties might be employed to undermine the rights of individuals (Knox, 2008).

The American Convention on Human Rights (ACHR)

The American Convention on Human Rights (ACHR) mentions individual duties only in the most general terms and omits reference to duties owed to the state. The main reference to duties can be found in article 32(1), which states that ‘every person has responsibilities to his family, his community, and mankind’. This represents a significant retreat from the 1948 American Declaration of the Rights and Duties of Man (ADRD), which devoted an entire chapter to individual duties (see appendix 2). It appears that the revised ACHR grew out of a concern that the general provision in the ADRD, taken together with the specified duties, allowed states to render enumerated rights contingent upon responsibilities (Knox, 2008).

The European Convention on Human Rights (ECHR)

It is clear from the *travaux préparatoire* (preparatory work) that a consensus existed at the time of drafting that ‘each right carried with it a corresponding duty’ (ECHR Travaux Préparatoires, 1949–51a). This consensus is reflected in the rights limitations clauses contained in the Convention, including articles 8(2), 9(2) and 11(2). The ECHR makes only one explicit reference to individual duties in article 10(2). This states that the exercise of freedom of expression ‘carries with it duties and responsibilities’. Although the drafters generally left duties implicit in the Convention, they nonetheless felt that the danger associated with the ‘powerful influence [that] the modern media ... exerted upon the minds of men and upon national and international affairs’ was sufficient to justify an explicit statement of the **special** duties under article 10(2).

Looking beyond the specific limitations contained in article 10, article 17 forbids the use of rights to injure the rights of others and can thus be seen as a codification of the idea of social responsibility (Sedley, 2008, p. 330; see appendix 2). While, the *travaux préparatoires* make reference to discussions of implied and corresponding duties (ECHR Travaux Préparatoires, 1949–51b), article 17 has not been prominent in the jurisprudence of the

European Court of Human Rights. Instead, the Court regards the article's general purpose as restricted 'to prevent[ing] totalitarian groups exploiting in their own interests the principles enunciated in the Convention' (*Norwood*, para. 64). In most other contexts, the specific rights limitation provisions have been regarded as adequate for the purpose of protecting individual duties (eg *United Communist Party of Turkey and Refah Partisi*).

The African Charter on Human and People's Rights

The African Charter on Human and People's Rights differs from the majority of international instruments in providing an extensive list of individual duties in article 29 (see appendix 2). These expand on the statement in article 27 that 'every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community'.

This focus on duties in the African Charter is frequently said to be a product of a 'firmly ingrained ... African tradition' (Gittleman, 1984, cited in Knox, 2008). The report of the meeting that drafted the African Charter recorded the view that the perceived Western liberal conception of the individual as 'completely free and completely irresponsible, and at all times in opposition with society, does not conform with African philosophy' (cited in Petrasek, 1999). However, the Charter is also unquestionably a product of drafting compromises drawing on 'responsibilities to the community in African tradition, neo-Marxist obligations (at the insistence of Mozambique and Ethiopia) and the needs of post-colonial, modern African states' (Saul, 2000).

As with the ADRD, significant concerns have been expressed regarding the potential for states to use Charter duties as a justification for suppressing human rights. The chapter on duties has been described as 'an invitation to the imposition of unlimited restrictions on the enjoyment of rights' (Buerghenthal, 1988, cited in Knox, 2008). This is because the restrictions on states' ability to limit rights in the Charter are extremely weak and vague. Article 27(2) simply states that 'the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest'. This fails to prevent states from relying on the broad article 29 duties to inform the scope of the 'morality' and 'common interest' limbs of the limitation clause, thus risking rendering rights contingent on responsibilities of uncertain scope (Knox, 2008).

4.3 Individual duties and responsibilities in domestic constitutions

As useful as international examples might be, the most revealing illustrations of individual duties can be found in the domestic context. Contrary to claims of the international

responsibilities movement, domestic human rights instruments do not reject or ignore the popular idea that ‘rights come with responsibilities’.

Implicit duties

As in the case of international human rights law, most Western liberal democratic constitutional texts do not typically contain such expressly stated ‘duties’. As most domestic rights are qualified by reference either to the rights of others or to fundamental state interests (such as public order, public safety, national security, etc), duties are normally regarded as inherent to the right itself (Hodgson, 2003; Saul, 2000). Duties also arise implicitly when rights contained in the same text compete (for example, freedom of speech and the right to privacy).

Alternatively, duties may arise as a consequence of the horizontal application of rights between citizens. Once a jurisdiction recognises the possibility that rights may apply between private individuals, then duties between individuals will naturally and implicitly arise as a consequence of the exercise of a right.⁸ Liberal democratic constitutions also typically attempt to capture the social aspect of rights via the promotion of a particular conception of the individual rights bearer. For example, a communitarian conception of the individual rights bearer has been expressed by the German Federal Constitutional Court, which has argued that the ‘image of man under the Basic Law is not that of the isolated sovereign individual; rather, the Basic Law resolves the conflict between the individual and the community by binding the citizen to the community without detracting from his intrinsic value’ (*BVerfGE* 12, 45, 51; 28, 175, 189).

In short, given the range of duties that arise implicitly as a consequence of the exercise of constitutional rights, there are few compelling reasons to outline such duties expressly in a Bill of Rights or constitution in a liberal democracy.

The explicit expression of duties has also been regarded by many as giving rise to considerable risks, as evidenced by the historic and contemporary abuse of individual duties by authoritarian dictatorships (Saul, 2000; Kirby, 2003), most notably the USSR and China. This also explains why there is a consistent and deep belief that constitutional human rights protections are, and ought to be, thought of primarily as safeguards against the state (Sedley, 2008). As the Federal Republic of Germany pointed out in its representations to the UN in 1976, rights ‘protect the individual against any abuse of power by the state’, whereas ‘[t]he state and the community with their inherent monopoly of power, can protect themselves

⁸ It is beyond the scope of this report to enter into the intricacies of the difference between direct and indirect horizontal effect, or to examine the variety of ways in which horizontality is understood in different jurisdictions.

against dereliction of duty and abuses of the law by individual citizens. For this reason, the rights of the community vis-à-vis the individual and the individual's duties corresponding to these rights do not need to be protected and given institutionalized safeguards in the same way as human rights' (Daes, 1980).

Explicit duties and responsibilities

Although many Western liberal democratic states have been reluctant to articulate duties explicitly, there are some states in which individual duties have been expressly stated. Normally such states are characterised by authoritarian regimes, either religious or socialist (Knox, 2008; Hodgson 2003; Ife, 2005; Daes, 1980). It must be noted, however, that the explicit articulation of individual duties has also been accepted to differing degrees and for differing reasons by liberal democratic states such as Australia, India, Italy, Germany, Spain, South Africa, Portugal and Poland (see appendix 3).

