Stoker, Gerry. "Citizenship and the Politics of Rights." *Prospects for Citizenship*. London: Bloomsbury Academic, 2011. 88–109. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781849662444.ch-005>>.

Downloaded from Bloomsbury Collections, www.bloomsburycollections.com, 26 April 2023, 07:49 UTC.

Copyright © Chris Armstrong, Momoh Banya, Derek McGhee, Anthony McGrew, Andrew Mason, David Owen, Graham Smith, Clare Saunders and Gerry Stoker 2011. You may share this work for non-commercial purposes only, provided you give attribution to the copyright holder and the publisher, and provide a link to the Creative Commons licence.

CHAPTER FIVE

Citizenship and the Politics of Rights

This chapter will explore the tension between what I will call ‘civic rights’ (meaning here the rights of citizenship) and human rights in the context of domestic politics. It will be suggested in this chapter that the recent debates and proposals for a Bill of Rights in the UK are the site for the emergence of a clash between two types of politics – ‘a politics of citizenship’ and a ‘politics of human rights’ – in which the ‘dual commitments of liberal democracies, that is, to international human rights and collective self determination’ (Benhabib 2001: 363) are in tension. Rather than leading to ‘the emergence of a deterritorialised and postnational politics’ in which legally codified human rights are to be privileged over citizenship (Tambakaki 2010: 3–4), these debates on the potential Bill of Rights in the UK were played out within the frame of ‘a Westphalian political imaginary’ (Fraser 2008: 12). It is in the debates on what a Bill of Rights could do for Britain that the tensions between privileging human rights over citizenship, as well as law over politics, are exposed (Tambakaki 2010: 8). This tension between the universal and the particular, with regards to civic rights and human rights, is part of what Žižek refers to as ‘the rebirth of the old distinction between human rights and the rights of citizens’ which involves the process of narrowing the rights of citizens (2002: 95) through repackaging the political rights of citizens as a mere ‘secondary gesture’ (Žižek 2002: 95). This can be observed in the debates on the conditional relationship between rights and responsibilities; however, in this chapter, the primary focus will be on processes of radical exclusion under the ‘war on terrorism’ where the treatment of foreign-born ‘terrorist suspects’ can be best described in Arendtian terms as a matter of deciding who has ‘the right to have rights’ in the name of public safety (McGhee 2008, 2010). In this chapter the tension between ‘civic rights’ and ‘human rights’ will be examined through examining what the recent Labour Government and Conservatives (whilst in Opposition) had to say about the potential Bill of Rights with regards to the relationship between: (a) human rights and ‘public safety’; (b) rights and responsibilities; and (c) the need to bolster what is perceived to be a weak sense of citizenship in contemporary Britain. In many ways this chapter is an examination of what Nancy Fraser, in her book *Scales of Justice*, calls ‘the politics of framing’ (2008: 22), which

is associated with debates on the setting of boundaries and decisions on who is included and who is not included. For Fraser, the boundary setting aspects of the political are amongst the most consequential of political decisions (2008: 22).

The debates surrounding the potential Bill of Rights offers a rich vein of intersecting discourses and strategies associated with what were thought (before the recent General Election) to be the two main political parties in the UK (Labour and the Conservatives). For example, these debates are a site for us to recognize the tabloid-collusive ambivalence of the Labour Government with regards to the Human Rights Act and their authoritarianism with regards to the British Bill of Rights and Responsibilities; but also to observe David Cameron's explicit hostility to the Human Rights Act. At the same time, when we step away from the party-political rhetoric, we can see that at least some aspects of our democratic institutions – namely the Joint (House of Lords and House of Commons) Committee on Human Rights (JCHR) – have attempted to take a longer-term view of the development of a human rights culture in the UK. As we shall see, it fell to the JCHR – in the context of recent Labour Government and Conservative Opposition's ambivalent, securitized and 'nationalistic' rhetoric on human rights and citizenship – to attempt to salvage the potential Bill of Rights from party-political shortsightedness, illegality and jingoism.

The chapter will consist of two main parts. The first will explore the relationship between the Human Rights Act and the potential Bill of Rights. The second will examine the recent Labour Government's rationale for introducing a potential Bill of Rights. In this part, I will examine how the Labour Government attempted to use what they called a British Bill of Rights and Responsibilities as a vehicle for making responsibilities explicit, enhancing 'public safety' and for strengthening citizenship. This part will also explore the JCHR's alternative UK Bill of Rights and Freedoms, which insists on the uncoupling of exclusive 'Britishness', citizenship criteria and contingent responsibilities from the Bill of Rights. It will conclude with an exploration of evidence of a change of direction that emerged in the last year the Labour Government was in power, that is when the potential Bill of Rights was being rethought and potentially replaced with a Statement of Rights and Responsible for citizens (as recommended in Lord Goldsmith's review) which would resemble the statement of rights and responsibilities for citizens being developed under the Dutch Charter of Responsible Citizenship. The conclusion will include analysis of the Green Paper 'Rights and Responsibilities: Developing a Constitutional Framework', published

by the Ministry of Justice in 2009. Particular note here will be made of the shift in emphasis from the Bill of Rights and Responsibilities to a non-legalistic Declaration of Rights and Responsibilities. It will be suggested below that the later shift from a legal Bill of Rights to a non-legal charter or declaration (of responsible citizenship) was an attempt to resolve some of the opposition that the Ministry of Justice (under Jack Straw, the former Lord Chancellor) had faced with regard to the tensions they had introduced in connection to the rights of citizens and human rights.

The chapter will end with some suggestions for further research.

The Human Rights Act – a (Precarious) ‘Stepping Stone’ to the Bill of Rights?

