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Teaching and Learning about Human Rights

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Human rights: what do we need to know?

The first item of knowledge in the citizenship programmes of study at key stages 3 and 4 is: 'the legal and human rights and responsibilities underpinning society'. It is perhaps for this reason, amongst others, that human rights seems to be one of the most common topics covered in citizenship in secondary schools. In fact these nine words constitute a considerable agenda that I will explore in this article.

First, two kinds of rights are mentioned: legal rights and human rights. Second, these two sets of rights are linked to responsibilities. Thirdly, the phrase seems to claim that rights and responsibilities underpin society. I will examine these three propositions in turn.

A legal right is a right that is protected or regulated by law. For example, in the UK, legally resident parents or carers of young children are entitled to receive child benefit. They do not have to be good parents, or tax payers, or British citizens or the child's parents. They do not have to promise to do anything in return and they do not have to demonstrate that they have spent the money on the child. Entitlement to this benefit is a legal right. It is not a human right.

Although there is naturally an expectation that parents and carers will use child benefit responsibly, the right does not depend on people accepting their responsibilities. The same applies to human rights. Even the most deprived criminals are entitled to fair treatment and due process. In fact it is the state and its agents (including, of course, teachers) that have responsibilities to ensure fairness, non-discrimination and respect for personal dignity.

This is not to deny that education and citizenship education in particular should encourage a profound sense of responsibility. Society, whether the microcosm that is the school or other communities including cities and nations, functions best when citizens feel a sense of responsibility to each other and to society. I have researched attempts to draw up a list of universal responsibilities and I have proposed a synthesis for discussion

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(Osler & Starkey, 2005). However, although an expectation of responsible behaviour is included in human rights instruments (e.g. article 29 of the Universal Declaration), rights are entitlements irrespective of whether individuals behave responsibly. They are not conditional.

Human rights come in two forms: those that are legal rights and those that are not. Some forms of legal protection are relatively powerful; others may be weaker or subject to abuse. The powerful sources of legal protection are those covered by a convention. The European Convention on Human Rights and Fundamental Freedoms (1950) is very powerful in this respect, particularly in the UK where it was brought directly into UK law through the 1998 Human Rights Act. Before explaining how this legal protection operates and what it covers, I will review the main human rights instruments relevant to people living in the UK.

The Universal Declaration of Human Rights

The modern conception of human rights dates from the 1940s. The appalling abuses of human dignity and the disrespect for human life epitomised by the Holocaust, were so shocking to popular opinion that the governments of the Allied Powers and neutral states were encouraged to form a new organisation, the United Nations (UN), with a commitment to justice and peace in the world. The Charter of the UN was signed in 1945 and it proclaims respect for human rights as the means to achieving world peace. At this stage human rights were not precisely defined and a Human Rights Commission was established to undertake the work of drafting the Universal Declaration of Human Rights (UDHR), which was proclaimed by the General Assembly of the UN meeting in Paris on 10 December 1948.

The main innovation of the UDHR is that it recognises, for the first time, a *universal* entitlement to rights applying to all 'members of the human family'. Previously, because of a concern for national sovereignty, states were immune from external control or moral pressure when they enacted discriminatory legislation or allowed their agents freedom to undertake extra-judicial killings or torture. The UDHR has huge moral stature deriving from a virtually universal acceptance that it is well founded and constitutes minimum standards for human behaviour and the conduct of governments. This universal acceptance was confirmed at the World Conference on Human Rights held in Vienna in 1993 (Reoch, 1994). As an example, this moral status is used daily by supporters of Amnesty International whose letter-writing members politely but firmly request ministers, officials and heads of government to be respectful of human rights. They have had success even with the most authoritarian of regimes.

As a Declaration of the UN General Assembly, the UDHR has little legal force, but huge moral force, not because it comes from the UN, but because there is agreement across national, religious and cultural boundaries that it sets out the minimum standards for human expectations and behaviour and for the responsibilities of governments. It has been described as: 'the most important and revolutionary document of the last

millennium' (Kennedy, 2000:xiv). It is thus the fundamental human rights text, usually referred to specifically in subsequent and legally more powerful conventions.