Whether we choose to distinguish between jurisdictions along regional, political or religious lines, it is clear from the voting records on the draft UDHR that certain states have consistently supported the entrenchment of individual duties and the broader 'responsibilities agenda'. These states can reasonably be described as having authoritarian tendencies and include Algeria, China, the Democratic Republic of the Congo, Cuba, Indonesia, Iran, Malaysia, Russia and Saudi Arabia (UN, 1999; UN, 2005; Saul, 2000; Knox, 2008). The majority of these states also have explicitly articulated conceptions of individual duties within their national constitutional systems.

Explicit duties typically find expression in three forms. The first is in a purely rhetorical manner either in titles or preambular clauses. The second is through general and frequently vague propositions. The third form is specifically articulated duties or lists of duties owed by individuals to the state.

Rhetorical references to duties

Some of the best examples of an attempt to give rhetorical recognition to the idea of duties can be found in Australia. Although Australia does not yet have a national Bill of Rights,⁹ in recent years Australian states and territories have begun to introduce human rights legislation. Notably, and despite some Australian affinity with the international responsibilities movement, the only mention of responsibilities in the Australian Capital Territory (ACT) Human Rights Act 2004 is in the preamble (see appendix 3). Similarly, the only substantive mention of responsibilities in the subsequently enacted Victorian Charter

⁹ A consultation is now ongoing regarding the possibility of a Federal Bill of Rights.

of Rights and Responsibilities 2006 is in the preamble and the title itself (see appendix 3). The Victorian Equality Opportunity and Human Rights Commission have argued that these references are not meant to have any substantive legal effect. Rather, ‘over time the Charter will help to change attitudes so that we all understand that rights come with responsibilities – including the responsibility to respect other people’s rights’.¹⁰

In response to the ACT Human Rights Act 2004, a Bill of Responsibilities was tabled in the ACT Legislative Assembly drawing on the IAC Universal Declaration discussed in chapter 2 above. This Bill was debated but, without the support of the governing Labor Party, was defeated (ACT, 2004; Kostakidis-Lianos & Williams, 2005). As a consequence, to date constitutional references to the responsibilities of individuals in Australia is limited to largely symbolic, rhetorical and educative statements.

General clauses on duties

A number of constitutions contain clauses that make general statements about individual duties (see appendix 3). These clauses vary in their specificity and in the obligations they impose. For example, the Cuban Constitution contains the rather broad general duty of ‘caring for public and social property, observing work discipline, respecting the rights of others, observing standards of socialist living and fulfilling civic and social duties’. Vaguer, and therefore perhaps less onerous, is the South African constitutional provision imposing ‘duties and responsibilities of citizenship’ on ‘all citizens’, which to date has yet to be discussed by the South African courts. As the JCHR points out, the purpose of the South African clause is highly unclear (JCHR, 2007–08a). A more anodyne example of a general clause can be found in the Portuguese Constitution, which holds citizens as ‘bearers of the rights’ and ‘subject to the duties laid out in the Constitution’. This provision only serves to reinforce the specific provisions laid out in the Constitution.

Specific duties

The third way in which individual duties arise is in the form of lists of specific duties owed by individuals to the state. Often stated that entrenched extensive lists of individual duties are authoritarian in character, the most extreme examples of this being the constitutions of the People’s Republic of China and the former USSR (see appendix 3). A number of liberal democracies have also incorporated individual duties in their constitutions. While some like Germany confine themselves to a single specific provision (parental duties), others incorporate in their constitutions lists of duties (India, Portugal, Italy, Poland, Spain). There is

¹⁰ <http://www.humanrightscommission.vic.gov.au/human%20rights/the%20victorian%20charter%20of%20human%20rights%20and%20responsibilities/#what%20is%20it>

considerable variation in both the length and detail contained in these lists. Likewise, there is some variation across jurisdictions as to the enforceability of these constitutional duties. (A full list of the provisions in each country is contained in appendix 3.)

The German constitution contains only one provision containing an explicit duty. Article 6(2) provides that ‘the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty’. This duty has been considered by constitutional theorists and the German Federal Constitutional Court to provide an inherent limitation upon the right to found a family. Thus, the Court has repeatedly argued that the right to found a family is limited by and interpreted in light of the duty to protect the welfare of the child. The constitutional duty to protect the welfare of the child also provides grounds for specific statutory obligation that can be directly imposed upon individuals (Jarass & Pieroth, 2002).

Other democratic constitutions contain more extensive lists of duties which go beyond single limitations of related rights. In these jurisdictions, however, the duties are rarely viewed as directly enforceable upon individuals. In Spain, for example, the duties contained in the different sections of the Constitution are generally regarded by constitutional lawyers as non-justiciable and incapable of being directly enforced. As such, they are frequently described as ‘improper duties’, insofar as they address public institutions rather than citizens and in the Spanish context are treated as statements of general principle (Rubio Llorente, 2001; Pérez Royo, 2000).

A similar attitude to the role and enforcement of duties is shown in Portugal. Duties contained in the Constitution are viewed as directly applicable only in exceptional cases (for example, the duty to educate your children) and typically require specific legislation before they can be enforced (Canotilho, 1998). Similarly, in Poland duties are regarded as too general to be directly imposed upon individuals and essentially declaratory in nature. Hence, constitutional duties are viewed as forming the legal source of individual statutory duties, while also providing interpretive guidance for the statutory provision in question. Polish commentators have also been clear that these duties cannot form the conditions for the exercise of any of the rights and liberties included in the Polish Constitution (Winczorek, 2000).

In contrast, in Italy the duties contained in the Constitution are not regarded as ‘improper’. Instead, constitutional lawyers argue that these duties apply directly to individuals rather than institutions and therefore impose real obligations on these individuals (De Vergottini, 2001). In this sense, duties are more than statements of principle. However, because the duties contained in the Italian Constitution are expressed in general terms, in practice the content of

these duties has been shaped by legislation. As a consequence, despite having a different constitutional status the practical impact of duties in the Italian context resembles that in Spain, Portugal and Poland – in other words, they serve as a justification for the enactment of specific legislation.

Perhaps the most extensive list of duties can be found in the Indian Constitution (see appendix 3). The inspiration for this list was the socialist Constitution of the Soviet Union. However, whereas the European constitutions containing individual duties leave constitutional lawyers to argue the case against direct enforceability, Article 37 of the Indian Constitution states explicitly that such duties are not to be regarded as directly enforceable (Subba Rao, 1992; Basu, 1973; Shukla, 1990). As various commentators have observed, the primary function of these duties is 'educative and evocative' (Subba Rao, 1992), but as Basu (1973) has explained, the 'courts may ... look at the duties while interpreting equivocal statutes which admit of two constructions ... or in interpreting the ambit of the fundamental rights themselves'.

