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Human rights and public education

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Human rights and public education

Abstract

This chapter attempts a contrast to the contribution by Hugh Starkey. Rather than his account of the inexorable rise of human rights discourse, and of the implementation of human rights standards, human rights are here presented as always and necessarily scandalous and highly contested. First, I explain why the UK has lagged so far behind its European neighbours in implementing citizenship education. Second, a comparison with France shows that the latest UK reforms bring us up to 1789. Third, the 20th century second generation social and economic rights are still anathema in the UK. Fourth, the failure to come to terms with Empire and especially the slave trade means that the UK's attitude to third generation rights, especially the right of peoples to self-determination, is heavily compromised. Taking into account the points I raise, citizenship education in the UK might look very different.

Keywords

human rights, citizenship, generations of rights, comparison France and Britain, institutional racism, empire

Introduction

This article, based on a keynote address to the conference which gave rise to this collection, attempts a contrast to the contribution by Hugh Starkey. Rather than his unproblematised account of the inexorable rise of human rights discourse, and of the implementation of human rights standards, human rights are here presented as always and necessarily scandalous and highly contested.

In this article, I firstly outline, with the help of Upendra Baxi, the approach of the UN and Council of Europe to human rights education; and outline my own credentials to reflect on these topics. Next, I explain why the UK has lagged so far behind its European neighbours in

implementing citizenship education, which is where, for the UK, human rights education is to be found. The recent publication, *Right Here Right Now: Teaching Citizenship Through Human Rights* (Ministry of Justice et al.(MoJ) 2008), produced in order to teach the new Key Stage 3 Citizenship curriculum, although attractive and highly professional, highlights these underlying problems with the UK approach. Third, a comparison with France shows, to the UK's disadvantage, that the latest UK reforms bring us up to 1789. Fourth, the 20th century second generation social and economic rights are still anathema in the UK, which has established itself in the avant-guard of neo-liberalism. Fifth, the failure to come to terms with Empire and especially the slave trade means that the UK's attitude to third generation rights, especially the right of peoples to self-determination, is heavily compromised. Human rights are shown to arise out of concrete revolutionary events, moving from Europe to the decolonising post-WWII world, as substantive bearers of symbolic capital, reawakened on each new occasion of struggle. Taking into account the points I raise, citizenship education in the UK might look very different.

My credentials for writing this chapter

In contrast to the other contributors to this volume, I am not a specialist in the theory of education, or in cultural studies. I am a teacher of law to undergraduates and postgraduates, and also, as an advocate, a human rights practitioner. In the 1990s I represented many Kurds at the European Court of Human Rights, and since 2000 have taken a large number of Chechen and other cases to Strasbourg. In 2003 I created, with a large grant from the European Commission, the European Human Rights Advocacy Centre, which now employs 12 lawyers in Russia including Chechnya, and has an office in London with five staff. We have assisted several hundred applicants, and helped win in 2005 the first Chechen cases arising from the Second Chechen War which started in 1999, and the first environmental case against Russia. I am also active with UK focused NGOs such as Liberty.

But I do have some further experience in and of education. My first teaching job, in the early 1970s, immediately after graduating with a degree in philosophy, was as a lecturer in general studies at a technical college in Kent, to engineering apprentices – a baptism of fire, but also a constant discovery of talents which had had no chance of expression in the secondary modern system. I first paid serious attention to the European Convention on Human Rights in 1986, when with colleagues I was prosecuted by Margaret Thatcher for “wilful misconduct” as a Lambeth Borough Councillor resisting the cuts she imposed – nothing like as savage as those now proposed by the coalition government. My first experience of the power and actuality of human rights was as a member of a delegation to the Palestinian Occupied Territories in 1988. I started teaching human rights to undergraduates in 1992 at the University of East London, and helped to develop the Bar Human Rights Committee’s schools project, sending barristers to speak at schools throughout the country. I regularly make presentations on human rights to school students, most recently to sixth formers in London and Essex – and to a splendidly well-informed and inquisitive group of 8-11 year olds in a “disadvantaged” primary school. And from 1998 to 2002, in close cooperation with the Citizenship Foundation, I helped to establish a centre for the teaching of human rights and citizenship in Kazakhstan, with the publication of three textbooks for secondary school students.