The Human Rights Act of 1998 has been described variously by Jack Straw as ‘not having an easy childhood’, and as being ‘an Aunt Sally; unfairly blamed for a host of other issues’ especially through misreporting on the part of the media and sometimes through the misapplication of the Act by public authorities (2009: 3). Ultimately, the Human Rights Act was ‘a victim of circumstance’ (Straw 2009: 3), given that the 9/11 attacks in the United States happened when the Act had been implemented for barely a year. As a result of 9/11 and the ensuing ‘war on terror’, the Labour Government which introduced the Human Rights Acts pre-9/11 ‘came to see the Act as an obstacle in the so-called “war on terror”’ (Klug 2007a: 4) in the post-9/11 context. When we realize how closely connected the Human Rights Act and the potential British Bill of Rights are in, for example, the Labour Party’s recent history, then the Labour Government’s orientation to human rights and the Human Rights Act have a particular bearing on the following questions. What was the potential Bill of Rights for? What was it supposed to do for Britain? I shall deal with these questions in the next part of the chapter. Here I want to spend a little time exploring the relationship between the Human Rights Act and a potential British Bill of Rights. Francesca Klug, in numerous speeches and articles delivered and published between 2007 and 2009, has traced the relationship between the Act and the potential Bill. Klug is extremely skilful in heading off the Eurosceptic backlash against the Human Rights Act (mostly spearheaded by the Conservatives under David Cameron) as being a foreign (European) imposition when she reminds us, as did the ‘Governance of Britain’ Green Paper, that British lawyers drafted the ECHR (Ministry of Justice 2007: 60; Klug 2009: 8).

According to Klug (2007a: 3), the late Labour leader John Smith committed the Labour Party to a British Bill of Rights as early as 1993. Smith suggested

a two-stage approach to this process. He suggested that 'the quickest and simplest way' of introducing 'a substantial package of human rights' would be first to pass a Human Rights Act which would incorporate into British law many aspects of the ECHR and complete the processes begun under Atlee (with the ratification of the ECHR in 1951) and followed by Wilson in 1966 (granting individuals the right to directly petition the European Court of Human Rights in Strasbourg). The second stage, the stage we in Britain are currently in (or potentially entering), is to introduce a British Bill of Rights. The introduction of a British Bill of Rights was first suggested at the Labour Conference at the NEC in 1993 by the then Home Affairs Spokesperson Tony Blair, who, in support of an all-party Commission, called for the drafting 'of our own Bill of Rights', following the incorporation of the ECHR into UK law (Blair quoted in Klug 2007a: 3). The 1997 Labour Manifesto reflected the first part of this process and the Human Rights Act was introduced the following year (Klug 2007a: 3).

As noted above, a year after the implementation of the Human Rights Act in 2000, the 9/11 attacks occurred in North American cities. One has to wonder how the Human Rights Act would have been perceived in the UK if it were not for 9/11? The Human Rights Act has suffered from a poor childhood indeed. Not only has it suffered from post-9/11 ambivalence and lack of sustained support on the part of the Labour Government, it has also been the focus of a hostile media (especially sections of the tabloid press) which have taken every opportunity to perpetuate damaging myths about the misapplication of rights to the undeserving criminals and terrorists in what Liberty describes as 'a concerted media campaign' (Russell 2007: 3). Klug has suggested a degree of collusion, post-9/11 and especially post-7/7, between senior members of the recent Labour Cabinet and this hostile media reporting, suggesting that at times the former Prime Minister Tony Blair sounded 'like a cheer leader for the tabloids' negative spin' on the Human Rights Act (Klug 2007c: 14). The Department for Constitutional Affairs suggested that with regard to the media's reporting on the Human Rights Act 'too much attention has been paid to individual rights at the expense of the interests of the wider community' (Department for Constitutional Affairs 2006: 1). As well as what Klug describes as 'the tabloid onslaught against the Human Rights Act', which Labour Ministers compounded by showing little or no appetite for rebutting these impressions (Klug 2007a: 5), there is also evidence that the Human Rights Act was bedevilled by poor public consultation and a general lack of preparation prior to implementation. For example, according to the Audit Commission's (2003: 21) report 'Human

Rights: Improving Public Service Delivery' published in 2003, 58 per cent of public bodies surveyed had no clear corporate approach to human rights.

It is the ambivalent relationship between the Labour Government, the Conservative Opposition and the Human Rights Act that I will briefly focus on here. I will first examine David Cameron's views (when he was Leader of the Opposition) on what he calls a Modern British Bill of Rights, before returning to the Labour Government's agendas (in the next part). Ken Clarke has famously described David Cameron's ideas for the Bill of Rights as being based on legal nonsense¹ and xenophobia if he intends the Bill of Rights to be used as 'a get out clause' from the ECHR (in Klug 2007b: 2). It was during his 'Balancing Freedoms and Security – a Modern British Bill of Rights' speech at the Centre for Policy Studies in June 2006 that David Cameron announced his party's intention to scrap the Human Rights Act in favour of introducing what he calls 'a Modern Bill of Rights to define the core values which give us our identity as a free nation'. Cameron's intention in this speech was to attempt to outdo the Labour Government's increasingly tough stance on terrorism, and to court public opinion in the context of the confusion about alleged misapplication of the rights included in the Human Rights Act (as reported in some parts of the media). It was the *Chahal* ruling issued by The European Court of Human Rights in 1996 (McGhee 2008)² that for Cameron epitomized the failure of ECHR case law (compounded in the UK by the Human Rights Act). According to Cameron, the European Court and the Human Rights Act prevented governments from making judgements in the public interest if these judgements impacted adversely on the rights of individuals, such as terrorist suspects. That is:

A Home Secretary must have more flexibility in making a judgment and the public interest balance the rights of terror suspects against the rights of British citizens. At present the jurisprudence from cases such as *Chahal* prevents this happening. And the Human Rights Act compounds the problem. I believe it is wrong to undermine public safety – by allowing highly dangerous criminals and terrorists to trump the rights of the people of Britain to live in security and peace. (Cameron 2006: 11)

It should be noted that Cameron's solution to what he perceived to be the miscarriages of justice as a result of the inappropriate application of the Human Rights in British courts was different to the suggestions for rebalancing rights made by Jack Straw and former Home Secretary Jacqui Smith.