A general overview of individual duties recognised in domestic constitutions can be seen below:¹¹

- **duty in respect of the family, including parental duties (Iran, South Korea, Venezuela, Germany, Gabon, Senegal, USSR, Italy);**
- **duty to acquire a basic formal education (China, Thailand, Dominican Republic, Venezuela);**
- **duty to work (Portugal, Italy, Dominican Republic, Costa Rica, USSR, China, North Korea, Philippines, Venezuela, Egypt, South Korea);**
- **duty to defend country/perform military service (Portugal, China, North Korea, Poland, Cuba, Thailand, South Korea, Morocco, Iran, Spain, Egypt, Turkey, Venezuela, Dominican Republic, Mexico, Finland, Italy);**
- **duty to pay taxes (China, Venezuela, Thailand, Egypt, Spain, Morocco, Italy, Turkey);**
- **duty to vote (Cuba, Venezuela, Dominican Republic, Italy, Australia);**
- **duty to preserve certain values (China, Thailand);**
- **duty to protect the environment (Thailand, USSR, Portugal, Spain, Japan).**

¹¹ This list is a brief survey of a number of countries that include specific duties in their constitutional texts. It is based on a more comprehensive study undertaken by Hodgson (2003). See also appendix 3.

4.4 Conclusion

The international and comparative analysis in this section demonstrates that duties and responsibilities have not been ignored at either the international or domestic level. However, statements of individual duties can take a variety of forms ranging from implicit duties arising from rights limitation clauses to explicitly enforceable duties. Jurisdictions with liberal democratic traditions tend, on the whole, towards implicit or rhetorical recognition of duties. When such constitutions or documents do expressly articulate duties, they normally do so either explicitly with a rights limitation clause (for example, article 10(2) ECHR and article 6(2) of the German Constitution) or in the form of indirectly enforceable statements (Italy, Spain, Portugal and Poland). In contrast, it is more common to find extensive lists of directly enforceable individual duties in constitutions with a strong authoritarian or socialist element (for example, the People's Republic of China).

5. A critical examination of individual duties

This chapter examines the moral foundation of human rights, the relationship between rights and duties, and the extent to which duties can be meaningfully expressed in law.¹² In particular, we consider whether it is possible or desirable to develop a model of individual duties with legal force.

5.1 The evidence

There is a vast body of literature on human rights, a great deal of which touches only tangentially on the issue of duties. In section 1.3 and appendix 1, we explain how we identified relevant books and articles based on a key word search of a wide array of databases and legal resources, and the criteria we used to decide whether to include or exclude particular works. Using our professional judgement, we identified the works of a number of leading rights theorists – such as Robert Alexy, Ronald Dworkin, Neil MacCormick, Joseph Raz and Jeremy Waldron – which were then used to guide our account of the relationship between rights and duties. It is important to note, however, that aside from Wesley Hohfeld few writers in the fields of legal philosophy or human rights have focused exclusively on the issue of duties. As a consequence, much of this section draws extensively on Hohfeld's analysis and works that have challenged his seminal account of the relationship between rights and duties.

5.2 The moral foundation of human rights

Contemporary thinking on the moral foundation of human rights stems from the liberal theories of the eighteenth and nineteenth century (Waldron, 2005), which played a central role in the struggle against political absolutism. Theorists such as Locke, Voltaire, Rousseau and Montesquieu were part of a movement to create a political order in which states are constrained by the recognition of the freedom and equality of citizens. The idea that a citizen's natural rights require protection from the state, and the state requires no such protection from individuals, remains central to liberal democratic philosophy.

After the Second World War and the extreme abuses of individual rights under the Third Reich, the idea of natural rights was reinvigorated and transformed into the notion of human rights. The founding of the UN and the adoption of the UDHR point to the central role that human rights played in the establishment of a post-war world order. This order was premised on a liberal theory of the individual's primacy over the state (Weston, 1992, in Steiner, Alston,

¹² See also the introduction to chapter 4 of this report.

& Goodman, 2007). The consequence of this principle is that state action must be justified in the light of human rights, while citizens do not need to justify or persuade the state that their human rights need to be respected (Dworkin, 1977). Citizens are bearers of human rights merely by virtue of the fact of being human.

While the moral recognition of human rights is one thing, rights will obtain legal protection only when they are recognised in law. What this legal incorporation implies is that the basic tenets of liberal rights philosophy have been accepted by the democratic authorities enacting these laws. It should therefore come as no surprise that the majority of democratic states do provide some legal protection for human rights.

5.3 The relationship between rights and duties

In the field of law, most jurisprudential discussions of the relationship between rights and duties begin with the analytical work of Wesley Hohfeld, who argued that rights both confer a legal advantage (as 'claim rights') and carry with them correlative duties (Hohfeld, 1923). According to Hohfeld, because the exercise of a right necessarily entails requiring someone to act (or refrain from acting) in a particular way, it follows that the right must also impose some form of duty. Applying Hohfeld to the human rights context, we can see that the correlative duty of a legal right is placed on the state. For example, the ECHR right to life imposes a correlative negative duty upon states to refrain (except in strictly limited circumstances) from taking the lives of individuals. In strictly legal terms, correlativity such as this between a claim right and a corresponding duty is the test of whether a legal stipulation is a 'right in the strict sense' (Hohfeld, 1923).

Contemporary legal theory has now produced a richer account of rights than one based on purely legal relationships between rights and duties.¹³ Indeed, most legal theorists now agree that it is more useful to view rights – particularly human rights - as giving rise to a 'cluster' of duties and obligations. These might stop the state, or private parties, from interfering in individual freedom, or they might require action or resource allocation in order for the right to be fulfilled (Fredman, 2008). These contemporary accounts of rights also draw on moral theory to capture the justificatory nature of human rights. Hence, human rights are viewed as the moral and political reasons for the imposition of rights-based duties, and as such rights have a logical priority over duties (Eleftheriadis, 2008). Duties exist, in other words, because

¹³ It is impossible to convey the intricacies and complexity of this theoretical debate in this setting. The theorists most prominent in this debate are Robert Alexy, Ronald Dworkin, Neil MacCormick, Joseph Raz and Jeremy Waldron. For a full account of the critique of Hohfeld's work on legal relations, see Eleftheriadis, 2008, chap. 6. For further texts on rights theory, see also references.

rights create the moral and political grounds for their existence. According to this view, once human rights are incorporated into law, the logical priority of rights over duties is accepted.