Developments on international standards

In 1994 my colleague Upendra Baxi gave (Baxi, 1994) a splendid *tour d’horizon* of the United Nations biography of human rights education (HRE). He reminds us (1994, 4) that the words of the Preamble to the 1948 Universal Declaration of Human Rights stress the central importance of a ‘common understanding’ of human rights and fundamental freedoms to the achievement of ‘freedom, justice and peace in the world’, and that the operative part proclaims that a ‘common standard of achievement’ of these values, nationally and globally,

requires ‘that every individual and organ of society, keeping this Declaration in mind, shall try by teaching and education to promote respect for these rights and freedoms...’.

Baxi emphasises that ‘education’ in human rights ‘is thus the individual and collective duty of all, nationally, regionally and globally.’ (p.4) He adds that education has a global orientation of producing true citizens of the world, ‘imbued with civic virtues of respect for pluralism, peace, dignity and rights. (p.5)

The UNESCO *Recommendation concerning education for international understanding, co-operation and peace and education relating to human rights and fundamental freedom* of 19 November 1974 (UNESCO 1974, known as the Recommendation Concerning Human Rights Education), as Baxi notes, significantly enlarged notions of ‘education’ for the purpose of HRE. Article 1(a) states that ‘The word education implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge.’ The aims of HRE are expanded to include ‘solidarity with less privileged groups’ so as to result in ‘observance of principles of equality in everyday life’ (Article 5); and creating capabilities to eradicate ‘conditions which perpetuate major problems affecting human survival and well-being’ (Article 18). Baxi is right to say that the Recommendation thus pursues ‘radical egalitarianism in everyday life’ (p.8). This is something which, as will be shown, is lacking in the UK to this day.

UNESCO’s International Congress on Education for Human Rights and Democracy held in Montreal in March 1993 gave birth to the *World Plan of Action for Education on Human Rights and Democracy* (UNESCO 1993), which laid a key foundation for the *Vienna Declaration and Programme of Action* adopted by the World Conference on Human Rights on 25 June 1993, and the *United Nations Decade for Human Rights Education (1995-2004)*, with its Plan of Action, submitted on 12 December 1996 (United Nations 1994).

The General Guiding Principles included education for ‘civil, cultural, economic, political and social rights and recognizing the indivisibility and interdependence of all rights...’ (para.4), and ‘human rights education under the Decade shall seek to further effective democratic participation in the political, economic, social and cultural spheres, and shall be utilized as a means of promoting economic and social progress and people-centred sustainable development.’ (para.7)

Finally, on 11 May 2010, the Council of Europe adopted the Recommendation on the *Charter on Education for Democratic Citizenship and Human Rights Education* (CM/Rec(2010)7), following Recommendation Rec (2002)12 of the Committee of Ministers of 16 October 2002 to member states on education for democratic citizenship. Education for democratic citizenship was defined as: ‘...education, training, awareness-raising, information, practices and activities which aim, by equipping learners with knowledge, skills and understanding and developing their attitudes and behaviour, to empower them to exercise and defend their democratic rights and responsibilities in society, to value diversity and to play an active part in democratic life, with a view to the promotion and protection of democracy and the rule of law.’ On 17-19 November 2010 the network of EDC/HRE coordinators met in Norway. The UK would have been represented by David Kerr, but he gave his apologies. But a questionnaire was approved to be sent to member states on teaching the ECHR case law: ‘Learning the key principles and the functioning of the human rights protection system’.

I note that my colleague Dina Kiwan (2005) has questioned the foundation of this approach to the teaching of citizenship within a human rights framework. She asks boldly whether human rights, located within a universalist frame of reference, are not conceptually distinct from citizenship, which are located within a more particularist frame. She poses the question whether conflating human rights with citizenship may actually obstruct the empowerment and active participation of individual citizens. That is a valid and politically challenging

criticism. But she does not reflect on the developments in terms of documents at the UN and Council of Europe level, and it would be interesting to see her critique of them in the light of her approach.