Whereas Straw and Smith advocated the prioritization of ‘public safety’ by emphasizing ECHR Article 2, the right to life, above other rights which follow recommendations of the previous Lord Chancellor, Lord Falconer (McGhee 2010), David Cameron’s solution was to abolish the Human Rights Act and replace it with a Modern British Bill of Rights and Responsibilities (Cameron 2006: 14). For Cameron:

... a modern British Bill of Rights needs to define the core values which give us our identity as a free nation. It should spell out the fundamental duties and responsibilities of people living in this country both as citizens and foreign nationals. And it should guide the judiciary and the government in applying human rights law where the lack of responsibility of some individuals threatens the rights of others. It should enshrine and protect fundamental liberties such as jury trial, equality under the law and civil rights. And it should protect the fundamental rights set out in the European Convention on Human Rights in clear and more precise terms. (Cameron 2006: 16)

Cameron’s initial ideas for his modern British Bill of Rights have many of the hallmarks of the Labour Government’s Bill of Rights and Responsibilities, especially concerning the relationship between security, shared values, citizenship and responsibilities (which will be examined later). The major difference is that the Labour Government’s intention from John Smith in 1993 to the publication of the ‘Governance of Britain’ Green Paper in 2007 is to build on the Human Rights Act. They perceived the Human Rights Act as a stepping stone to what Michael Wills (former Justice Minister) described as ‘the next stage’ (Wills, 2008a) of the UK’s human rights story.

Although there was cross-party support for a British Bill of Rights, it should be noted that this potential document has become the repository for both the hopes and fears of the nation. The Bill of Rights was seen by the Labour Government and also by the Conservatives whilst in opposition as a major component of (1) national security strategy; (2) citizenship strategy; and (3) as providing the opportunity for making British values and responsibilities more explicit.

Making Responsibilities Explicit and Strengthening Citizenship – the Government and the Bill of Rights

The Labour Government, unlike David Cameron, had no plans for scrapping the Human Rights Act, but there has been a great number of statements about

amending the Human Rights Act in respect of the interpretation of the ECHR (Klug 2007c: 14). Despite this, the Bill of Rights and Responsibilities was viewed as an opportunity for addressing Britain's alleged: (a) responsibilities deficit; (b) citizenship deficit; and (c) public safety deficit. It will be argued here that the first two of these are potentially problematic because they create tensions between a domestic or territorially bounded 'politics of citizenship' and a universal 'politics of human rights'.

The Determination to Enhance 'Public Safety' in the Bill of Rights

It was in the Labour Government's 'Governance of Britain' Green Paper that the relationship between the potential Bill Of Rights and Duties and 'public safety' was introduced:

The government itself recognized in its review last year of the implementation of the Human Rights Act,³ the importance which must attach to public safety and ensuring that government agencies accord appropriate priority to protection of the public when balancing rights. A Bill of Rights and Duties might provide a means of giving greater clarity and legislative force to this commitment. (Ministry of Justice 2007: 61)

To add to this, Jack Straw stipulated in his Mackenzie-Stuart lecture that, 'Britain faces a new set of challenges, both internationally and at home, which requires us to look again at our mechanisms of rights' (2007a: 2). From this statement and the Green Paper we can see that the Bill of Rights and Responsibilities, was a component in Straw's wider project of rebalancing rights in favour of public security. According to Liberty, statements such as these undermine the Human Rights Act by suggesting, as David Cameron has above, that in the Act insufficient regard is being paid to public safety and national security (Russell 2007: 9). Liberty did not accept these criticisms of the Human Rights Act. They stated that:

... public protection is at the core of the human rights framework. Not only do rights instruments like the 1998 Act play a vital role in protecting individuals against abuses by the state; they also require the state to take positive steps to protect the rights of those within their jurisdiction, including from the actions of other private individuals. The Human Rights Act requires criminal laws to be put in place to protect

people from committing serious offences like murder, terrorism and rape. (Russell 2007: 10)

Liberty also reminded us that most of the rights and the Human Rights Act are not absolute and that 'one of the legitimate reasons for placing proportionate legal restrictions on the rights protected is public safety' (Russell 2007: 10). The JCHR were also opposed to the Labour Government's ambitions for rebalancing the Human Rights Act in favour of 'public safety'. In their 2006 report 'The Human Rights Act: the DCA and Home Office Reviews', the JCHR demonstrated 'that there was no evidence that such an amendment to the human rights framework was necessary' (2006: 35–9). In their 'Bill of Rights for the UK?' report of 2008, the JCHR stated that 'a surprising number of witnesses in our inquiry were opposed to a Bill Of Rights on this ground alone: they were concerned that the real motivation behind the proposal was to dilute the protections for human rights already contained in the Human Rights Act' (2008: 19). The JCHR, in an attempt to reassure these witnesses and to send a clear message, placed the following in bold in their report:

In our view it is imperative that the Human Rights Act not be diluted in any way in the process of adopting a Bill of Rights. Not only must there be no attempt to redefine the rights themselves, for example, by attempting to make public safety or security the foundational value which trumps all others, but there must be no question of weakening the existing machinery of the Human Rights Act for the protection of convention rights. (Joint Committee on Human Rights 2008: 20)