The universality of the UDHR has sometimes been questioned, but it has been increasingly recognised as providing basic principles for people and governments. The People's Republic of China incorporated respect for human rights into its constitution in 2004. From the outset the UN Commission on Human Rights sought contributions from the widest range of religious, philosophical and national perspectives.

The Commission consisted of 18 members. John Humphrey, a Canadian, prepared the first draft of the Declaration and Rene Cassin of France, Eleanor Roosevelt of the USA, Dr. Charles Malik of Lebanon and Dr. P.C. Chang of China all contributed. The text was considered at a great number of meetings of the General Assembly, being adopted only at the 183rd session. Latin American countries took a keen interest in the proceedings and the Declaration was adopted by 48 votes to none with 8 abstentions, notably the Soviet block, South Africa and Saudi Arabia.

The preamble to the UDHR sets out the aims of the Declaration, namely to contribute to 'freedom justice and peace in the world'. This is to be achieved by the universal recognition of and respect for human rights. Human rights are then precisely defined in 30 articles. There are many ways of conceptualizing and ordering the articles of the Universal Declaration, but that proposed by Rene Cassin himself has the merit of a mnemonic. Cassin sees the Declaration as resembling a classical Greek portico, such as that used in the logo of UNESCO (see figure 1).

The foundations are the preamble and the first article:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The four pillars of the Universal Declaration are:

- personal rights (life, freedom, security, justice) in articles 2 to 11;
- rights regulating relationship between people (freedom of movement, rights to found a family, asylum, nationality, property) in articles 12 to 17;
- public freedoms and political rights (thought, religion, conscience, opinion, assembly, participation, democracy) in articles 18 to 21;
- economic, social and cultural rights (social security, work, equal wages, trade unions, rest and leisure, adequate standard of living, education, cultural life) in articles 22 to 27.

To cap the edifice (articles 28-30) there is the pediment of an international order essential for the realization of rights and the understanding that rights imply duties to the community and freedoms do not extend to those actions which jeopardize the rights of others.

The European Convention on Human Rights and Fundamental Freedoms

Unlike a Declaration, which has only moral force, a Convention is a legally binding treaty that signatory states are obliged to respect. Following the founding of the United Nations, a number of states in Europe determined to create a regional organisation, to foster European unity on the basis of a common commitment to liberal democracy and human rights. The Council of Europe was founded by the Treaty of London in 1949. The Conservative war-time prime minister Winston Churchill was one of its most enthusiastic supporters. At its foundation the Council had ten member states. Turkey joined in 1950. By 2006 there were 44 member states, including all 27 member states of the European Union.

The European Convention on Human Rights and Fundamental Freedoms (ECHR) was opened for signature in 1950. Ratifying the Convention obliges member states to observe certain of the human rights in the Universal Declaration, notably those essential for the preservation and working of a participatory democracy. Denial of such rights is the hallmark of a non-democratic regime. In summary the rights in the ECHR are:

Personal rights

- the right to life liberty and security of person, including the enjoyment of family life and possessions and privacy in the home and in correspondence
- the right to a fair trial
- the right to education

Fundamental freedoms

- freedom of thought conscience and religion
- freedom of expression (including for the press)
- freedom of peaceful assembly and association the right to form trade unions

Prohibition of:

- torture and inhuman or degrading treatment, including slavery and forced labour
- retro-active criminal legislation
- the death penalty
- expulsion or refusal of entry to nationals
- collective expulsion of aliens.

Individuals who consider that any of these rights have been violated, can, when they have exhausted all national legal remedies, take their cases to the European Court of Human Rights in Strasbourg, France. However, because of the powerful legal guarantees provided in the ECHR, the rights are carefully drafted and include a number of exceptions. So, for instance, the right to life does not extend to the accidental shooting of a suspect by a police officer attempting a lawful arrest.