It remains to be seen how the UK will respond to the challenge posed by the new Charter. In their 'synthesis of scholarly literature' on EDC in England during 1995-2005 (Osler & Starkey 2006), that is, during the UN Decade referred to above, Audrey Osler and Hugh Starkey mention the Charter (2006, 434), but do not analyse its provisions; however, they do recognise that 'The struggle for political justice and equality continues to the present day.' (2006, 438). The US scholar James Banks (2008) argues for 'transformative citizenship education', which would enable students to 'acquire the information, skills and values needed to challenge inequality within their communities, their nations, and the world... to take thoughtful individual or collective civic action.' (Banks 1998, 135). Those are themes I pursue in this paper.

Right Here Right Now? What is going on in the UK?

The recent publication *Right Here Right Now* (Ministry of Justice et al ,(MoJ) 2008) produced by a uniquely powerful team of two government ministries and two leading UK NGOs, to assist teachers to teach the National Curriculum, although very professionally and attractively produced, highlights the underlying problems with the UK approach. It is a resource designed to support the delivery of the revised KS3 Citizenship curriculum taught from September 2008.

As the Introduction points out, the new curriculum is underpinned by three key concepts: Democracy and Justice; Rights and Responsibilities; and Identities and Diversity: living together in the UK.

In this document, human rights are presented in a standard formulation, as timeless, as always already in existence. ‘Human rights are the basic rights we all have simply because we are human; they are the fundamental things that human beings need in order to flourish and participate fully in society. Human rights belong to everyone, regardless of their circumstances.’ (MoJ, 7)

Further, on the same page: ‘The ideas behind human rights have been present throughout history in many different societies and civilisations.’ The “modern concept of human rights” is presented as having ‘emerged’ following the events of the Second World War, in particular the Holocaust; and the array of international, regional and domestic human rights instruments and mechanisms as having been ‘prompted and inspired’, and having followed seamlessly from the 1948 Universal Declaration of Human Rights. This account is altogether abstract and static, despite the reference to the Second World War, and gives no indication that human rights have ever been associated with struggle, still less with revolution.

The detailed ‘human rights timeline’ (MoJ, 35) tells teachers and their students that in 1215 the Magna Carta was ‘issued’, rather than having been wrung out of the King by the barons; that in 1689 Parliament ‘agreed’ the Bill of Rights, rather than imposing it on the newly invited King, having deposed his predecessor, and having executed that predecessor’s father following a civil war; that in 1789 the French National Assembly ‘agreed’ the Declaration of Rights of Man and of the Citizen, rather than making this astounding statement in circumstances where they fully expected to be executed for their actions in overthrowing the French monarchy; and that in 1791 the US Congress ‘agreed’ the Bill of Rights, rather than cementing the revolutionary overthrow of British rule. Thomas Paine (2008), author of *Common Sense* (1776) and *The Rights of Man* (1791), of course gets no mention.

No explanation is given either as to why the UK, having signed the European Convention on Human Rights (ECHR) in 1951 – and as is pointed out UK lawyers were instrumental in the

drafting process – did not make the Convention available in UK domestic courts until 2 October 2000, when the Human Rights Act 1998 came into force. I return to an explanation below.

This sets the stage for ‘Human Rights Education’ in England. The document highlights and promotes (MoJ, 15) the ‘whole-school approach’, as follows: ‘Over the last few years, ground-breaking research in Canada and the UK has demonstrated the benefits of a whole-school approach to human rights education... Here in the UK, Hampshire County Council is conducting a project called ‘Rights, Respect and Responsibility’ which encourages schools to embed a human rights approach across the curriculum and into the whole-school ethos.’ This is known as the ‘RRR initiative’.

The document notes that the Hampshire project was inspired by a similar project in Cape Breton, Canada. However, Brian Howe and Katherine Covell, of Cape Breton University in Canada (Howe & Covell, 2010) carried out a three year study, completed in 2008, the year of publication of *Right Here Right Now*, of the impact and implementation of the project, interviewing and surveying head teachers, teachers and students in 18 schools involved in the RRR initiative. Thirteen of these schools completed their study and gave them their data set. (Ibid, 96) They compared schools where RRR was fully implemented (FI), and schools where it was partially implemented (PI). While they found ‘overall success’ in the RRR programme, they also observed, especially in PI schools, some ‘miseducation’.