At this philosophical level, the notion that ‘duties precede rights’ or that rights stem from duties (HC, 1998a, Straw; HC Committee, 1998b, Gummer) is inconsistent with the liberal proposition that rights have a necessary priority over duties. This is a point that has been made by Asbjørn Eide, President of the Advisory Committee on the Council of Europe’s Framework Convention for the Protection of National Minorities, who has argued that ‘[h]uman duties should be derived from human rights, and their sole purpose should be to strengthen the respect and protection of human rights’ (Eide, 1999). At the level of legal theory, unless duties are seen as correlatives of rights and are clearly seen as subject to established rights, they will in essence signify a rejection of liberalism (respect for the individual and an insistence that state coercion must be justified).

Political arguments that duties precede rights can therefore have real consequences for constitutional and legal structures. They are not just rhetorical assertions. They challenge the liberal values that underpin human rights. In short, a real risk exists that a freestanding discourse around duties that is not concerned with rights will (whether we want it to or not) end up undermining rights. The remainder of this chapter therefore seeks to evaluate how ‘duties’ might be expressed while remaining consistent with a liberal rights project.

5.4 Types of duties

Implicit individual duties to exercise rights in certain ways

As explained in chapter 4, the limitations placed on human rights can be regarded as implied duties, specifically to exercise a given right with regard to the rights of others and certain fundamental state interests (such as public order, public safety and national security). Where we recognise such duties, the limitations they impose must be clearly laid down in legislation. For example, the right to free speech in article 10(1) ECHR might be reasonably and proportionately restricted by a law preventing the incitement of racial hatred. Such a law could be seen as giving expression to an implicit duty not to abuse freedom of expression to incite racial hatred. It is important to be very clear that absolute rights, such as the article 3 ECHR prohibition on torture and inhuman and degrading treatment, cannot be limited and thus cannot be said to carry any such implicit individual duty.

The practice of implying individual duties through limitation clauses on qualified rights is unobjectionable from the perspective of a rights-based approach. This is because it simply defines and establishes the scope of well-understood restrictions on qualified rights. Furthermore, the practice does not undermine the status of the qualified right. It is important

to distinguish this category of implicit individual duties, which arise as a result of the exercise of rights, from both correlative and non-correlative duties, which may arise both in the exercise of rights and in other circumstances.

Correlative and non-correlative duties

Legal theorists now argue that, from a rights perspective, other individual duties can be broadly divided into two categories: correlative (perfect) and non-correlative (imperfect) duties (Eleftheriadis, 2008, chap. 6). Of the two types of duty, correlative duties are the most easily understood. Both the right to life and the right to property are good examples of rights that give rise to correlative duties and would clearly lack meaning unless the law imposed and enforced these duties. By making murder and theft crimes, the law aims to ensure that these rights are respected and that individuals understand that they have a duty not to infringe them.

In contrast, non-correlative duties may exist in the absence of a specific right or may be more broadly expressed than rights to which they relate. Where a duty arises from a correlative right, the primary reason for enforcing the duty in law is to ensure that the individual right is protected and respected. That right will therefore define the ambit of the duty. Moreover, because such an anchoring right will itself be limited by the recognition of other rights, the duties that flow as a consequence will in turn be rights regarding. For example, the right to respect for privacy necessarily places limits on the right to freedom of expression. The duties that flow from these rights will as a consequence be defined by such rights-based limitations. However, in the case of non-correlative duties, the absence of underlying rights means that this rationale for enforcing a duty disappears, and with it the inherent constraints on that duty. The non-correlative duty is owed to the state alone, and the rationale for imposing that duty is either disconnected from any right or is broader ranging than ensuring the protection of an individual right. An example of a non-correlative duty disconnected from any right is contained in article 29(2) of the African Charter, which states that an individual must 'serve his national community by placing his physical and intellectual abilities at its service'.

Non-correlative duties may, however, bear some relationship to recognised human rights. One example of such a duty might be the duty to defend your country through military service. While this is not an individual duty directly correlative on an individual right, it might be argued that imposing such a duty is an indirect means by which the state discharges its positive duty to protect the right to life of individuals. What is important here, however, is that an individual's right to life would not be infringed merely because the state did not impose such a duty or because an individual failed to fulfil their duty to undertake military service. The absence of a direct relationship between the individual's right to life and the duty to

undertake military service gives rise to indeterminacy as to the scope of the duty and the extent to which it can be understood in terms of the right to life. Does the right require an individual to serve in the military for ten years to discharge his or her duty? Would two years be enough? The answer is evidently not as clear as it might be, for example, when we argue that an individual has a clear and directly correlative moral duty not to murder another individual by virtue of their right to life.

Some non-correlative duties are difficult to attach to rights at all. For example, a more explicitly freestanding duty might be the 'duty to work' or the 'duty to safeguard the unity of a country'. The justifications for imposing such duties might be found in either political or economic expediency, which is likely to mean that the ambit of such duties is not constrained by any associated rights. Hence, when a duty conflicts with a right, its relationship with the enshrined right will be unclear. For example, would the duty to safeguard the unity of a country extend to the silencing of all political criticism? Such questions are difficult to answer in the absence of a right that anchors the duty. Freestanding duties that exist without rights-based justification will as a consequence not necessarily be subject to limitations required by enshrined rights.

Contingency and correlativity

It is equally important to be clear about the distinction between correlativity and contingency in the context of rights and duties. Correlativity exists when a duty can be said to be the inevitable, logical product of a specific right. However, it does not necessarily follow that our enjoyment of that same right (or other rights) is contingent on fulfilment of the correlative duty. Statements about contingency almost always constitute statements about the conditions upon which rights are to be protected or denied. This is exemplified in the statement that we must 'exercise our rights responsibly'. Such a statement is not confined to asserting the existence of inevitable, logical correlatives of rights, and readily encompasses a broad range of circumstances as to how a given right should be restricted and when – in extreme cases – it should be denied. The phrase has the potential to introduce contingency were it considered justiciable.

It is important to recognise this distinction between correlativity and contingency if we are to avoid muddying discussions about the proper relationship between rights and duties with political and moral arguments about the appropriate limits of rights. This danger is particularly acute where duties are discussed in the absence of any reference to specific rights or any other explicit or specifically grounding principle. For example, while the claim that all individuals have a duty to obey the law may on its face appear uncontroversial, it is open to a number of potentially problematic interpretations. As a consequence, we need to be very

clear about where the duty to obey the law comes from, what should happen when it is breached, and how it relates to the rights we wish to protect. Speaking about the duty to obey the law independently of rights leaves open the question of contingency and gives rise to unexamined conclusions about the supposed relationship between specific rights and duties. For example, it is not inconceivable that some might – incorrectly – conclude that the failure to discharge a general duty to obey the law should result in a limitation on the right to due process.

