LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's response to the Ministry of Justice's Green Paper: Rights and Responsibilities: developing our constitutional framework

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Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

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Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

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Introduction

1. The Government introduced its Green Paper, *Rights and Responsibilities: developing our constitutional framework* in March 2009. Its stated purpose is to launch a debate on rights and responsibilities and the possible need for a 'Bill of Rights and Responsibilities'. This comes at a time when attacks on, and calls for the repeal of, the *Human Rights Act 1998* (HRA) have continued unabated. The Paper itself suggests that the HRA does not place enough emphasis on 'responsibilities'. We are therefore very concerned that the Bill of Rights debate continues not in the progressive vein of increasing human rights protection in the UK but out of a desire for current protections to be diminished. Liberty believes that rather than spending resources on consulting on the introduction of a new Bill of Rights the Government might have better focussed attention on educating and informing people on the ones they already have.

The current tone of the debate

2. The HRA came into force just months before the tragic 9/11 attacks and as such arrived at a difficult time in our recent history. The Government that introduced it has, since then, pursued anti-terror, criminal justice, policing and asylum policies that have strained every sinew of its contents. At the same time, we have seen repeated attacks on the HRA from the Government and the main Opposition. It is, of course, to some extent inevitable that an Act principally aimed at keeping a check on executive power will fall out of favour with its political masters. However the intensity of past ministerial and shadow ministerial attacks on HRA judgments, particular judges, and the human rights framework as a whole has been unprecedented. And all this while the Act was still very much in its infancy. These attacks were accompanied by a near complete lack of public education about the Act and its operation. Recent polling commissioned by Liberty reveals that while 96% of people believe it important that there is a law protecting rights and freedoms in the UK, only 11% of people ever remember receiving or seeing any information from the Government about the HRA.[1] While Ministers continue to criticise the operation of the HRA in the press,[2] direct ministerial challenges to the Act have abated. Further,

[1] See Liberty's ComRes poll – further information available in Liberty Press Release, 10 December 2009, available at: http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2009/10-12-09-the-truth-about-britain-s-values.shtml

[2] See the Sunday Times "*Criminals to face easier deportation"* on 3rd May 2009 available at: http://www.timesonline.co.uk/tol/news/uk/crime/article6211514.ece

this Green Paper includes a commitment that the Government *"will not resile"* from nor repeal the HRA. While these developments are, of course, welcome, we remain concerned that the focus in the Green Paper is not on enhancing rights but rather on limiting them.

3. In addition to being effectively abandoned by its political parents, the HRA has also been subject to partisan attacks, in particular from the main Opposition. In 2005 the former Conservative leader, Rt Hon Michael Howard MP, called for the HRA to be revised or scrapped, claiming that prisoners rights were being put before those of victims. In 2006, the current Conservative leader, David Cameron MP, continued along this path, arguing in a speech at the Centre for Public Policy Studies that the HRA should be scrapped and replaced with a 'British Bill of Rights and Responsibilities'.[3] Arguing that the HRA has made it harder to fight crime and terrorism he said:

> *The Human Rights Act has made it harder to protect our security. And it's done little to protect some of our liberties. It is hampering the fight against crime and terrorism. And it has helped to create a culture of rights without responsibilities.*[4]

4. In this political context, while Liberty has long supported the idea of the incorporation of many other important human rights into domestic law, we are sceptical about whether this is realistic. We are extremely concerned that instead of human rights protection being enhanced, draft legislation for a British Bill of Rights and Responsibilities in the current climate would allow protections in the HRA to be weakened. Indeed, one of our very real concerns is that the absolute prohibition against torture contained within the HRA (Article 3) would be watered down in any new Bill of Rights. To this end, the Government has recently argued before the European Court of Human Rights that it should be able to 'balance' or weigh up any national security concerns in deciding whether to deport a person to a country where they risk being tortured.[5] The Conservative leader, David Cameron MP, has also

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[3] David Cameron, "Balancing freedom and security – A modern British Bill of Rights", Speech to the Centre for Policy Studies, June 26, 2006 available at: http://www.guardian.co.uk/politics/2006/jun/26/conservatives.constitution

[4] Ibid.