They note (Ibid, 98) that, according to Osler and Starkey (2005), the title ‘Rights, Respect and Responsibility’ was chosen as a means of ‘depoliticising claims about rights’, by linking rights directly with responsibilities (a favourite trope of UK politicians) with the result that some head teachers decided that children should be taught responsibilities before they learn that they have rights, or to give emphasis to responsibilities at the expense of rights. They found (Ibid, 99) that children in such schools had little knowledge of the nature of rights, and

a majority could not describe what rights were. Thus, ‘... the focus on responsibilities may compromise children’s capacity to understand rights in ways that reflect a serious miseducation on children’s rights.’

This paper goes further, to suggest that the characteristically English take on rights, exemplified in *Right Here Right Now* and the RRR project, is rooted in characteristically British attitudes to human rights.

The UK’s long road to citizenship and human rights education

In 2003 David Kerr wrote that there is ‘no great tradition of explicit teaching of human rights in the UK.’ Indeed, in his 1999 comparison of 16 countries, Kerr observed that only the UK lacked citizenship education in any form, let alone human rights education. Citizenship education, including human rights, was finally introduced into the secondary school curriculum in September 2002, following the Crick Report in 1998, for Key Stage 3 (11-14 years old) and Key Stage 4 (14-16). Kerr also noted (1999) that ‘(T)he avoidance of any overt official government direction to schools concerning political socialization and citizenship education can almost be seen as a national trait.’ As Terence McLoughlin (2000) pointed out, in contrast to many other countries, England and Britain as a whole were very slow. This in his view is linked to the obvious fact that the inhabitants of Britain have long been ‘subjects’ rather than ‘citizens’, also noted by Crick (1999, 4): ‘... a subject obeys the laws and a citizen plays a part in making and changing them.’

For Crick, the desirable outcome of citizenship education, implicit in his Report, is ‘civic republicanism’, a democratic society in which ‘... the public have... rights to be involved in the things that are of common concern... and cannot merely exercise those rights but are presumed to have a civic duty to do so.’ (Crick 1999, 5). This was in strong contrast to the active citizen of Thatcherism who, as Faulks (2006, 125) points out, ‘was a law abiding,

materially successful individual who was willing and able to exploit the opportunities created by the promotion of market rights, while demonstrating occasional compassion for those less fortunate than themselves – charity rather than democratic citizenship was to be the main instrument of “active citizenship”.’ Audrey Osler and Hugh Starkey situate the impetus for the Crick Report in the constitutional reforms of the first years of the Labour Government elected in 1997, namely the Human Rights Act 1998, and devolution for Scotland, Wales and Northern Ireland (Osler & Starkey 2001, 335).

Yet the distinctive model of citizenship promoted by New Labour and developed by Crick has a direct impact on who may become a British citizen. Dina Kiwan (2008) describes a ‘journey’ to citizenship in the UK, in the context of the ‘citizenship tests’ introduced as a requirement for naturalisation following a report published in 2003, in which she participated. She argues (Ibid, 71), against those for whom rights should be framed ‘in terms of human rights based on international law’ – Kiwan adds the word ‘responsibilities’ to ‘rights’, and against those for whom the source of human rights is the ‘individual’s moral nature’, here human rights are a consequence of ‘the inherent dignity of the human person’, that ‘when talking of citizen’s rights and responsibilities, these rights are based on membership of a political community, rather than solely in terms of membership of the human species’ (as explained by her in Kiwan 2005). For her, members of a political community are those who have formal citizenship status – for naturalisation, having passed the test which she helped to create. Surely it should be added that members of a political community are those who take an active part in struggling to sustain and improve it.

As I seek to explain in this paper, my own take on human rights departs from all three conceptions described by Kiwan. I do not find human rights empirically in the plethora of human rights instruments and their ratification by the majority of states, as does Donnelly; nor do I find them in human nature; nor simply in the fact of citizenship. Instead, I

understand human rights as the highly contested products of great historical upheavals, social capital identified in the instruments, and brought back to life constantly in the context of real struggles (Xxxx 2008a).

France – in comparison

In Audrey Osler and Hugh Starkey in their illuminating study (2009) show that both Britain and France introduced new programmes of citizenship education in about 1999. These were both in part responses to the challenge of racism and xenophobia, in Britain crystallised in the 1999 Macpherson report into the murder of Stephen Lawrence, which for the first time identified ‘institutional racism’.