In light of these possibilities, it is essential to be clear about the risks associated with even rhetorical or aspirational statements about duties. Unless statements about the importance of duties are grounded in an account of rights that explicitly recognises the distinction between correlativity and contingency, and place rights and duties in the correct order, then we risk undermining rights by implying that the fulfilment of duties is an essential prerequisite to the enjoyment of certain rights.

5.5 Enforcing duties: justiciability

Assuming we recognise the existence of duties and articulating their relationship to rights, the question then arises as to whether such duties should be legally enforceable. As has already been noted in chapter 4, it is very rare for states to move from acknowledging the importance of duties to making them justiciable and directly enforceable. There are three main reasons why this has been the case.

First, as has already been noted, any move towards a greater emphasis on duties inevitably raises the spectre of contingency and with it the risk of undermining established human rights protections. Second, it is unclear as to what kinds of duties can in fact be justiciable. General duties – such as the duty to obey the law, for example – are simply too broad to be the subject of meaningful legal action, in part because it would be extremely difficult to define the limits of such a duty or agree on what the sanction for breach of such a duty would be.

The third and perhaps most compelling reason why the majority of states have avoided making duties justiciable is because few have seen the need to do so. Most jurisdictions have well-developed, relatively settled systems of public and private law that govern the relationships between individuals and between individuals and the state, systems which typically predate the legal recognition of human rights and the establishment of frameworks to protect them. For example, the common law doctrine of negligence sets out detailed rules and principles that determine when a duty is owed, the standard of conduct required in order to fulfil that duty, and what happens when it is breached. Given that most duties capable of clear legal definition are already recognised and enforced by law, it is difficult to see what

would be achieved by formally recognising a set of duties outside the law of torts. Instead, such a move may lead to confusion – both in the minds of lawyers and the general public – and place a heavy burden on the courts to determine the limits of any such duties and their place within existing human rights frameworks.

5.6 Conclusion

Given that most human rights scholars accept that duties are inseparable from rights and that their observance is crucial to the development and protection of those rights, few would argue against the recognition of duties per se. That said, it is rare to encounter a call for those duties to be made explicit or given a substantive legal meaning. Aside from the fact that such an exercise would be extremely difficult, many commentators are rightly wary of implying that rights are somehow contingent on duties or responsibilities. No matter how well intentioned, there is always the possibility that a court or public body may mistake the statement of a duty as a call for it to be made a precondition for the exercise of a right.

This being the case, the question arises as to what is likely to be achieved through any effort to set out the duties that attach to particular rights. Although it can be argued that articulating such duties may help the public to better understand the role played by rights in the legal system and counter concerns that rights are overly individualistic and undermine social cohesion, there is always a risk that any statement of duties will become the focus of attempts to give it legal meaning. Moreover, articulating such duties may also give the false impression to lay citizens that there is some contingent relationship between rights and duties. Having identified these risks, the next section will provide a series of concluding recommendations about how best to approach the question of duties while maintaining a clear commitment to the centrality of human rights.

6. Conclusion

This report has examined the relationship between rights and responsibilities, described the surrounding debates both in the UK and internationally, and surveyed the duties expressed in international and domestic law. Although this report is not intended to serve as a direct response to the proposals contained in the Green Paper, its findings point to a number of general conclusions that may help to frame any future discussion of the proper role of responsibilities in the UK.

The first of these conclusions is that many duties are already recognised and enforced throughout UK law, and they are also implicit in the exercise of rights under the Human Rights Act. That said, at present there is no general duty to respect the rights of others as laid out in a number of international treaties and various domestic constitutions. While some may view such a duty as superfluous, its potential value lies in the fact that it reinforces our shared commitment to the importance of rights and recognises that the exercise of these rights should be constrained by respect for other rights. To this extent, the principle gives expression to the liberal commitment to the priority of rights over duties, while also reinforcing the idea that we all have a duty to respect the rights of others. Such a duty to respect the rights of others is to be preferred to a duty to ‘exercise rights responsibly’, which confuses the moral appeal of living a responsible life with the existence of a legally enforceable duty. Moreover, to the extent that the law exists to protect individual rights, the duty to respect the rights of others might also be said to encompass a duty to obey the law. In this sense, the duty to respect the rights of others may be preferable to the more coercive and less nuanced obligation to obey the law.

The second conclusion of this report is that there is little to be gained from incorporating lists of specific duties into any proposed written constitution or Bill of Rights. Instead, this report suggests that the proper place for any statements about responsibilities is in the preamble to any such document. This approach not only ensures that such statements are seen as educative and aspirational but also guards against the risk of misinterpretation and any suggestion that such duties should be regarded as justiciable and directly enforceable against individuals.

Finally, this report concludes that if Parliament decides that certain duties should be incorporated into the main text of any new written constitution or Bill of Rights, then precautions should be taken to safeguard the commitment to non-justiciability contained in the Green Paper. In particular, we should avoid including specific or general duties that

cannot be linked either directly or indirectly to fundamental rights. General clauses should in particular be avoided on the grounds that they are particularly vulnerable to opening up the possibility of contingency. In addition, when there is a risk that the wording of a non-correlative specific duty may give rise to suggestions of contingency, then we must ensure that the duty is narrowly interpreted and make clear that the ability to exercise the right can never be constrained by reference to a non-correlative duty. One way to safeguard against the risks of contingency or direct enforceability is to follow the example of the Indian Constitution and incorporate a clause expressly stating that duties are not directly enforceable.

Underpinning all of these conclusions is the idea that the best way to avoid the risks of contingency is to ensure that duties are based on and derived from rights. Put another way, any debate on the role of responsibilities must always be conducted in the context of a continuing and robust commitment to the protection and advancement of fundamental human rights.

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American Declaration on Rights and Duties of Man (1948) – article XXVII & chapter II.

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) – preamble and articles 18(1), 18(2) & 18(3).

European Convention on Human Rights (1950) – articles 10 & 17.

International Covenant on Civil and Political Rights (1966) – preamble.

International Covenant on Economic, Social and Cultural Rights (1976) – preamble.

Universal Declaration of Human Rights (1948) – article 29.

Domestic law provisions

Australian Capital Territory (ACT) Human Rights Act 2004 – Fifth Preambular Clause.

Victorian Charter of Rights and Responsibilities 2006 – Second Preambular Clause.