[5] See UK Government's intervention in the case of *Saadi v Italy*, ECtHR, Grand Chamber, 28 February 2008. Note that the Grand Chamber unanimously rejected this argument and reiterated its previous decision in *Chahal*: that the prohibition against torture is absolute and that no other interests can be balanced against the risk of torture.

said that the legal prohibition on removal to torture is thwarting the ability "*to expel unwanted and dangerous foreign nationals from our country*". He has gone on to say:

> *And the Human Rights Act has made the problem worse. So our approach has got to change. If our security services believe that a foreign national is a dedicated terrorist and a danger to national security, then the Home Secretary should be able to balance the rights of the suspect with the rights of society as a whole, and go ahead with deportation.*[6]

5. It is clear then that recent calls for a 'Bill of Rights', a 'British Bill of Rights', a 'Bill of Rights and Responsibilities' etc, have not sprung from a desire to increase human rights' protection. Bypassing this, the Green Paper tries, somewhat bizarrely, to link the need for a contemporary debate on a Bill of Rights to the recent financial crisis. It suggests that because of the financial crisis, and recent technological developments, globalisation, medical advancements, climate change and an ageing population it is "*a new age of anxiety and uncertainty*" and that a Bill of Rights "*could act as an anchor for people in the UK*" as we enter this new age.[7] It also notes that the debate on rights and responsibilities "*is not an alternative to decisive action on the economic front but an essential complement to it*".[8] Perhaps unsurprisingly, the Green Paper does not explain however how a Bill of Rights could possibly alleviate concerns over the financial crisis or globalisation, or explain how it complements the taking of action on the economic front, nor indeed why a different form of rights protection is required than that deemed suitable just 12 short years ago when the HRA was introduced. We believe that the main difference between then and now is the extent to which the human rights currency is now misunderstood and has become the scapegoat for all manner of unrelated ills. The Green Paper argues:

> *The arguments against the need for reform in the end rest on the assumption that the current relationship between Government, Parliament and the courts still provides the best possible protections*.[9]

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[6] See *Cameron on Cameron: Conversations with Dylan Jones*, 4th Estate, 2010 at page 178.
[7] See paras 1.13-1.16 of the Green Paper.
[8] See page 3 of the Green Paper.
[9] See para 4.3 of the Green Paper.

This oversimplifies matters. Arguments against partisan reform at this time do not rest on the belief that the current system is perfect. Rather, that in the current climate, the HRA, not even out of its first decade in force, offers the best, most universal human rights protection that is realistically achievable.

Party Politics

6. To date there has been little attempt in the Bill of Rights debate to reach beyond party political lines. The Green Paper places strong emphasis on exploring socio-economic rights, with a focus on the welfare state, the NHS and measures proposed by this Government in 2009 (including the Welfare Reform Bill and the Child Poverty Bill). The Green Paper also states that the Government has no intention of including the possibility of trial by jury within the remit of a new rights settlement. By the same token, the main Opposition has, so far, explicitly ruled out the possibility of socio-economic rights being included in a Bill of Rights, focusing instead on the potential for greater protection of the right to jury trial and other civil and political rights.

7. Until there is at least some attempt to cross traditional party dividing lines, it is difficult to see how a future government will ensure cross-party support for any new rights settlement. This will inevitably mean that any such settlement will be open to the same partisan political attacks that have befallen the HRA in recent years. If the cause of fundamental rights and freedoms is to be truly advanced there must, at the very least, be a cross-party commitment to consensus-building and genuine engagement. Political point-scoring in this area can only do more harm to the currency of rights and freedoms in the UK.

Confusion and Inconsistencies

8. The Bill of Rights debate has also contained some glaring inconsistencies and contradictions. The HRA has at the same time been accused of being both too strong and too weak. Too strong, allegedly, for sucking power away from Parliament and giving too much power to unelected judges. The leader of the main Opposition has promised to "*reign in and reverse the regulation of our lives by unaccountable judges who are changing Britain's legal landscape with their judgments in the*

courtroom" by introducing a British Bill of Rights.[10] As for shifting power from Parliament to the judiciary, it is difficult to imagine a mechanism that more neatly squares a difficult circle between upholding parliamentary sovereignty and safeguarding against abuses by the State than that already provided for by the HRA. The HRA does not contain a power for judges to strike down legislation for breach of its provisions (as is the case under the US Bill of Rights and many other rights instruments). Instead, the HRA achieves a rather British compromise. The section 4 declaration of incompatibility both preserves parliamentary sovereignty, while being capable of shaming the executive into more enlightened remedial action.