The French reforms started with guidelines and a program of study developed from 1996 by a working party, the *Groupe Technique Disciplinaire, Éducation Civique* (Ibid, 335). However, Osler and Starkey point out that, in strong contrast to Britain, France introduced citizenship education as far back as 1871, when democratic rule was restored after the disaster of the Franco-Prussian War. It has been ‘intended to help integrate a diverse population into a single national French culture defined as Republican.’ That is, it is based on the principles of *liberté, égalité, fraternité* (freedom, equality, solidarity) which are inscribed on every public building in France, and on *droits de l’homme* (human rights), which, as already noted, date from the Declaration of 1789, and remain an integral part of the French Constitution.

Osler and Starkey find (Ibid, 340) that ‘(T)he emphasis on human rights is considerably more developed in the French program than in the English. A very influential report (the Audigier report)... in 1984 and a subsequent action research program ensured that the case for human rights as the fundamental principles underpinning education is accepted by all major political parties.’ The French program places much more emphasis on community and local

democracy, and the work of political parties, trade unions, and pressure groups is presented as healthy elements in a democracy.

Most strikingly:

‘The emphasis... is of citizens actively engaged in the French Republic’s central task of promoting justice. The book’s cover shows young people involved in a demonstration, and there are a further nine photographs of demonstrations and strikes, all presented positively. Active citizenship is linked explicitly to demonstrations, political party membership, and participating in strike action. Striking is described as “one of the great social achievements of workers, it is recognised by the Constitution.”’ (Osler & Starkey 2009, 343).

The contrast with Britain could not be stronger. In the view of the present author, Margaret Thatcher’s onslaught on local democracy and on trade unions in the 1980s, both of which she swore she would deal with as soon as she was elected in 1979, have fundamentally changed the social context in the UK. It is noted that in this she followed in the footsteps of the great English constitutional lawyer, A. V. Dicey, (Dicey, 1914), for whom local government and trade unions posed the gravest threats to parliamentary sovereignty and to English freedoms. In France, the natural reaction to injustice is to take to the streets, and to go on strike, and all French children have learned that this is proper and appropriate behaviour. In France a demonstration will take up the whole street; in Britain, demonstrators are usually tightly corralled and directed. The enormous demonstrations against the Iraq War, and the Trade Union Congress demonstration of 26 March 2011 have been exceptions. In France, country-wide strikes are commonplace; in Britain, it is increasingly difficult to organise a lawful strike at all. Yet the right to demonstrate peacefully and the right to strike are fundamental human rights protected by the international and regional instruments. Except in Britain. Osler and Starkey (2009, 344) suggest that ‘Teachers in England are amazed to hear that French

textbooks emphasise the right to strike, and it is difficult to imagine that such a textbook would be well received by British parents.’

They conclude that ‘while the French program is based on Republican values, particularly human rights... [T]he programme for England emphasises social and moral responsibility... [I]t is therefore more pragmatic and less concerned with core principles.’ That is, in view of the foregoing, to put the differences rather mildly.

But the most significant difference between England and France is - 1789. The document containing the civil and political rights, which, on my account given below constituted the first generation of human rights, was the child of the French Revolution, drafted and proclaimed by revolutionaries who expected it to be their monument in the event of their likely imminent execution. The ECHR, drafted as we know primarily by British lawyers, reproduces almost verbatim the rights contained in the French Declaration of Rights of Man and of the Citizen. My point at this stage is, therefore, that the UK’s Human Rights Act of 1998 and the 2002 Citizenship curriculum together have the effect of bringing the UK from (or perhaps within) feudalism right up to 1789. But not quite to the present day. That is, the “second generation”, social and economic rights, and the third generation, of rights of peoples, starting with the right of peoples to self-determination, are missing.

I should explain at this point that the notion of three generations of rights was first proposed by Karel Vasak (Vasak 1977), legal adviser to UNESCO at the time of the heated international debates concerning a Right to Development. This not a universally accepted framework, although I find it pedagogically useful as an overview. Alston and others (2001) have suggested that the so-called 'third-generation' of 'rights of peoples', the rights to self-determination, to development, to a clean environment, to peace - were an effusion of Seventies radicalism and have had their day.