The Human Rights Act

The Human Rights Act (HRA) of 1998 brings the ECHR into British law. This means that the rights and freedoms listed above must be taken into account by law makers and

by judges. In principle, there is no longer a need to appeal to Strasbourg, since British judges and the Crown Prosecution Service must take into account possible human rights abuses. Since the ECHR applies to any individual coming under British jurisdiction, it protects non-citizens as much as citizens.

Since all spheres of government and the judiciary are obliged to act within the framework of the ECHR, the HRA may be considered to be a constitutional document. It sets the rights and freedoms within the context of the Universal Declaration, which is specifically referenced in the preamble. I would therefore argue that the British constitution is now based explicitly on a commitment to upholding and protecting human rights. It follows that any contemporary discussion of British values is able to draw on human rights as minimum standards for living together. This would appear to be the meaning of the phrase: 'human rights and responsibilities underpinning society' in the programmes of study.

The United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (CRC) was opened for signature in 1989 and has been ratified by virtually every member state of the UN. The universal acceptance of this binding commitment to respect children's rights is another strong indicator that human rights are not ideological and associated merely with the West or the North, but that they provide a universal standard for children's services. The current UK government strategy of Every Child Matters is predicated on the standards of the CRC, though this is rarely acknowledged in the official literature.

Children are defined as those less than 18 years of age. They are entitled to all human rights. In addition, because they may be vulnerable, they have additional rights to *provision* of services (e.g. education, health care); *protection* from exploitation and abuse; and *participation*. As bearers of rights, including the right to be consulted, children are citizens, not just future citizens.

Since the CRC is a convention it is legally binding. Governments have to report to the UN every five years and the UN also receives reports from non-governmental organisations (NGOs) that may be critical. This is another example of where moral pressure is used in support of legal requirements. Governments do not want to be embarrassed by adverse reports and they are therefore encouraged to improve their services to children.

Article 12 of the CRC gives children the right to be heard in any decisions that concern them. Whereas many schools have introduced student councils and OFSTED now seeks evidence from students, in fact the basis of these developments lies in the right of children to have their views taken seriously. The CRC is a source of inspiration for educators and it is possible to derive pedagogical principles that underpin school policy (Osler & Starkey, 2005).

A case that has frequently been made to me by teachers, inspectors and officials is the concern that too much stress on children's rights leads to individualistic behaviour and diminishes the power of the teacher. I have two main responses. First a right is not a right unless you know about it. Human rights education is itself a human right as defined by article 26 of the UDHR and article 29 of the CRC. It is also part of the programme of study for citizenship. To that extent we have no choice but to undertake human rights education. My second response is that where schools have based their ethos on a commitment to human rights, students learn to respect each other and their teachers. Far from undermining teacher authority, it is a means to ensure that that authority is respected because it is based, not just on power, but also on an explicit commitment to fairness and respect for dignity (Hudson, 2005; Covell & Howe, 2005).