9. Described as too strong by some, the Act is also described as too weak – sometimes by the very same detractors. They point to ID cards, the growth of the 'database state', excessive snooping powers, stop and search without suspicion and other excesses as evidence that the HRA is either useless or out-dated. Such criticisms are most likely connected to the relative youth (and therefore perceived vulnerability) of the HRA – the same criticisms have not been levied at the US Bill of Rights for allowing the passage of the PATRIOT Act or many of the other repressive measures carried out across the Atlantic during the misnamed and misjudged 'War on Terror'. Almost by definition, Bills of Rights act as a check on executive and legislative power after its exercise. We must not forget that the HRA and European Convention on Human Rights has in recent times clocked up some significant and symbolic victories, including:

- the Belmarsh litigation[11] which determined that indefinite detention of foreign nationals without charge or trial breached both the right to liberty and the principle of equal treatment;
- the House of Lords decision in *Ghaidan v Godin-Mendoza*[12] which used the HRA to ensure homosexual couples were given the same level of protection in tenancy arrangements as heterosexual couples;
- the *S and Marper v UK* Strasbourg judgment[13] which ruled that the Government's blanket and indiscriminate retention of DNA was illegal;

[10] David Cameron: Giving power back to the people, 25 June 2009.
[11] *A v Secretary of State for the Home Department* [2005] 1 AC 68.
[12] *Ghaidan v Godin-Mendoza* [2004] UKHL 30; [2004] 2 AC 557.
[13] *S and Marper v the United Kingdom*, Application Nos 30562/04 and 30566/04, Grand Chamber judgment 4 December 2008.

- the control orders judgments,[14] which ruled the use of secret evidence breached the right to a fair trial as "*non-disclosure cannot go so far as to deny a party knowledge of the essence of the case against him, at least where he is at risk of consequences as severe as those normally imposed under a control order*".

- the *Gillan and Quinton v UK* Strasbourg judgment[15] which ruled that the stop and search powers without suspicion under section 44 of the Terrorism Act 2000 were unlawful as the power as currently drafted fails to properly circumscribe the use of a broad and general power.

10. There has also been confusion and contradiction about the perceived benefits that a new rights model could bring. The HRA has been criticised by the main Opposition for "*importing the ECHR lock, stock and barrel"* and preventing the potential for judgments and interpretations that they feel would be more closely aligned with the British liberal tradition. We are told that the British Bill of Rights suggested in its place would give greater freedom from Strasbourg so that British judges can interpret the law in line with British culture and British tradition. Yet this analysis fundamentally misunderstands the unique mechanism created under the HRA. While the HRA requires that Strasbourg case law is considered by our domestic courts, UK judges are not in fact bound to follow Strasbourg case law. Far from giving too much discretion to European judges, the HRA mechanism allows UK judges that all-important first bite of the cherry that ensures that Convention judgments are informed by domestic experience and considerations. Similarly repeal of the HRA and revision would not mean that Strasbourg no longer played a role in rights determination. Unless any mainstream political party is suggesting that the UK withdraw from the European Convention on Human Rights (and effectively the EU), Strasbourg will remain the potential final arbiter of claims under the Convention.

[14] See House of Lords judgment: *Secretary of State for the Home Department v AF and another* [2009] UKHL 28 and the European Court of Human Rights' judgment: *A v United Kingdom* (2009) 26 BHRC 1.
[15] *Gillan and Quinton v the United Kingdom*, *Application no. 4158/05,* European Court of Human Rights, 12 January 2010.

Citizenship

11. The Green Paper is peppered with references to rights for 'citizens'. The Foreword explains that at the heart of the Green Paper "*is the key constitutional question of the relationship between the citizen and the state"*, and that "*every UK citizen should be able to have their say in how their country is run*". The Green Paper contains well over 20 references to 'citizens' in the context of rights and freedoms. This is entirely reflective of the tenor of the Bill of Rights debate to date – 'citizens rights' instead of 'human rights' have become the buzzwords of choice both for the Government and the main Opposition.

