

Will the New Human Rights Legislation Do More Harm than Good?

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"In a democratic society, everyone has rights. Your rights come first, but so do everyone else's."

page 9, Human Rights Act: An Introduction, HRG1, 10/2000, published by the Home Office Communication Directorate

Prisoners have them. Students have them. Even lawyers have them. Rights -- whatever that word means -- are in vogue. Yet, as the quote above illustrates, there runs throughout the current debate much illogicality and muddle.

Because the idea of personal rights is fashionable, new human rights legislation has been enacted in Britain and other nations. Worryingly from an economist's point of view (and a rational citizen's point of view), this legislation has not been pushed through after a careful weighing up of the likely costs and benefits from such laws. To the best of my knowledge, no attempt has been made to assess the darker side of human rights legislation. In consequence, there is a good chance that these laws will make our society worse rather than better.

It is sensible to start with the long perspective. The key problem of human society is how to ensure that people have freedom but do not behave in ways that hurt others -- whether as school pupils, employees or citizens. At the start of the 21st century, we are passing human rights legislation without thinking about the repercussions further down the track. We have deceived ourselves into believing that we can improve human rights without costs or unpleasant side-effects.

The Data Protection Act is one example of this kind of legislation. Others include the new UK Human Rights Act and the Rome Ruling of November 2000.

It is instructive to take a look at the Human Rights Act 1998 and read Protocol 12 of the Council of Europe's 2000 Convention for the Protection of Human Rights and Fundamental Freedoms. Then step back and think of the likely problems to come.

To give the flavour:

Article 3 of the UK Human Rights Act, 1998

No one shall be subjected to ...degrading treatment

Or Article 5

Everyone who has been the victim of arrest or detention ... shall have an enforceable right to compensation

Or Article 8

Everyone has the right to respect for his ... correspondence

Or Article 11

Everyone has the right to form ... trade unions.

But perhaps most starkly, consider the Rome Ruling of 4 November 2000:

The member States of the Council of Europe hereto ... agree...

Article 1

No one shall be discriminated against by any public authority on any ground such assex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

At first glance, all these seem excellent ideas. Motherhood, apple pie, rights -- they are all excellent ideas. No reasonable person

could object to them. Hence the movement towards individual liberty and personal rights is likely to continue for years to come.

Unfortunately, reality has a way of biting back. For centuries, the United Kingdom managed without such laws on human rights. Does this mean that millions were treated shamefully and underwent much suffering? Possibly. But it seems more likely that an equilibrium in our country had sprung up where life continued in a sensible way and, notwithstanding the lack of law, there was a fair amount of respect for people's rights.

Those who felt the need for human rights legislation should have presented to the United Kingdom a clear cost-benefit analysis that established the case for the legislation. They did not do so. All the emphasis was on the benefits and the costs were ignored. That is bad economics.

Seven difficulties stand out.

First, a lot of sensible behaviour is slowly being outlawed under the new kinds of legislation. A mundane but revealing example can be found if you glance at the ceiling in most shops on your high street. Closed circuit TV cameras have been a valuable defence against shoplifting. Yet under the new human rights legislation and the Data Protection Act, some of the current uses for these small video cameras look now like becoming illegal. The reason is straightforward, of course. They infringe personal liberty and interfere with the right to privacy. Cameras must be withdrawn or their use -- how long tapes can be held and so on -- heavily circumscribed.

However, a cool-headed economic analysis suggests that this could turn out to be a thoroughly bad thing for a society. When costs rise, as they will with an increase in shoplifting, those extra costs must be passed on to someone. Prices in the affected shops will then go up. Customers, of course, are the ones who end up footing the bill -- potentially for the rights of shoplifters, one might say, if one were going to be harsh-minded.

This is only one example. Others abound, because many of the small conventions of life have come about as efficient ways for

citizens (like shopkeepers) to interfere with those who would damage them (like thieves).

Second, many of us are now unable to speak plainly. This is particularly noticeable in universities, because part of life is spent writing evaluations of students and indeed of research. The law is coming close to the point where it is impossible to keep job reference letters confidential. American universities, when they write to ask whether Ms Z or Mr J should be promoted to professor, now remind you in their covering letter that it may not be possible to prevent the candidate obtaining access to what you write about her or him.

In the year 2001, everyone has (virtually) the right to see everything. In consequence, human resources managers in UK companies are noticing a trend for job reference letters to say less and less. This is because those who write them are starting to bear in mind that, in our new world, they might be sued for talking the truth plainly. At the other extreme, and as a kind of insurance, all university final-year students become outstanding, and all current employees turn out to have made enormous contributions to the company. Reference letters like this are already with us -- helping nobody and to the detriment of economic efficiency. Yet an economist would be inclined to believe that accurate job reference letters play an important role in helping to match the right people with the right openings.

Third, we are living in an era in which 'social rights' are slowly being forgotten. Without being conscious of it, we are educating our young people to believe that they matter, as individuals, above all else, including the social good. The individual comes first, is the implicit message of human rights legislation.

When you implicitly denigrate the social good, a form of corrosion sets in. It runs slow; but it runs deep. We have started that now, with the new legislation about rights, and have little idea, if one is honest, where things will come to rest before the corrosion is spent.

Human societies need people to take all sorts of actions that are not especially attractive to folk who are self-interested and concerned above all with their own rights. The most painfully obvious from history is that, every now and then, one needs to draw on people's

willingness to go and fight for their nation or a cause. The Human Rights legislation recognises that and makes exemptions: soldiers do not have the same rights as others. But that exemption merely illustrates the generic difficulty: most of us have at times to do things that are not especially in our own interests. Other useful actions are being willing to donate organs for transplants, give up time to run citizens' help groups, be the local parish clerk, get on uncomplainingly when someone treats you unkindly, and much much else. The worry is that this is the kind of behaviour that may be driven out, little by little, decade by decade, court case by court case, by an obsession with personal rights.

Fourth, our concern for rights is steadily making certain people's jobs less enjoyable. School teachers today can barely punish a child who is ruining a lesson. On a small scale, this is a good example of personal rights over-riding social rights.

It is safe to guess that teachers will soon have to do blind marking of written work and exam scripts, and afterwards be willing to explain in huge detail to every student how each exam answer could have been improved. Fine, you might say. That will be good for our children's education. True enough. But it will also be expensive because it is going to drive teachers out of the profession by the lorry load. Then what happens? It becomes necessary to raise the wages of teachers because the job will have become more onerous. Society pays.

Fifth, all sorts of intriguing economic consequences will flow from the anti-discrimination clauses in the legislation. Just as one example: western countries will not be able to sustain their current rule that women are allowed to retire 5 years earlier than men. Pension designers, take note.

Sixth, as philosophers know, there is no watertight case for the notion that people have rights. An alternative way to think -- a better one, indeed, in my judgment -- is utilitarianism. On that view, it is legitimate to treat someone in a somewhat degrading way if millions will gain through it. On this moral view, the interests of the many come first.

Seventh, if you carry a smaller stick in your right hand, then something unpalatable happens. You have to have larger carrots in your left. The purpose of human rights legislation is to reduce the chance that someone -- school boy or lady merchant banker or prisoner -- can be treated badly. In itself, that is admirable. But it means that other ways will have to be found, in the real world where folk make mistakes or get bad tempered or forget to do things, to encourage people to behave responsibly. That takes carrots, and carrots are expensive.

The costs of human rights laws may turn out to outweigh the benefits. The legislation has been brought in because the idea of rights is fashionable, not because the intellectual case is a strong one.

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