It is of course the case, as Osler and Starkey point out (2009, 345), that Britain, in contrast to France, ‘acknowledges religious diversity, and has increased the power and status of religious groups and authorities in schooling’ (I would myself question whether this last is at all to be commended); and ‘recognises a range of ethnic groups and expects understanding of diversity (and) expects individuals to challenge prejudice and discrimination, but does not consider collective responses or the existence of institutional racism and structural disadvantage.’ France, as a ‘revolutionary Republican’ state seeks to protect secularism in education, and resolutely refuses to recognise the existence of ethnic groups. President Sarkozy’s policy of deporting Roma families to Romania in the summer of 2010 showed France in the worst possible light.

The scandal of human rights

The rights contained in the French Declaration of 1789 were anathema to many contemporary commentators, especially those from the British Isles. In his splendid collection *Nonsense Upon Stilts* (1987) Jeremy Waldron shows how Edmund Burke, Jeremy Bentham and Karl Marx all attacked the rights set out in the French Declaration, albeit from their conservative, liberal and communist standpoints. For Burke, the Irish-born intellectual father of English conservatism, the list of rights in the Declaration were utterly corrosive of traditional, organically developed liberties. They were an underground explosive mine which would destroy all established institutions. For Bentham, the founder of the political philosophy of utilitarianism, human rights were ‘anarchical fallacies’, simply ‘nonsense upon stilts’.

It is my case (Xxxx 2008, 2008a) that each of the three “generations” of human rights came into existence not as documents ‘agreed’ by some legislative body or benign administration, but as the products of revolutionary events, posing discomfort and fear to the entrenched authorities. Thus, just as the civil and political rights were the progeny of the French and American revolutions, so the second generation of social and economic rights became legally

protected human rights as a direct result of the Russian Revolution of 1917. Social and economic rights had pride of place in all three Soviet Constitutions (1924, 1936 and 1977), and it can truthfully be said that the right to work, the right to free health care and to quality free primary, secondary and tertiary education, as well as to social security and pensions, were to a large extent implemented until the USSR's collapse in 1991. The response of the West to the existential threat posed by recognition of these rights was the creation in 1919 of the International Labour Organisation as an agency of the League of Nations and now of the United Nations. Its many binding treaties, and its unique trilateral procedures, bringing together governments, business and trade unions, have made social and economic rights, the second generation, a reality – except in the UK. Finally, the third generation of human rights was spearheaded by the right of peoples to self-determination. The recognition of this right as a fundamental right by virtue of its inclusion in Article 1 of both the UN's human rights covenants of 1966, on civil and political rights (ICCPR), and economic, social and cultural rights (ICESCR) respectively, was the achievement of the colonial peoples fighting for their independence.

The absence of rights in UK constitutional theory and state practice

This is the point at which to return to the UK.

The key text to this day in understanding the UK's constitutional system – in the absence of a written constitution – remains A V Dicey's classic *Introduction to the Study of the Law of the Constitution* (Dicey 1885). Dicey not only provided definitions of the rule of law and of the central principle of the English system, the supremacy or sovereignty of parliament, but provided lucid and compelling arguments as to why Britain's slow and haphazard provision of protection for key civil liberties, dependent on individual cases reaching the courts, was far superior to protection of rights through declarations and lists in written constitutions, as in France and Belgium. By the way, Dicey was also a strenuous opponent of Home Rule for

Ireland – Parliament's sovereignty had to extend to the whole of the British Isles (Mount 1993).

In contrast to most contemporary textbooks of English constitutional law, which rarely contain comparative references except as to the US constitutional system, Dicey's key text is a genuinely comparative work. In the view of Dicey and his successors, adoption of a list of rights, however described, would pose immense danger to 'English freedom'.

That is one reason for the delay, from 1951 to 1988, in incorporating the ECHR into English domestic law, let alone citizenship education.

The UK also to this day refuses to recognise the binding force of social and economic rights – the 'second generation' - as enshrined in the UN Covenant of 1966 referred to above, and the Council of Europe's 1989 Revised Social Charter. The UK has ratified the ICESCR, but will not so far ratify its Optional Protocol, which would enable complaints to the UN for failure to comply. Under the Revised Social Charter, there is a right of collective complaint, by trade unions, NGOs and similar, to the European Social Committee, which can adjudicate and has done so in a series of decisions on child labour, trade union rights, and other social rights against Council of Europe member states. The UK is the state with the most extreme social stratification, the most restrictive trade union laws, and the highest incarceration rates of any Western European country.