12. A Bill of Rights which reserves basic rights and freedoms to British citizens would be wholly unacceptable, flying in the face of the principle of universality which is a fundamental feature of the post-war human rights framework. After the horrors of the Holocaust, the international community recognised "*the inherent dignity … and inalienable rights of all members of the human family*".[16] People have basic rights by virtue of being human. They are not earned by paying taxes to a particular government and do not come with possession of a particular passport. As the Belmarsh internment policy, control order scheme and treatment of asylum-seekers have demonstrated, it is indeed non-citizens, in law and in practice, that are most often in need of human rights protection. The continued use of the language of citizenship in a debate about fundamental human rights aptly demonstrates our concerns about its drift.

Proposals in the Green Paper

13. It is thus clear that this debate is not taking place in a vacuum. Indeed that it is not borne out of a desire to build greater respect for, and protection of, rights. Unsurprisingly then, the Green Paper itself effectively rules out adding new legally enforceable rights, stating:

> *The Government does not consider that a generally applicable model of directly enforceable rights or responsibilities would be the most appropriate for a future Bill of Rights and Responsibilities.*[17]

[16] Preamble to the Universal Declaration on Human Rights.
[17] Ministry of Justice Green Paper, *Rights and Responsibilities: Developing our Constitutional Framework*, para 4.25.

Despite this the Green Paper does propose to bring about 'constitutional change', declaring that a Bill of Rights will be a 'constitutional instrument', will express rights 'constitutionally', place rules 'on a constitutional footing', and give responsibilities 'an elevated constitutional status'. Nonetheless few of the proposals contained therein would actually lead to any constitutional change. The three options posited in the Green Paper are as follows:

- To make a non-legally binding declaration of rights and responsibilities, which is "*primarily political and symbolic rather than legal*" and could "*provide an opportunity to express rights and responsibilities in inspiring and motivating language*" setting out "*broad aspirations*". The Green Paper states that this would "*not necessarily need the statutory force of an Act of Parliament*" and would be "*a unique constitutional document*".[18] It is certainly unique to call what would be essentially a brochure setting out existing laws a 'constitutional document'.

- Alternatively, the Green Paper proposes 'codifying' and expressing in one place all existing rights and responsibilities. It seems to be proposing that an Act of Parliament would restate existing rights that are already found in legislation, as well as those found in the common law. It recognises that this could "*cause confusion by providing alternative expressions of existing rights*" but that this could be avoided by simply repeating the words of existing statutes, or cross-referencing to existing laws, or by framing them as general principles but making them not legally enforceable. The only real purpose it seems in doing so is expressed as enabling "*any such new protections to be located in one place so that people could gain access to them more easily*". It does not propose adding to any existing rights.[19]

- Third, and the only proposal that would have any real legal effect, is the proposal to set out general interpretative principles to be taken into account by courts and public authorities when exercising their discretion. In particular, it gives the example that this could "*expressly*

[18] See pages 52-54 of the Green Paper.
[19] See page 54 of the Green Paper.

refer to the principle of proportionality and the need to balance certain individual rights against the public interest and the rights of others". Alternatively it could place a duty on public authorities to have regard to relevant principles when exercising their functions and making decisions, such as "*principles of sustainable development or good decision-making*".[20]

Option 1: Bringing together all rights and responsibilities into one non-statutory document

14. We have no real comments to make on the first proposal to produce a catalogue of all existing rights and responsibilities (which of course could be done at any time by anyone). An educational tool of this kind might help with greater public understanding and ownership of human rights. However, it is of little assistance if such a document fails to distinguish between legally enforceable fundamental human rights and socially accepted norms or current government initiatives. The Green Paper falls into this trap, using the language of rights to describe the "*frustrations that can arise in daily life*"[21] and states that questions about the smoking ban, the hunting ban and the taking of action to prevent climate change are "*constitutional questions about rights and responsibilities*".[22] It also talks about responsibilities such as treating public sector staff with respect, assisting the police in reporting crimes and having access to "*a decent home at a price they can afford*".[23] It suggests a Bill of Rights and Responsibilities could allow for "*recognition of the distinctive ways in which healthcare is provided in different parts of the UK*"[24] and reflect the aim that every child "*be healthy; stay safe; enjoy and achieve*".[25] In doing so it confuses recognised individual human rights with what people might colloquially call 'rights'. This inevitably leads to confusion about what human rights are, and understandable concern about the undermining effect of 'rights inflation'. Obviously we would all like, and indeed expect, to be treated with courtesy and respect by others but there is no human right to general politeness. To suggest that a 'Bill of Rights and Responsibilities' can provide for all this is misleadingly unhelpful.