The JCHR's recommendation in the 2008 and 2006 reports was that the Labour Government should start acting consistently with regards to the Human Rights Act, if they were to successfully build on 'its achievements'. That is according to the JCHR, the Ministry of Justice cannot on the one hand talk about building upon the achievements of the Human Rights Act, whilst also pandering to a hostile media's characterization of the Human Rights Act 'as some sort of terrorists' charter' (Straw, in Joint Committee on Human Rights 2008: 20). Straw admitted to the JCHR that addressing this characterization of the Human Rights Act and the public's misperceptions was 'part of the framework for the current debate' on the Bill of Rights and Responsibilities (Straw, in Joint Committee on Human Rights 2008: 20). The JCHR's consistent position on the Labour Government's attempts to

correct public misperceptions about the current regime of human rights protections under the Human Rights Act was that 'the government should seek proactively to counter public misperceptions about human rights rather than encourage them by treating them as if they were true' (Joint Committee on Human Rights 2008: 14). The Labour Government clearly could not have it both (or all) ways. According to the JCHR, the Labour Government could not attempt to correct/rebalance and thus undermine the Human Rights Act, while also attempting to use or (mis)use the Human Rights Act as a stepping stone to a potential Bill of Rights. In many ways the rebalancing of human rights in the name of public safety (McGhee 2010) forms the background to the unfolding tension to be explored below with regards to debates on responsibilities and citizenship and the politics of human rights. The lesson of the 'war on terrorism' is that the distinction between citizens and foreign nationals (especially foreign national terror suspects) is that the former are considered to be 'rights bearing' (although increasingly this is conditional on discharging the responsibilities of citizenship) and the latter, in many ways, are not.

The Explicit Articulation of Responsibilities in the Bill of Rights

The presentation of the potential Bill of Rights as a 'next stage' in the evolution of Britain's human rights culture, as Michael Wills suggested, was all about responsibilities, or more accurately the better articulation of 'the balance between rights to which we are entitled and obligations we owe each other' (2008a: 2). The better articulation of rights and responsibilities is not new. The alleged responsibilities deficit in Britain was a feature of New Labour's moral communitarianism as far back as 1995 when, for example, Tony Blair's lecture on 'the rights we enjoy reflect the duties we owe' depicted what Driver and Martell refer to as the new Labour perception that in the post-war years Britain was eager to extend the scope of individual rights without any corresponding concern for the responsibilities attached to rights and the duties individuals owe as members of families and communities (Driver and Martell 1998: 130). To overcome the responsibilities deficit, Labour's communitarianism was, according to Driver and Martell, strongly laced with ideas of reciprocity and strong values (1998: 118). Blair wrote, 'the only way to rebuild social order and stability is through strong values, socially shared, inculcated through individuals, family, government and institutions of civil society' (in Driver and Martell 1998: 118–19). For Driver and Martell, New Labour's communitarianism consists of the promotion of a 'new social

morality' (1998: 119) founded on 'shared values'. In an article written in 1997, Driver and Martell, describe New Labour as being torn between what they describe as conformist and pluralist versions of communitarianism (1997: 27). I think this is an accurate description of 'early' New Labour. However, if we fast-forward from the early days of New Labour to Tony Blair's last year in office as Prime Minister in the post-7/7 context, we see that rather than being 'torn' between conformist and pluralist versions of communitarianism, the Labour Government had shifted into an explicitly conformist and morally prescriptive (integration) discourse (McGhee 2008). For example, the 7/7 bombers, according to Blair, were 'integrated' at one level in terms of lifestyle and work (2006: 5), but not integrated fully:

Integration is not about culture or lifestyle. It is about values. It is about integrating at the point of shared, common unifying British values. It isn't about what defines us as people, but as citizens, the rights and duties that go with being a member of our society. (Blair 2006: 5)

Citizenship, responsibilities and duties are all intermingled in Blair's 'you are either with us or with the terrorists' conditional approach to integration. When it comes to the Labour Government's promotion of the Bill of Rights and Responsibilities, the communitarian concerns with regards to the alleged responsibilities deficit and the attempt to make the acceptance and sharing of particular values a condition of citizenship are a central feature. Schinkel's analysis of the shifting weight between what he describes as the formal aspects and moral aspects of citizenship in Dutch integration discourse is a useful comparison for examining a similar shift in emphasis in contemporary Britain. Formal citizenship, for Schinkel, is associated with our 'juridically codified rights and duties of citizen-members of states' and moral citizenship is 'a counterfactual ideal of citizen-participation' associated with an extra-legal and normative concept of 'the good citizen' (2008: 17). Although Schinkel is careful to point out that every formal conception of citizenship is going to entail aspects of moral citizenship, the distinction he is making is analytical and serves the purpose of exploring the relative weight given to formal or moral aspects of citizenship (2008: 18). If we move our attention away from 'integration' strategies and discourses for a moment (we will return to Schinkel's analysis of Dutch citizenship and integration and the Dutch Charter of Responsible Citizenship below) to once again focus on the central focus of this chapter (the Bill of Rights and Responsibilities), we shall see that when it comes to the Labour Government's and the Conservative

Opposition's promotion of the Bill of Rights and Responsibilities in the UK, the relative weight or emphasis between the formal and the moral has shifted to the latter.