Constitution of the People's Republic of China 1982 – chapter II (articles 33, 51, 52, 53, 54, 55 & 56).

Basic Law for the Federal Republic of Germany 1949 – article 6.

Constitution of the Republic of Cuba 1992 – article 64.

Constitution of India 1949 – part IV (clause 37) & part IVA (article 51(a)).

Constitution of the Italian Republic 1947 – articles 4, 29, 30, 31, 32, 33 & 34.

Constitution of the Republic of Poland 1997, preamble, chapter II (articles 82, 83, 85, 86).

Portuguese Constitution of 1976 – part I (articles 12, 36, 49, 64, 66, 106, 116 & 276).

The Constitution of the Republic of South Africa 1996 – section 3(2)(b).

Constitution of Spain 1978 – articles 30, 35 & 45.

Constitution of the USSR 1977 – article 59.

Constitution of Russia 1993 – chapter II.

Appendix 1: Methodology

This report draws on a wide range of international and domestic human rights documents, government and non-governmental reports, and academic writings. Following an initial decision to look at both international and national discussions of the relationship between rights and responsibilities, the authors used a variety of academic databases to produce a list of available writings on the topic. Among those databases consulted were:

- Australian Law Online
- Oxford University e-Journals
- Electronic Information System for International Law (EISIL)
- EurLEX
- Europa
- European Sources Online
- Firstpoint
- FLAG (Foreign Law Guide)
- Global Legal Information Network (GLIN)
- Hansard
- HeinOnline
- House of Commons Parliamentary Papers
- Index to Foreign Legal Periodicals
- Index to Legal Periodicals
- Justis
- LexisNexis Butterworths
- Official Document System of the United Nations
- Social Science Research Network (SSRN)
- United Nations Treaty Collection
- Westlaw
- WorldLII

Using these databases the authors conducted a systematic literature review based on key words associated with the key research questions. Initially, the keywords **constitutional duties, constitutional responsibilities, constitutional obligations, international law duties, international law responsibilities** and **international law obligations** were used. After reviewing the abstracts of the available literature, the authors narrowed down the literature selection to pieces that focused on the constitutional duties, responsibilities and obligations that apply to (or potentially apply to) individuals rather than states.

Based on this initial search, we identified a long list of potentially relevant academic literature. While a great many of these works touched on the issue of constitutional responsibilities, in the majority of cases the discussion in question was relatively brief or confined to jurisprudential discussions of the meaning of duty and obligation. Following a preliminary reading of these works, however, we were able to identify a number of leading

books and articles in the field that examine the relationship between rights and responsibilities in detail. These include:

- (1) Daes, E. (1980) *Freedom of the Individual Under Law: A Study on the Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights*;
- (2) Eleftheriadis, P. (2008) *Legal Rights*;
- (3) Etzioni, A. (1995) *The Spirit of Community: Rights, Responsibilities and the Communitarian Agenda*;
- (4) Glendon, M. A. (1991) *Rights Talk: The Impoverishment of Political Discourse*;
- (5) Hodgson, D. (2003) *Individual Duty within a Human Rights Discourse*;
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- (8) Petrasek, D. (1999) *Taking Duties Seriously: Individual Duties in International Human Rights Law*;
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- (11) Steiner, H., Alston, P. & Goodman, R. (2007) *International Human Rights in Context: Law, Politics and Morals* (3rd ed.);
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The report develops its analysis at three levels, and the research methodology was adapted to each. First, at the level of political and ideological analysis, the report examines the origins of the rise of the responsibilities movement, both internationally and within the UK. The materials selected in this area were primarily political analysis articles and political philosophy associated with the responsibilities movement (eg Etzioni, 1995). In addition, official and NGO publications and records of relevant political debates at the international and domestic level were especially important in developing an account of the origins of the responsibilities movement internationally and in the UK.

Second, at the level of legal analysis, the report surveys international law provisions regarding individual duties, as well as similar examples within domestic jurisdictions. Legal materials were compiled using secondary literature as an initial guide and also using legal databases directly. A comprehensive list was compiled of jurisdictions and international law materials that include references to duties and responsibilities. The authors took the view that the main international and regional human rights treaties were clearly of significance to the discussion. Regarding domestic jurisdictions, the authors drew a clear distinction between jurisdictions with authoritarian characteristics and those that could be classified as democratic liberal states. While the report notes on several occasions that jurisdictions with authoritarian regimes have been more likely to include comprehensive lists of responsibilities and duties in their constitutions, these jurisdictions are not examined in detail here. Rather, the report takes a closer look at those jurisdictions that the authors determined 'comparable'

with the UK. The authors took the view that comparable jurisdictions would need in the first instance to be characterised as democratic liberal states and should in addition fall under one of the following inclusion criteria:

- Common law jurisdictions;
- Member States of the European Union;
- Commonwealth jurisdictions;
- Anglo-American jurisdictions.

Finally, the report takes a theoretical approach to the idea of responsibilities, drawing on well-established legal and moral theories on human rights. This part of the report drew most heavily on analytical literature. The primary inclusion criterion at this level of research was that of 'scholastic reputation in the field', a criterion which was strongly guided by the authors' professional judgement, developed during long experience of teaching and researching in the area of human rights and human rights theory. The authors were also particularly pleased to have leading rights theorists amongst their peer reviewers, who offered extensive feedback on the field.

Appendix 2: Key international provisions

This appendix contains extracts from the main international treaties and conventions referred to in the report. All documents are listed in alphabetical order.

(1) African Charter on Human and People's Rights (1981)

Article 27:

Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.

Article 29 specifies the following duties:

- 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 threatened;
- 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.

(2) American Convention on Human Rights (1969)

Article 32:

- 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.

The American Convention on Human Rights replaced the:

(2a) American Declaration of the Rights and Duties of Man (1948)

Article XXVIII - Scope of the Rights of Man

The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

Chapter two - Duties

Article XXIX - Duties to society

It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.

Article XXX - Duties toward children and parents

It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.

Article XXXI - Duty to receive instruction

It is the duty of every person to acquire at least an elementary education.

Article XXXII - Duty to vote

It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

Article XXXIII - Duty to obey the law

It is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be.

Article XXXIV - Duty to serve the community and the nation

It is the duty of every able-bodied person to render whatever civil and military service his country may require for its defense and preservation, and, in case of public disaster, to render such services as may be in his power.

It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Article XXXV - Duties with respect to social security and welfare

It is the duty of every person to cooperate with the state and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances.

Article XXXVI - Duty to pay taxes

It is the duty of every person to pay the taxes established by law for the support of public services.

Article XXXVII - Duty to work

It is the duty of every person to work, as far as his capacity and possibilities permit, in order to obtain the means of livelihood or to benefit his community.