[20] See page 55 -56 of the Green Paper.
[21] See page 4 of the Green Paper.
[22] See page 4 of the Green Paper.
[23] See para 3.55 of the Green Paper.
[24] See para 3.61 of the Green Paper.
[25] See para 3.72 of the Green Paper.

Option 2: Codification of existing rights

15. The alternative proposal, to codify all existing rights and entitlements in one document, appears unnecessary. If no new rights are proposed there seems little point in legislating simply to repeat rights that already exist in other legislation. The passing of legislation should not be used solely as a means of educating people. The proposal to codify some common law rights may have some merit but it would necessarily need to be done in a way that does not limit the rights and change the meaning ascribed to them over hundreds of years from the common law. And again, putting all existing entitlements into one document and selling them all as individual 'rights' confuses and trivialises what are fundamental human rights (such as the prohibition against torture and slavery and the importance of free speech, assembly and the right to vote etc) with entitlements and legal duties (such as duties on witnesses in the criminal justice system or the "*principles and values of the NHS*"). This again may well lead to fears about 'rights inflation' and a corresponding dilution in the currency of inalienable and fundamental human rights.

Option 3: Statutory interpretative provision

16. The final proposal to legislate for a general interpretative provision raises a number of questions over how this would interact with existing laws. As regards ensuring courts interpret legislation compatibly with human rights, and that public authorities take into account human rights principles in decision-making, it would be completely unnecessary. This is already provided for by sections 3 and 6 of the Human Rights Act. For this reason also, it is concerning and surprising that the Green Paper suggests that courts should have to take into account principles of proportionality and the need to balance rights against the public interest. The HRA, and human rights principles generally, already require considerations of proportionality to be made and the need to balance rights in certain circumstances. With few exceptions, the rights in the HRA are not absolute and many can be restricted for a number of legitimate reasons. It is therefore already possible to make laws which restrict a person's rights in order to ensure compliance with the individual responsibilities that we all owe to one another and the society in which we live. Indeed, certain rights in the Convention expressly recognise that rights carry with them "*duties and responsibilities*".[26] However, not all human rights can be balanced.

[26] See Article 10 (freedom of expression) in the ECHR.

The prohibition against torture and slavery and the right to a fair trial are absolute and cannot, and should never, be balanced against any other interest. It is therefore alarming to find in the Green Paper that: "*It would be possible in a future Bill of Rights and Responsibilities to highlight the importance of factors such as an applicant's own behaviour and the importance of public safety and security*".[27] As we highlight in more detail below, a general interpretative clause to this effect would be highly dangerous.

'Responsibilities'

17. Human rights are universal in nature and are not dependent on the moral worth of the individual in concern. Self-evidently a person could not, for example, be denied a right to a fair trial because they are suspected of having committed a crime. We are pleased that the Green Paper acknowledges that "*fundamental rights cannot be legally contingent on the exercise of responsibilities*"[28] but are concerned that the interpretative provision is proposed as a backdoor way of introducing the concept that past conduct (or alleged conduct) might be used to limit the interpretation of rights. This is particularly so given the negative tone found in some parts of the Green Paper. We are told, for example, about the "*rise of a less deferential, more consumerist public*" where "*rights have become commoditised*" as "*demonstrated by those who assert their rights in a selfish way without regard to the rights of others*"[29] and "*rights are seen through a prism of selfish individualism*".[30] Such language again seems to confuse notions of what people think their entitlements are and colloquial 'rights' with the hard edged content of fundamental human rights. Using this reasoning as a basis for amending the law to provide "*a clear statement of the proper relationship between rights and responsibilities*"[31] risks undermining the precious fundamental human rights that we already all have.