There are problems with this ambition (coming from both David Cameron's Conservative Opposition party, and from Jack Straw and the Ministry of Justice) to better articulate the responsibilities that come with rights, and attempting to use the Bill of Rights and Responsibilities to reverse the alleged responsibilities deficit in contemporary Britain. For example, David Cameron, as noted above, suggested we need 'a modern Bill of Rights that ... balances rights with responsibilities' and which 'spells out the fundamental duties and responsibilities of people living in this country' (Cameron 2006: 2); whilst in the 'Governance of Britain' Green Paper it was stated that a 'Bill of Rights and Duties could provide explicit recognition that human rights come with responsibilities and must be exercised in a way that respects the human rights of others' (Ministry of Justice 2007: 61). Liberty challenged this portrayal of a culture of rights without responsibilities in contemporary Britain. As with their criticism of the Labour Government's pandering to the misperception that individuals' rights are being prioritized over 'public safety', Liberty reminded us that with few exceptions the rights in the Human Rights Act are not absolute. This means that individuals' rights can be restricted for a number of legitimate reasons, the result being that it is permissible to make laws which restrict a person's rights in order to ensure compliance with individuals' responsibilities to society (Russell 2007: 8). At the same time Liberty remind us that there is a mass of criminal and civil laws that have existed for centuries that ensure that people act in accordance with their responsibilities to the state and other individuals (Russell 2007: 8). These laws already operate to punish those who breach the criminal law and provide redress where a person violates civil law responsibilities to others, that is by acting negligently (Russell 2007: 8). The problem, according to Liberty, is that David Cameron and Jack Straw's ambitions of trying to make these implicit and embedded responsibilities, obligations and duties explicit and 'easily understood' (Ministry of Justice 2007: 54) by the public and new citizens alike could be perceived as making individual rights 'in some way contingent upon compliance with one's responsibilities' (Russell 2007: 9). It is at this point where the civic politics of responsibilities, duties and obligations and the universality of human rights protections are brought into tension. The JCHR had similar concerns to Liberty. It is the potential for undermining the principle of universality through the overemphasis of the conditionality of rights (on the contingency that duties or responsibilities are

performed) that resulted in the JCHR stating: 'rights cannot be contingent on performing duties or responsibilities' (2008: 6). According to the JCHR, a number of the witnesses called to their inquiry expressed concerns that the 'inclusion of responsibilities in the Bill of Rights might mean that only the "deserving" would have full rights entitlement' (2008: 69). Jack Straw told the JCHR that the longstanding desire to ensure that people realize that with rights come responsibilities was 'the first reason why the government is interested in moving beyond the Human Rights Act to a Bill of Rights' (Joint Committee on Human Rights 2008: 68). Straw informed the JCHR that he wanted to be able to confront people who, in his view, have asserted their rights 'selfishly', that is without regard to the rights of others, with a text which says 'Yes, you have rights, but you also have responsibilities'. Straw stipulated to the JCHR that he was 'really keen on getting that out specifically' (Straw, in Joint Committee on Human Rights 2008: 68). The JCHR recognized the importance of responsibilities to the debates on the new Bill of Rights, but suggested that the Labour Government's thinking about the relationship between rights and responsibilities was 'extremely muddled' (2008: 71). More than that, the Labour Government had failed to reconcile their desire to increase a sense of responsibility in British citizens with the principles of universality in human rights conventions. The JCHR's position, as noted above, was unequivocal on the matter of the relationship between responsibilities and rights: 'human rights are rights as people enjoy by virtue of being human: they cannot be made contingent on the prior fulfilment of responsibilities' (Joint Committee on Human Rights 2008: 71).

A Bill of Rights for British Citizens?

At this stage it would be helpful to acknowledge the parallel and interdependent process that is to accompany the potential Bill of Rights, namely the creation of a British Statement of Values. In many ways, the Labour Government's 'on and off' support of 'human rights' (or more accurately the Human Rights Act) resulted in the relationship between the British Statement of Values and the Bill of Rights becoming increasingly unclear. Some members of the recent Labour Government, such as former Home Secretary Jacqui Smith, seemed to be engaged in the process of uncoupling the British Statement of Values from the Bill of Rights in order to get their authoritarian 'accept and share' British values 'or else' message across. For this reason it is important to stipulate that the Labour Government's intention behind suggesting the formulation of a British Statement of Values was that this process, in particular the national

debate that was promised on shared values, would inform and underwrite the Bill of Rights. According to the JCHR, the intention was that the Labour Government's consultation on 'the values the British people consider to be fundamental' would be used to form the preamble to the Bill of Rights (Joint Committee on Human Rights 2008: 34).

The JCHR have particular problems with the term 'Britishness' and the use of 'British' as a prefix in the title for the proposed Bill of Rights. The JCHR consciously removed the prefix 'British' to both the Statement of Values and the Bill of Rights. The JCHR anticipated difficulties associated with establishing a Bill of Rights on the basis of a statement of 'British' values, the main reason being that this label 'may or may not be accepted' by those people 'who consider themselves to be, for example, "English", "Scottish", "Irish" or "Welsh", but not "British"' (Joint Committee on Human Rights 2008: 29). Jack Straw's justification for employing the adjective 'British' to the potential 'statement of values' and the Bill of Rights, in his witness statement to the JCHR, can be described as yet another strategy to head off (whilst also colluding with) hostile media reporting and public attitudes with regards to human rights:

The 'British' adjective in my view is important because there is the implication in the air that these human rights which equal in some people's minds, not mine or yours, a terrorists' and criminals' charter, are a European imposition and by Europe it is meant 'the Other', that somehow we are not part of Europe. I think it is important that we break that down. (Straw, in Joint Committee on Human Rights 2008: 29)

The JCHR took an alternative view, as noted above. They saw the adjective 'British' as being counterproductive in that it could be detrimental to social cohesion and could be a source of division (2008: 29). They also viewed the adjective 'British' as suggesting a link with British citizenship, which for many of the rights within the Bill of Rights would be inappropriate.⁴ In the 'Governance of Britain' Green Paper the development of a British Statement of Values was justified in terms of strengthening citizenship. In this Green Paper, developing a sense of Britishness was seen as being the key for revitalizing British citizenship. This amounted to a strategy of recognizing the many different aspects of our social identities and value systems in order to ultimately trump other value systems and identities in relation to our 'British' identities and shared values:

It is important to be clear about what it means to be British, what it means to be part of British society and, crucially, to be resolute in making the point that what comes with that is the set of values which have not just to be shared but also accepted. There is room to celebrate multiple and different identities, but none of these identities should take precedence over the core Democratic values that define what it means to be British. (Ministry of Justice 2007: 57)