Article XXXVIII - Duty to refrain from political activities in a foreign country

It is the duty of every person to refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien.

(3) 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)

Preamble:

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international level.

Article 18(1):

Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

Article 18(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.

Article 18(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 rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

(4) European Convention on Human Rights (1950)

Article 10:

- 1** Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2** The exercise of such freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 17:

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or 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.

(5) International Covenant on Civil and Political Rights (1966)

Preamble:

[T]he 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.

(6) International Covenant on Economic, Social and Cultural Rights (1976)

Preamble:

[T]he 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.

(7) Universal Declaration of Human Rights (1948)

Article 29:

- 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 of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Appendix 3: Key domestic law provisions

This appendix contains extracts from the main domestic constitutions referred to in the report. All documents are listed in alphabetical order.

(1) Australia

Australian Capital Territory Human Rights Act 2004

The fifth preambular clause reads: 'This Act encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others'.

Victorian Charter of Rights and Responsibilities (2006)

The second preambular clause reads: '...human rights come with responsibilities and must be exercised in a way that respects the human rights of others'.

(2) China

The Constitution of the People's Republic of China (1982), Chapter II: The Fundamental Rights and Duties of Citizens

Article 33: All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.

Article 51: The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.

Article 52: It is the duty of citizens of the People's Republic of China to safeguard the unity of the country and the unity of all its nationalities.

Article 53: Citizens of the People's Republic of China must abide by the constitution and the law, keep state secrets, protect public property and observe labour discipline and public order and respect social ethics.

Article 54: It is the duty of citizens of the People's Republic of China 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.

Article 55: It is the sacred obligation of every citizen of the People's Republic of China to defend the motherland and resist aggression. It is the honourable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law.

Article 56: It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law.

(3) Germany

Basic Law for the Federal Republic of Germany (1949)

Article 6: Marriage and the Family; Children Born outside of Marriage

- 1 Marriage and the family shall enjoy the special protection of the state.

- 2 The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.
- 3 Children may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect.
- 4 Every mother shall be entitled to the protection and care of the community.
- 5 Children born outside of marriage shall be provided by legislation with the same opportunities for physical and mental development and for their position in society as are enjoyed by those born within marriage.

(4) Cuba

Constitution of the Republic of Cuba (1992)

Article 64: Every citizen has the duty of caring for public and social property, observing work discipline, respecting the rights of others, observing standards of socialist living and fulfilling civic and social duties.

(5) India

Constitution of India (1949)

Part IV-A: Fundamental Duties

Article 51(a) states: It shall be the duty of every citizens of India

- a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- c) to uphold and protect the sovereignty, unity and integrity of India;
- d) to defend the country and render national service when called upon to do so;
- e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- f) to value and preserve the rich heritage of our composite culture;
- g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- i) to safeguard public property and to abjure violence;
- j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Subject to Part IV clause 37

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

(6) Italy

Constitution of the Italian Republic (1947)

[Part 0] Fundamental Principles

Article 4: Work

- 1** The republic recognizes the right of all citizens to work and promotes conditions to fulfil this right.
- 2** According to capability and choice, every citizen has the duty to undertake an activity or a function that will contribute to the material and moral progress of society.

Title II: Ethical and Social Relations

Article 29: Marriage

- 1** The family is recognized by the republic as a natural association founded on marriage.
- 2** Marriage entails moral and legal equality of the spouses within legally defined limits to protect the unity of the family.

Article 30: Parental Duties and Rights

- 1** Parents have the duty and right to support, instruct, and educate their children, including those born out of wedlock.
- 2** The law provides for the fulfilment of those duties should the parents prove incapable.
- 3** Full legal and social protection for children born out of wedlock is guaranteed by law, consistent with the rights of other family members.
- 4** Rules and limits to determine paternity are set by law.

Article 31: Family

- 1** The republic furthers family formation and the fulfilment of related tasks by means of economic and other provisions with special regard to large families.
- 2** The republic protects maternity, infancy, and youth; it supports and encourages institutions needed for this purpose.

Article 32: Health

- 1** The republic protects individual health as a basic right and in the public interest; it provides free medical care to the poor.
- 2** Nobody may be forcefully submitted to medical treatment except as regulated by law. That law may in no case violate the limits imposed by the respect for the human being.

Article 33: Freedom of Arts, Science and Teaching

- 1** The arts and sciences as well as their teaching are free.
- 2** The republic adopts general norms for education and establishes public schools of all kinds and grades.
- 3** Public and private bodies have the right to establish schools and educational institutes without financial obligations to the state.

- 4 The law defining rights and obligations of those private schools requesting recognition has to guarantee full liberty to them and equal treatment with pupils of public schools.
- 5 Exams are defined for admission to various types and grades of schools, as final course exams, and for professional qualification.
- 6 Institutions of higher learning, universities, and academies have the autonomy to establish by-laws within the limits of state law.

Article 34: Education

- 1 Schools are open to everyone.
- 2 Primary education, given for at least eight years, is compulsory and free of tuition.
- 3 Pupils of ability and merit, even if lacking financial resources, have the right to attain the highest grades of studies.
- 4 The republic furthers the realization of this right by scholarships, allowances to families, and other provisions, to be assigned through competitive examinations.

(7) Poland

Constitution of the Republic of Poland (1997)

Preamble:

Citizens Equal in rights and obligations towards the common good...

Chapter II: The Freedoms, Rights and Obligations of Persons and Citizens (General Principles – Obligations)

Article 82:

Loyalty to the Republic of Poland, as well as concern for the common good, shall be the duty of every Polish citizen.

Article 83:

Everyone shall observe the law of the Republic of Poland.

Article 84:

Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute.

Article 85:

- 1 It shall be the duty of every Polish citizen to defend the Homeland.
- 2 The nature of substitute service shall be specified by statute.
- 3 Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute.

Article 86:

Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.

(8) Portugal

Constitution of Portugal (1976), Part I: Fundamental Rights and Duties

Article 12: Principle of Universality

- 1** All citizens enjoy the rights and are subject to the duties laid down in the Constitution.
- 2** Bodies corporate enjoy such rights and are subject to such duties as are compatible with their nature.

Article 36: Family, Marriage, and Filiation

- 1** Everyone has the right to found a family and marry on terms of complete equality.
- 2** The requirements for and effects of marriage and its dissolution by death or divorce are regulated by law without distinction as to the form in which the marriage is or was contracted.
- 3** Spouses have equal rights and duties with respect to their civil and political capacity as well as the maintenance and upbringing of their children.
- 4** Children born out of wedlock may not for that reason be the subject of discrimination; discriminatory designations of filiation may not be used by the law or by Government departments.
- 5** Parents have the right and the duty to bring up and maintain their children.
- 6** Children are not to be separated from their parents unless the latter fail to perform their fundamental duties towards the former, and then only by judicial decision.
- 7** Adoption is regulated and protected in accordance with the law.