18. Indeed, research carried out on behalf of the Ministry of Justice in relation to the relationship between rights and responsibilities,[32] warned that the focus on

[27] See para 2.25 of the Green Paper.
[28] See para 2.22 of the Green Paper.
[29] See para 2.15 of the Green Paper.
[30] See para 2.18 of the Green Paper.
[31] See para 2.18 of the Green Paper.
[32] Liora Lazarus, Benjamin Goold, Rajendra Desai and Qudsi Rasheed, University of Oxford, *The relationship between rights and responsibilities*, Ministry of Justice Research Series 18/09, December 2009, available at: http://www.justice.gov.uk/publications/docs/research-rights-responsibilities.pdf

responsibilities in the rights context may actually represent "*an opportunity to introduce new restrictions on human rights*".[33] After reviewing the concept of rights and responsibilities in the international context the report concluded that "*[j]urisdictions with liberal democratic traditions tend, on the whole, towards implicit or rhetorical recognition of duties*".[34] Examples given include the limitations already implicit in the European Convention on Human Rights, as already incorporated by the HRA. In contrast it found that "*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)*".[35] It also warned that even rhetorical or aspirational statements about duties could "*risk undermining rights by implying that the fulfilment of duties is an essential prerequisite to the enjoyment of certain rights*"[36] and that "*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*".[37]

19. In addition to the possible limitation on rights, the focus on responsibilities is totally unnecessary. The HRA already requires rights to be read together with Article 17 of the European Convention on Human Rights, which provides that the Convention does not give anyone a right to do anything that would destroy or unduly limit other people's human rights.[38] It is therefore very confusing as to what greater emphasis the Government is proposing when it says it wishes to explore whether a Bill of Rights "*ought to have more prominence to principles such as that underpinning Article 17*".[39] Given it is already a legal requirement that all rights be read together with Article 17 we are unsure as to how much more emphasis could be placed on this. Another proposal, to require "*our domestic courts to consider an individual's behaviour before deciding on the award of any damages*"[40] ignores the fact that the courts already do this on a daily basis.

20. In addition, as the Green Paper itself recognises, "*there are many ways in which our responsibilities are impliedly or expressly recognised in our day-to-day*

[33] Ibid, page 10.
[34] Ibid, page 24.
[35] Ibid, page 24.
[36] Ibid, page 30.
[37] Ibid, page 31.
[38] See section 1(1) of the HRA and Article 17 of the European Convention on Human Rights.
[39] See para 2.53 of the Green Paper.
[40] See para 2.55 of the Green Paper.

lives" including through the 'criminal and regulatory law', 'a duty to pay our taxes' and 'traffic rules'. This is indeed the case. A mass of criminal and civil laws have existed for centuries to ensure that people act in accordance with their responsibilities to the state and other individuals. These laws already operate to punish those who breach the criminal law and to provide redress where a person violates their civil law responsibilities to others, i.e. by acting negligently. It is difficult to see how the myriad of moral, ethical and legal responsibilities that we all owe could be compiled with sufficient succinctness and clarity for codification. If any responsibilities were left out, hierarchies of responsibility would be created, inadvertently devaluing the importance of certain duties and elevating others. If people are confused by the responsibilities they owe this is a matter for public education. Indeed, as the Green Paper acknowledges *"[i]f there is a deficit in relation to responsibilities, it is not in relation to their existence, but rather in their expression of them*".[41] If this is the case, it is not a reason to bring in new legislation, but rather a worthy cause for public awareness raising. The Green Paper starts by stating that the biggest challenge is "*how best to remind people of the importance of individual responsibility and to give this greater prominence*".[42] The answer to this seems clear – to inform people about their existing rights and correlating responsibilities.

Public Perceptions of Rights

21. Much has been said about public perceptions of the HRA. It is undeniable that there is a lack of public understanding about the HRA and its operation. Lack of public information about the Act has meant that for many years the human rights narrative has been one of real and imagined litigation as reported by the media. Liberty has consistently expressed disappointment that more was not done at the time – or indeed since – the Act's enactment to explain the HRA to the British public. This might well have encouraged greater buy-in to the legislation and made the recent attacks on the HRA less likely.