The connection between British citizenship, the British Statement of Values and the potential British Bill of Rights and Responsibilities was made by Michael Wills, the former Justice Minister, who suggested that the stepping stone between the Human Rights Act and the British Bill of Rights and Responsibilities was the formulation of a British Statement of Values which would explicitly articulate previously implicit responsibilities and would also explicitly express 'our national identity':

Our national identity matters ... it was only the years after the Second World War that we went through a period of introspection, lacking in self-confidence when such discussions were often regarded with embarrassment. We are now far more successful and self-confident as a country and the government believes the time is right to find a way to express who we believe ourselves to be in a way that is inclusive and commands broad support. (Wills 2008a: 3)

For Wills this is a pre-emptive strategy, in terms of the Labour Government getting in there first, facilitating a national debate before this process could be overtaken by 'others':

If we don't do this, others will. National identity matters to people. If there isn't a national process to discuss it, in ways that are inclusive of everyone on these islands, then there is a risk that this territory will be colonized by sectarian and sometimes even poisonous views. (Wills 2008a: 3)

Thus, the potential discussion of the Statement of Values and the Bill of Rights was bound up with pre-emptive-defensive or reflexive-corrective motivations associated with a 'getting in there first' mentality or an undoing the mistakes of the past reflexive mentality.

Giving the process of formulating a Statement of Values and a Bill of Rights and Responsibilities a 'British spin' has other consequences. There were concerns, discussed above concerning the Labour Government's attempt to rebalance human rights protections to prioritize the security of citizens and their attempts to better articulate the relationship between rights and responsibilities; their emphasis on 'Britishness' and the addition of the prefix 'British' to the Statement of Values and the Bill of Rights sent the wrong messages, and once again flew in the face of universality (Russell 2007: 5). Liberty viewed the emphasis on Britishness, as suggesting that the 'British' Bill of Rights would only protect the rights of British people. They viewed the prefix 'British' as yet another ill-advised response to for example, the criticisms that launched by David Cameron that the Human Rights Act protects the rights of foreign citizens to the perceived detriment of British citizens (Russell 2007: 5). Once again the tension between citizenship and human rights – and in particular the distinction between those who should and should not enjoy human rights protections, or more accurately whose human rights should be considered first and foremost – emerges here. What these debates lead to is a particular frame-setting discourse that could have profound effects on 'non-citizens', who seem to be 'wrongly excluded from consideration' (Fraser 2008: 6). This amounts to what Nancy Fraser would call 'misframing' which can result 'in a kind of "political death"' (2008: 20) for individuals and groups who find themselves outside the frame. In response to misframing, Liberty reminded us once again of the universality principle that 'people have basic rights by virtue of being human' (Russell 2007: 5). Liberty attempted to block any move that would prioritize the rights of the citizenry over the rights of others (e.g. Third Country, non-EU foreign nationals) who are resident in the UK in the name of preventing further human rights abuses from occurring in the UK. They cited the results of recent misframing practices to support their opposition 'as the Belmarsh internment policy and treatment of asylum seekers have demonstrated, it is indeed non-citizens that are most often in need of human rights protections' (Russell 2007: 5). They suggested that a Bill of Rights and a Statement of Values should not be used to shore up a sense of 'Britishness' if the result of this is that such a process is perceived as a means to prioritize the rights of British citizens first. The JCHR were also opposed to the British prefix with regards to the Statement of Values and Bill of Rights. The JCHR recognized that the formulation of a Bill of Rights was a significant event of 'national definition' (2008: 28). According to the JCHR, a national Bill of Rights was an expression of national identity and in the process of drawing

up a Bill of Rights ‘invites reflection about what it is that “Binds us together as a nation”’ (2008: 28). However, the JCHR was not persuaded that the term ‘British’ for the Bill of Rights was a helpful description of the Labour Government’s proposal. The JCHR’s primary concern was that giving the Bill of Rights the prefix ‘British’ could encourage an inward-looking view that human rights were linked to nationality or citizenship rather than being universal in their application (Joint Committee on Human Rights 2008: 30). The JCHR suggested instead that the term ‘UK’ Bill of Rights would be more accurate and appropriate and would also serve to demonstrate that the rights it contained were ‘owned’ by all of the people (Scottish, English, Welsh and Northern Irish) of the UK (Joint Committee on Human Rights 2008: 30). At the same time they suggested the removal of ‘Responsibilities’ and the addition of ‘Freedoms’ to the title of the Bill to represent the location of the UK Bill of Rights and Freedoms within established Human Rights Conventions, which, following Klug, would signify that the Bill of Rights would provide a unifying force but not at the expense of recognizing ‘the contribution of many countries, and most religions and cultures, to the human rights values recognized throughout the world today’ (Klug 2007a: 13).

In many ways the JCHR report ‘A Bill of Rights for the UK?’ took on the role of filtering out the prioritization of the rights of some over the rights of others, and the discourses of responsibilities, Britishness and citizenship from the Labour Government’s proposed British Bill of Rights and Responsibilities. The JCHR has performed the task of removing the contingency, exclusivity, restrictiveness and non-universality of the proposed Bill of Rights in order to propose their own UK Bill of Rights and Freedoms which is universal, inclusive and outward-looking (through referencing existing human rights conventions and standards). Moreover, the JCHR’s recommendations could also lead – and there is some evidence that this idea is beginning to gather some momentum – to the uncoupling of the Labour Government’s strategies for increasing a sense of obligations, duties and responsibilities through the process of strengthening British citizenship from the processes associated with introducing the Bill of Rights. As noted above, there are a number of similarities between the citizenship and integration strategies found in the Netherlands and those found in the UK. As in recent British proposals for the introduction of ‘earned’ British citizenship (McGhee 2009, 2010), in the Netherlands newly arrived immigrants are required to first gain what Schinkel calls ‘moral citizenship’ in order to apply for ‘formal citizenship’, the latter being ‘the crowning achievement of their becoming-citizens’ (2008: 22). However, perhaps the