I therefore disagree with Hugh Starkey when he says that the European Convention on Human Rights (and the Human Rights Act) are based on the UN's 1948 Universal Declaration of Human Rights. This is not the case. The ECHR contains no social and economic rights, with the exception of the curiously phrased right to education in Article 2 of Protocol 1. The UDHR protects social and economic as well as civil and political rights. As I

have already pointed out, the ECHR and the Human Rights Act therefore go no further than 1789.

Another reason for the long delay in incorporating the ECHR

And despite active involvement in drafting the ECHR, the UK did not want to accept the right of individual petition until 1966. We have still not enshrined the right to complain to the Human Rights Committee of the UN under the ICCPR.

Why not?

The main reason for this hesitation and delay is the British Empire. Osler (2009) points out that the Empire and its consequences are completely missing from the discourse of Blair and Brown on citizenship. I emphasise, as above, that the establishment of the ‘third generation’ of human rights, which came to be recognised in international law after 1966, was driven by the struggle for decolonisation.

It is no coincidence that the first cases against the UK after 1966 concerned Cyprus (the inter-state cases brought by Greece in 1956-7 concerning Britain’s actions in suppressing the EOKA movement), the notorious case of the East African Asians, in which Britain was condemned in 1973 for the suffering caused by its discriminatory policies, and Northern Ireland (the inter-state case brought by the Republic of Ireland alleging that the UK had employed torture against Republic suspects in detention; the UK was convicted of inhuman and degrading treatment in 1978). Britain, as a colonial power until rather recently, had every reason to delay as long as possible, in fact for 13 years until 1966, the right of complaint against it to the Strasbourg Court. Soon there will be important judgments in the European Court of Human Rights (*Al-Skeini v UK*, and *Al-Jedda v UK*) concerning the actions of Britain’s armed forces in the invasion and occupation of Iraq in 2003.

I already mentioned MacPherson's discovery of institutional racism in 1999. But the UK is still in denial. My colleague at Essex University, Fernne Brennan, ensures that the issue of reparations for the slave trade is not forgotten. And in a further post-colonial twist, the highly varied Muslim communities of the UK have now been constructed, by way of legislation and government pronouncements, as a 'suspect community', exactly the fate which befell the Irish in the 1980s and 1990s.

Conclusion

In conclusion, I emphasise two further points of disagreement with Hugh Starkey.

First, human rights discourse works as 'emotional rhetoric', as he puts it, because, and only because, on each occasion that it is evoked by people in struggle, individuals and groups, it re-awakens the symbolic capital of the revolutionary events which gave birth to each of the three generations of rights I have mentioned. That is, when the Kurds or the Chechens take their cases to the European Court of Human Rights against Turkey and Russia, complaining of violations of the European Convention on Human Rights of 1950, they bring back to life the revolutionary content of the French Declaration of the Rights of Man and of the Citizen of 1789; and at the same time they draw strength and legitimacy from the Right of Peoples to Self-Determination, which became a legally binding right in international law, enshrined in UN Treaties and Resolutions, through the post-WW II anti-colonial struggles.

Second, for Starkey, a right is not a right unless you know about it. That is perfectly true as far as it goes, and it is our duty as human rights educators to ensure that our pupils and students are as well-informed as possible. But history has shown on very many occasions that is not a right, on the contrary it is mere rhetorical froth, unless you fight for it. Human rights were born, and come back to life again and again, through an unending struggle against oppression, exploitation, inequality and discrimination.

How does the committed teacher put such principles into the practice of pedagogy? A start could be made by demonstrating the contradiction between human rights as they have emerged and crystallised over the course of three centuries, and

- the corrosive application of market values to spheres of life, such as public health and education, in which it is hard to see how they have a place
- the corollary of glorification of the market, namely the commodification of everything including human values, culture and simple collective life in society
- the extreme gulf between rich and poor of the kind now to be found in the UK
- the plague of ASBOs, indeterminate sentences, imprisonment for minor offences, and the punitive philosophy which lies behind them
- the poisonous left-overs of Empire, including racism, xenophobia and racist discrimination

Those are just a few of the glaring problems of contemporary life, with which any serious education in citizenship and human rights must necessarily engage.

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