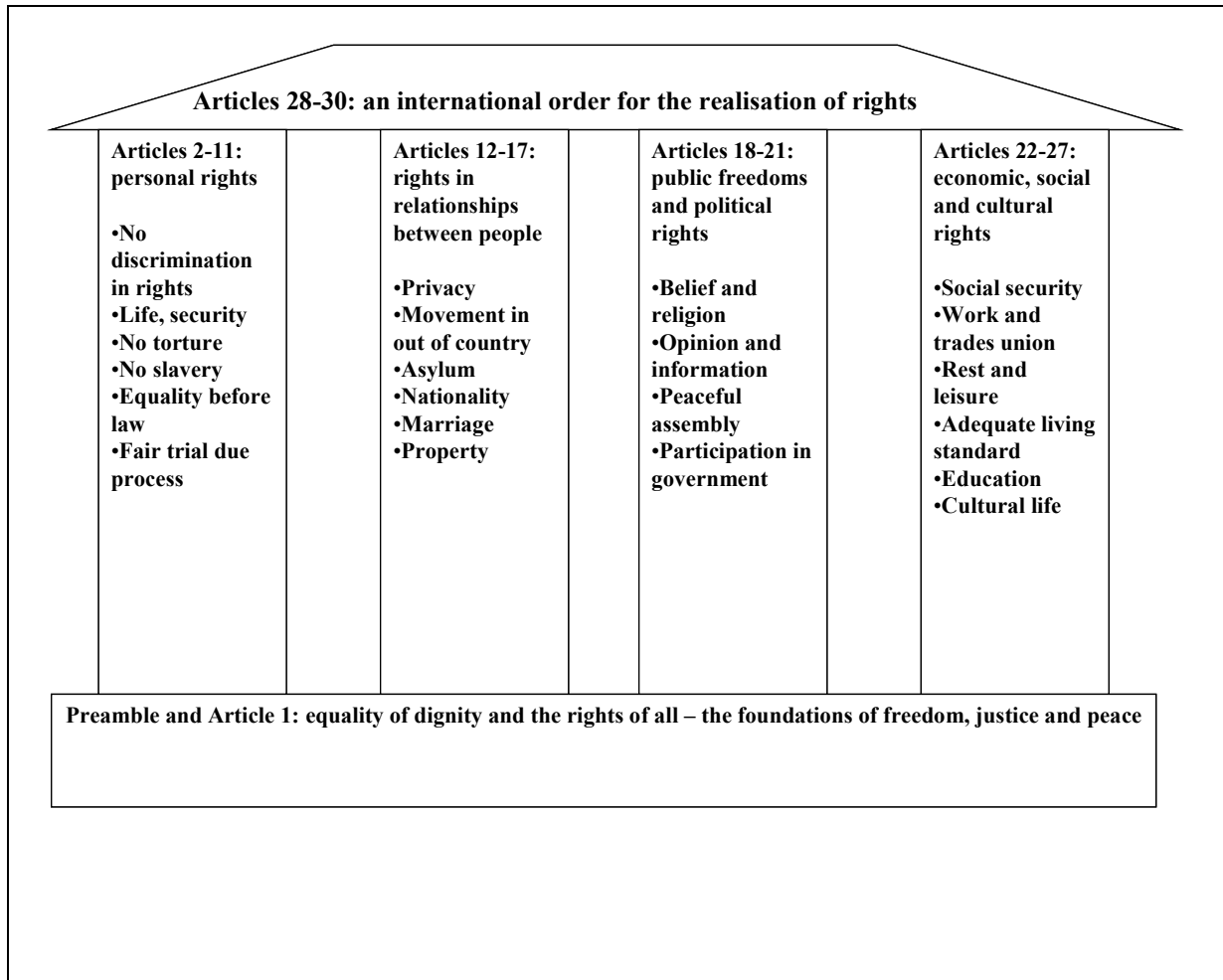
Conclusion

The distinction between legal rights and human rights is probably a useful one. Very often discussions on human rights issues are confused with legal rights. For instance it is a human right to seek asylum (UDHR article 14). However, there is no human right to move to another country, except on grounds of fear of persecution. There is a right to leave a country and to enter the country of your citizenship. Once legally inside a country there is freedom of movement and choice of residence, but the right to enter another country is otherwise a legal right, varying with national legislation, but not a human right (UDHR article 13).

It is therefore important, when teaching about human rights to have the text of the main instruments to hand, so that students can check on the status of a rights claim. In addition, the fact that human rights education is a human right has implications for the way schools are organised and for relationships within schools. Verhellen (2000) suggests a model of the right *to* education; rights *in* education (i.e. the rights of the CRC are implemented in school); and rights *through* education (i.e. the right to learn about rights).

In 2006 the UN launched the World Programme of Human Rights Education. There are many resources now available free to teachers and I have listed some useful websites after the references.

Figure 1. Rene Cassin's model of the Universal Declaration of Human Rights as a portico



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