most significant aspects (for the focus of this chapter) of Schinkel's account of the shifting nature of citizenship processes in the Netherlands (and their parallels with the UK) are what he has to say about the Dutch authorities' concern with established immigrant communities, in particular Muslim communities, 'who have formal citizenship status but who lack "integration"' which is constructed by some politicians and the media in the Netherlands in 'cultural racist terms' as being 'a consequence of their lack of "cultural adjustment"' (Schinkel 2008: 22). For Schinkel, in the case of established immigrant community groups, many of whom already have formal citizenship status, 'the real prize' for the Dutch government was achieving 'the loyalties involved in moral citizenship' (2008: 22). The latter has resulted in the Dutch initiating debates on the potential process of developing a Charter of Responsible Citizenship (Schinkel 2008: 24).

There is one other development that we would like to mention that is the relationship between the debates above on the Bill of Rights and the recommendations made by Lord Goldsmith in his wide-ranging citizenship review (2007–8). Lord Goldsmith's review and recommendations also focus on the wider challenges of strengthening a sense of citizenship and commonality for all in the UK. However, in my opinion, Lord Goldsmith's recommendations do not lead to the strengthening of 'our common bond of citizenship' through a Bill of Rights. Rather, in my view, many of Goldsmith's recommendations could lead us down the paths to something like a British (or UK) Charter of Responsible Citizenship (similar to the Charter proposed in the Netherlands) which could potentially take the place of the proposed Bill of Rights and Responsibilities.

There are some signs that Jack Straw was beginning (in the last year the Labour Government was in office) to take note of the developments with regards to the creation of the Dutch Charter in the context of the stiff opposition he and the Ministry of Justice have faced from the JCHR and organizations like Liberty. We have described above a seemingly irreconcilable tension between the Labour Government's ambitions for the Bill of Rights with regards to public safety, responsibilities and citizenship (which have been grouped here under the term the 'politics of citizenship') and its commitments to universal human rights. Jack Straw has stated that the Dutch Charter of Responsible Citizenship 'is not intended to be a formal document with direct legal or even normative effect. The aim is to stimulate social change through increasing individuals' understandings of their responsibilities to one another, and their responsibilities to society as a whole' (2009: 7). In my opinion there are strong parallels between the

Dutch Charter of Responsible Citizenship, Jack Straw's understanding of the latter and Lord Goldsmith's recommendations for developing 'a narrative, non-legalistic statement of the rights and responsibilities of citizenship' in Britain (Goldsmith 2008: Executive Summary). Like the Dutch Charter of Responsible Citizenship, Lord Goldsmith advocated a narrative statement of British citizenship that both simplified and clarified 'the package of rights and responsibilities which demonstrate the tie between a person and a country' (2008: 6). For Lord Goldsmith, access to citizenship for new immigrants should be rigorous and could, like the earned citizenship proposals, include a 'credit-based' modular system for the acquisition of citizenship 'which may be able to accurately record commitment to settle in the UK and engage with UK society' (2008: 116). At the same time, Lord Goldsmith was adamant that Britain needs to better emphasize the relationship between those who already enjoy formal citizenship and the State (2008: 92) through the development of his ideas for a statement of citizenship rights and responsibilities. For Lord Goldsmith:

One can imagine a number of circumstances in which such a statement could be of benefit, for example, as part of citizenship education or the coming of age ceremonies which I will discuss below.⁵ It could moreover make a much clearer statement of what we expect of citizens and what they can expect of their country. (Lord Goldsmith 2008: 92)

There is no way of knowing how these processes would have developed under the Labour Government with regards to the development of a Bill of Rights and/or a Charter of Responsible Citizenship if it had remained in power after the General Election in 2010. It will be very interesting to see how relevant these 'deficit discourses' and the shift of emphasis from the Bill of Rights to the Charter of Responsible Citizenship under Labour will be to the 'investigations' of the Coalition Government's commission on the creation of the Bill of Rights (which was announced in The Coalition Agreement).

Conclusion: Towards a British Declaration of Rights and Responsibilities?

The future of the British Bill of Rights and Responsibilities was uncertain even before the General Election in 2010. According to an article in *The Monitor* (the Constitution Unit's newsletter) it was reported that: 'amidst the gathering economic gloom the government's constitutional reform plans

are being quietly shelved' (2009: 1). This slippage, according to the *Monitor*, had impacted on plans for the Bill of Rights, which was to take centre stage in Gordon Brown's planned constitutional reform programme as introduced in the 'Governance of Britain' Green Paper. It was reported that despite all three main political parties being committed to introducing a Bill of Rights (in the case of the Conservatives, as a replacement for the Human Rights Act) the promised publication of the Green Paper on the Bill of Rights had been repeatedly postponed, even after the JCHR published their own detailed proposals and draft Bill in 2008 (Constitution Unit 2009: 1). According to *The Monitor*, the main problem with the Bill of Rights was the lack of enthusiasm amongst Labour Cabinet colleagues, and the proposed link between the Bill of Rights and the British Statement of Values (Constitution Unit 2009: 1). According to Patrick Wintour, writing in the *Guardian*, the Labour Cabinet revolt on the Bill of Rights can be summed up in the following way: 'some Cabinet Ministers believe there is no demand for such a complex constitutional development and it will be regarded as irrelevant in times of economic stress or, at worst, be highly unpopular' (2008: 1). Wintour highlighted the potential clash between the Ministry of Justice and the Home Office around the proposed Bill of Rights. Former Home Secretary Jacqui Smith was identified by Wintour as a leading opponent of the Bill of Rights, from whose perspective it would 'strengthen the hand of the judiciary over parliament' and lead to 'further public alienation from the concept of human rights' (Wintour 2008: 2). Wintour reported that Smith's opposition to the Bill of Rights was being backed by Home Office lawyers 'who feel that they have a hard enough time trying to protect their decisions from the impact of the Human Rights Act'. According to Wintour, the response of Straw (and Wills) to such criticisms was to make 'the unpopular Human Rights Act' more palatable by balancing the existing emphasis on rights with a new emphasis on duties and responsibilities in the Bill of Rights (2008: 3). However, as noted above, this strategy of rebalancing rights and responsibilities, and the links between particularly 'British' values and the prefix 'British' in the proposed title of the Bill of Rights, have all been called into question and exposed as exclusionary, counterproductive and feeding the very myths and misconceptions they are setting out to challenge. More than that, the proposed Bill has become the repository for the clash of the domestic politics of citizenship and the politics of universal human rights. According to Melissa Kite, writing in the *Telegraph*, senior Labour ministers were said to be unhappy with Straw's plans for the Bill of Rights as they feared they would 'be deeply unpopular with the public' and