22. Yet it is not hard to see why the Act is unpopular amongst politicians – it is designed to guard against abuses of government and indeed future governments. However criticisms of the Act are not confined to the political world. The HRA has also been the target of a concerted media campaign which has unfairly portrayed the

[41] See para 2.24 of the Green Paper.
[42] See page 8 of the Green Paper.

Act and the rights it contains as a charter for criminals and terrorists and a threat to public safety. HRA claims considered 'unworthy' are often reported as if already adjudicated and numerous inaccurate HRA stories are left uncorrected creating a misleading picture of the Act's impact in the public imagination. Certain sections of the press have been open about the reasons for their hostility to the HRA. In particular, their suspicion of and contempt for Article 8 – the right to a private and family life – which demands that intrusions in this sphere need to be justified. For the time being at least this suspicion remains, despite the fact that Article 10 of the HRA creates the first positive right to freedom of speech and expression in British law and has been employed by journalists and their publishers on a number of occasions in recent times.[43]

23. Given this background, it is unsurprising that the Act has not yet been fully understood by the public. However, lack of understanding and unpopularity does not mean, as some have argued, that the Act is not working. If one of the principal 'shortcomings' of the HRA is that it exists in a fog of misunderstanding it is far from clear that tearing up the HRA and starting afresh with a new Bill of Rights, as some politicians have contended, would rectify this failure. Bad publicity is not commonly motivation enough for constitutional style reform.

24. Basic human rights and civil liberties must be given a chance to 'bed down' if they are to stand any chance of being understood, appreciated and owned by the public. Liberty is convinced that it is not too late to encourage the British public to better understand and appreciate the HRA and the rights it contains. This is why we have launched a new campaign, *Common Values,* which aims to explain and promote the human rights framework and to debunk some of the most common myths about the operation of the HRA.[44]

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[43] See for example the case of journalist Sally Murrer who was arrested in May 2008 and charged with aiding and abetting misconduct in a public office. She was accused of helping to leak police secrets. The case was eventually thrown out in 2008, and in giving his ruling, the judge said that Ms Murrer's right to do her journalistic job had been breached under Article 10 (right to freedom of expression). See also the recent case of journalist Suzanne Breen who was not required to hand over journalistic sources, in part because of the concept of confidentiality of journalists protecting their sources is recognised by Article 10, see http://business.timesonline.co.uk/tol/business/law/article6529671.ece

[44] For more information go to: www.commonvalues.org.uk

25. Early signs show that more information and explanation yields strong support for human rights principles. Over the past year Liberty has commissioned three separate polls on the rights contained in the HRA.[45] The results revealed consistently strong support for the various individual rights contained in the Act. In all polls, close to or more than 90% identified the right not to be tortured or degraded as either vital or important. In all polls 95% identified both respect for privacy, family life and the home as either vital or important.[46] It is clear to us then, that the cause of creating greater public acceptance and support for human rights protections is not best served by encouraging a partisan debate about a possible new system of rights protection.

Conclusion

26. Until there is better understanding and greater consensus around the rights protection that currently exists we do not believe that an extension of rights protection is politically realistic. Instead, we believe that moves towards a new Bill of Rights would be dominated by pressure to weaken the protection currently provided by the HRA.

27. Concerted efforts must now be made, not only to explode the myths and misunderstandings about the 1998 Act, but also to communicate the constitutional value of the post-war human rights framework - its ability to provide a unifying set of values in a diverse society, to hold an increasingly powerful and overbearing executive to account, and to protect and empower some of the most vulnerable people in society. The position that Liberty takes on the HRA is not a defensive one. We seek to pro-actively inform, explain and promote the vital rights contained within the HRA. We believe that failure to work now on building public confidence in and ownership of the post-war human rights consensus would threaten the existing legal protection of human rights across the UK.

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[45] See Liberty-ComRes polls in December 2008, June 2009 and December 2009.
[46] A press release on Liberty's most recent poll is available at: http://www.liberty-human-rights.org.uk/news-and-events/1-press-releases/2009/10-12-09-the-truth-about-britain-s-values.shtml