Article 49: Right to Vote

- 1** All citizens who are over 18 years of age have the right to vote, except for the incapacities laid down in general law.
- 2** The exercise of the right to vote is personal and constitutes a civic duty.

Article 64: Health

- 1** Everyone has the right to protection of his or her health and the duty to defend and foster it.
- 2** The right to health protection is to be met by:
 - a)** A universal and general national health service that, taking into account the economic and social conditions of the citizens, tending to be free of charge;
 - b)** The creation of economic, social, and cultural conditions securing the protection of children, the young, and the old; the systematic improvement of living and working conditions; the promotion of physical fitness and sports in school and among the people; the development of the people's sanitary education.
- 3** In order to secure the right to health protection, the State has prime duty to:
 - a)** Secure the access of all citizens, regardless of their economic condition, to preventive as well as curative and rehabilitation medical care;

- b)** Secure a rational and efficient medical and hospital coverage of the whole country;
 - c)** Direct its action towards the socialization of the costs of medical and medico-pharmaceutical care;
 - d)** Control and supervise medicine practiced in partnership and privately, coordinating it with the national health service;
 - e)** Control and supervise the production, marketing and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis.
- 4** The national health service has a decentralized management in which the beneficiaries take part.

Article 66: Environment and Quality of Life

- 1** Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it.
- 2** It is the duty of the State, acting through appropriate bodies and having recourse to or taking support on popular initiatives, to:
- a)** Prevent and control pollution, its effects and harmful forms of erosion;
 - b)** Order and promote regional planning aimed at achieving a proper location of activities, a balanced social and economic development, and resulting in biologically balanced landscapes;
 - c)** Create and develop natural reserves and parks and recreation areas and classify and protect landscapes and sites so as to ensure the conservation of nature and the preservation of cultural assets of historical or artistic interest;
 - d)** Promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability.

Article 106: Fiscal System

- 1** The fiscal system aims at satisfying the financial needs of the State and other public bodies, as well as a fair partition of the incomes and the wealth.
- 2** Taxes are created by law, which determines the incidence rates, concessions, and safeguards for taxpayers.
- 3** No one may be compelled to pay taxes which have not been created as provided in the Constitution and whose settlement and collection are not effected in the forms laid down by law.

Article 116: General Principles of Electoral Law

- 1** Direct, secret, and regular elections are the general rule in appointing the members of the elected organs of supreme authority, the autonomous regions, and local government.
- 2** Registration of electors is compulsory and permanent and does not serve any other purpose. There is a single registration system for all elections by direct universal suffrage.
- 3** Election campaigns must observe the following principles:
- a)** Freedom of propaganda;
 - b)** Equality of opportunity and treatment for the various candidates;
 - c)** Impartiality towards candidates on the part of public bodies;
 - d)** Supervision of vote-counting.

- 4 Citizens have the duty to collaborate with the elections administration in the forms laid down by law.
- 5 Votes cast are converted into effective suffrage in accordance with the principle of proportional representation.
- 6 Acts dissolving corporate organs based on direct suffrage set the date of the new elections, to be held in the following ninety days and in accordance with the electoral law in force at the time of dissolution, otherwise the said acts are legally null and void.
- 7 The courts are competent to judge the regularity and validity of acts of electoral procedure.

Article 276: Defence of the Country, Military, and Civic Service

- 1 The defence of the country is a fundamental right and a fundamental duty of every Portuguese.
- 2 Military service is compulsory, for a period and on conditions laid down by law.
- 3 Persons considered unfit for armed military service perform unarmed military service or civic service suited to their situations.
- 4 Conscientious objectors perform civic service of a length and difficulty equivalent to that of armed military service.
- 5 Civic service may be established as a substitute for or as a complement to military service and may be made compulsory by law for citizens not subject to military service.
- 6 No citizen may keep or obtain any office in the State or in any other public body if he fails to perform his military service or civic service, if compulsory.
- 7 Performance by a citizen of military service or compulsory civic service is without prejudice to his social security benefits or permanent career.

(9) South Africa

Constitution of the Republic of South Africa (1996)

Section 3(2)(b):

All citizens are equally subject to the duties and responsibilities of citizenship.

(10) Spain

Constitution of Spain (1978)

Article 30: Military, Civilian, Emergency Duties

- 1 Citizens have the right and the duty to defend Spain.
- 2 The law shall determine the military obligations of Spaniards and shall regulate, with all due guarantees, conscientious objection as well as other causes for exemption from compulsory military service, and it may, when appropriate, impose a substitute social service.
- 3 A civilian service may be established for the accomplishment of objectives of general interest.
- 4 The duties of citizens in cases of serious risk, catastrophe, or public calamity may be regulated by law.

Article 35: Work

- 1** All Spaniards have the duty to work and the right to work, to the free election of profession or office career, to advancement through work, and to a sufficient remuneration to satisfy their needs and those of their family, while in no case can there be discrimination for reasons of sex.
- 2** The law shall regulate a statute for workers.

Article 45: Environment

- 1** Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.
- 2** The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.
- 3** For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.

(11) Former USSR

The **1936 USSR Constitution** contained a list of individual rights followed by a list of individual duties, including: to respect the rules of socialism; performance of military service; and maintaining labour discipline (articles 120–33).

The subsequent **1977 USSR Constitution** similarly contained a list of individual rights and individual duties (Chapter 7: The Basic Rights, Freedoms and Duties of Citizens of the USSR). Article 59 laid down the relationship between rights and duties, stating: 'Citizens' exercise of their rights and freedoms is inseparable from the performance of their duties and obligations'.

Notably, the current **Russian Constitution (1993)** has removed 'duties' from the title of the section dealing with rights (Chapter 2: Rights and Freedoms of Man and Citizen) and retains only individual duties to defend the homeland and to perform military service.

Ministry of Justice Research Series 18/09

The Relationship between Rights and Responsibilities

This report examines the idea of constitutional responsibilities within the context of the current debate on a new Bill of Rights and Responsibilities and is based on a comprehensive survey of legal and philosophical writings on the relationship between rights and responsibilities and an examination of how responsibilities have been recognised in international and national human rights instruments. The report concludes that responsibilities are already inherent in human rights, and that the risks of explicitly recognising responsibilities need to be carefully weighed against their potential benefits.

ISBN: 978 1 84099 331 8

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