would become 'a charter for expensive lawsuits', especially if the proposed ECHR and aspects of the proposed Bill of Rights and Responsibilities (which also features in the JCHR's UK Bill of Rights and Freedoms) such as social and economic rights were included (Kite 2008: 2).

I will end this chapter with some final developments. The much delayed 'Rights and Responsibilities: Developing Our Constitutional Framework' Green Paper was published in March 2009. Despite the JCHR's recommendations, Straw and Wills were still fixated on 'Britishness', 'responsibilities' and 'citizenship'. However, one significant difference was the shift in emphasis in 'security' discourse; that is there was a relative lack of reference to the threat from terrorism in the Green Paper, emphasis instead being placed on the 'crisis in the world's financial system' (Foreword, Ministry of Justice 2009: 3). A further development was the stipulation in the Green Paper of the Labour Government's position on the relationship between rights and responsibilities. For example, with regards to the contingency of rights on responsibilities, it was stipulated in the Green Paper that:

The government does not consider a general model of directly legally enforceable rights or responsibilities to be the most appropriate for a future Bill of Rights and Responsibilities ... the imposition of new penalties is unlikely to be the best way to foster a sense of civic responsibility and encourage respect and tolerance for others and participation in the democratic process. (Executive Summary, Ministry of Justice 2009: 10)

The result of these constraints is that the Green Paper, as predicted above, had become less of a discussion paper on a Bill of Rights and responsibilities and more a discussion paper on what Straw and Wills describe as 'the constitutional question' of the relationship between the citizen and the state which focused on 'how this relationship can best be defined to protect fundamental freedoms and foster mutual responsibility as the country is going through profound changes' (Foreword, Ministry of Justice 2009: 3). Thus, the Green Paper in my opinion became a discussion paper for providing a 'clearer and more explicit understanding' of the relationship between rights and responsibilities in order to 'articulate what we owe, as much as what we expect' so as to 'foster a stronger sense of shared citizenship among all those who live in the UK' (Ministry of Justice 2009: 17). The Green Paper was peppered with statements such as these, all of which are evidence of the shift in emphasis from the Bill of Rights and Responsibilities to something more

akin to a non-legalistic British statement of responsible citizenship. This shift was evident, for example in the Green Paper's creation of an 'accessible document', mentioned on page 20. By page 26, other examples of 'national instruments' were listed including the plans in the Netherlands to draw up a Charter for Responsible Citizenship, and by the end of the Green Paper, they were referring to 'a charter or declaration' of rights and responsibilities (2009: 52) before plumping for a non-legalistic declaration of rights and responsibilities in the final pages which was described as having 'the advantage over other options for legal effect' by including 'broad aspirations'⁶ and a focus on 'cultural change' (2009: 53). Such a declaration, as noted above, in the discussion of the Dutch Charter for Responsible Citizenship and Lord Goldsmith's recommendations for 'a narrative, non-legalistic statement of the rights and responsibilities of citizenship', according to the Green Paper, 'would provide an opportunity to express rights and responsibilities in inspiring and motivating language, without the constraints placed by the careful drafting needed in legislative provision' (Ministry of Justice 2009: 53). What we can deduce from this shift in emphasis from a Bill of Rights to a Declaration of Citizenship is that the Labour Government was attempting to better articulate rights and responsibilities and bolster British citizenship outside of the legalistic constraints of human rights frameworks, and by so doing they suggested that the intentions of their 'domestic' 'civic politics' in and through the Bill of Rights with regards to public safety, responsibilities and citizenship could not be reconciled with their 'dual' commitment to human rights.

Further Research

The analysis of the debates on the Bill of Rights and Responsibilities and the shift in emphasis under Labour from the latter to focus on a declaration of responsible citizenship makes possible a number of opportunities for further research regarding comparisons with developments in other countries (including countries with different human rights traditions). In particular, future research could compare how what I have described above as the tensions between the politics of citizenship and the politics of human rights are played out in other countries. However, as well as conducting follow-up research at this general level, the relationship between the debates on the development of the potential Dutch Charter of Responsible Citizenship and the development of a possible British version in the form of a declaration of responsible British citizenship warrants specific examination, as do similar developments in other countries.

The possibilities for further research on the topics covered in this chapter are obvious. In the British context, we are left with questions about the future of a Bill of Rights. As stated in the introduction, the futures of Britain's human rights policy and the Bill of Rights are uncertain. Will Britain retain its incorporation of the ECHR through the incorporation of the Human Rights Act? Will a Bill of Rights and national debate on 'British values' be introduced by the new Coalition Government? Or will the latter national debate on 'shared values' lead to a declaration of 'responsible' British citizenship? What is certain is that these potential alternative developments and the debates and documentation which articulate them will continue to be a key site for the exploration and analysis of the tension between the politics of citizenship and the politics of human rights in the future.