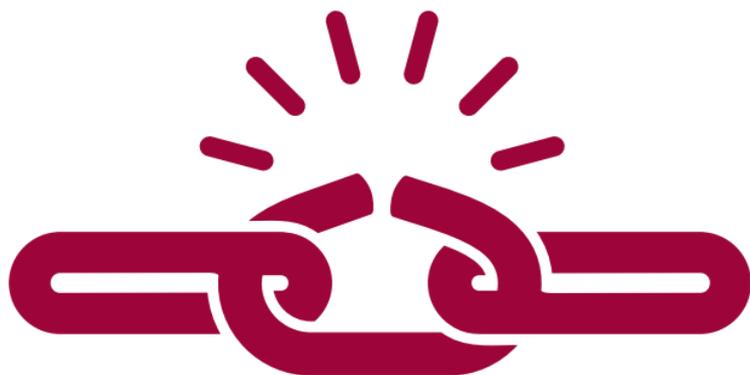


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# **FAIR AND FREE**



**LABOUR, LIBERTY AND HUMAN RIGHTS**

**Edited by Kate Murray**

Fabian Ideas 644

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# Fair and Free

Labour, liberty and human rights

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**Edited by Kate Murray**

## Project partners

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The Labour Campaign for Human Rights is a political campaign that promotes human rights within the Labour party. We believe that human rights are core Labour values. Our campaigns aim to foster debate and discussion within the party about human rights and ensure they remain at the heart of Labour's policy and practice.



Labour Campaign for Human Rights

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Shami Chakrabarti

In a seemingly ever more unequal and polarised world, human rights discourse should be a way of responding to enormous threats and challenges, guided by past experience and universal values. In a sometimes coarse and toxic political debate, essays rather than epithets are a way of exploring those same threats, challenges – and indeed the opportunities that come with them – in a spirit of civility and curiosity instead of bitterness or bile. This short collection of provocations creates a little space in which to attempt both. That space is enhanced by a welcome consensus within the contemporary Labour movement and much of wider civil society around the notion of post-war human rights as a means of both protecting individual liberty and dignity, and binding societies and peoples together.

The Human Rights Act 1998 (HRA) is Britain's modern Bill of Rights. It is capable of being as important a Labour legacy as the NHS or welfare state and because human rights are indivisible – under Jeremy Corbyn's leadership – it is as fiercely defended. It has the advantage of a broad democratic heritage both at home and internationally. In incorporating the European Convention on Human Rights (ECHR) that Winston Churchill passionately promoted after the second world war, it should attract the support of all mainstream democrats in the UK and Europe. However it also connects

us with much of the post-imperial world that adopted similar civil rights principles in founding constitutional documents. So it is a predictable shame that Conservative leaders have for too long attacked the Human Rights Act as part of wider xenophobic distraction, designed to divide and rule people instead of uniting and empowering them. In engaging both parliament and the courts in its practical enforcement mechanisms, the HRA is capable of animating and informing both political and legal debate. It contains qualified as well as absolute rights (privacy and free speech as well as rules against torture and slavery). Thus its constant references to measures that are necessary in a “democratic society” recognise human beings as social as well as individual creatures. It helps us navigate – if not finally resolve – so many dilemmas about the balance between freedom and equality, security and other vital priorities.

However there are two important caveats. Firstly, it is one thing to defend human rights in theory and another to promote them in practice via political discourse, policy formulation, public education and real access to justice. This makes some of the issue-specific discussions in this collection particularly important. Louise Haigh offers a robust approach to law and order which supports the police whilst still learning from past injustices so as to protect our civil liberties. Andrew Noakes suggests an approach to immigration based on human rights values as well as economic value, and suggests we address people’s fears and insecurities rather than stoking them. Laura Janes offers clear thinking on young people’s disempowerment, Britain’s prison crisis, and the relationship between the two. Robert Sharp challenges Labour more jealously to guard privacy and free speech against lazy authoritarianism both on and offline.

Secondly, the Human Rights Act – like the ECHR itself – for the most part, protects our civil and political rights rather

than those of a social and economic nature. No discussion of Labour and liberty can fail to recognise what the drafters of the precursor Universal Declaration of Human Rights realised in 1948. Broader human rights are about delivering and even celebrating everything that a person needs to thrive. That means housing, healthcare and an economic means of living in dignity, as much as personal privacy, freedom of conscience and speech. Who would dream of asking an emancipated slave to choose liberty or equality, or offering a guest the opportunity to share in the meal or conversation, but not both? “Freedom to” as well as “freedom from”, is illustrated in a number of the essays and in particular, the more philosophical pieces by Lisa Nandy and Jason Brock as well as the socio-economic contributions from Andrew Fagan, Frank Field and Andrew Forsey, and Virginia Mantouvalou. Fagan is right to seize on the socio-economic aspect of human rights as being equally vital to improving the popular understanding of human rights. Mantouvalou on employment, like Andrew Noakes on immigration, makes important observations about discrimination.

Many of the contributors seek to draw on a left and Labour history that is too often casually forgotten or deliberately ignored. It is not merely possible to believe in both an effective progressive democratic state and empowering people. It is ultimately impossible to achieve either goal without the other. With their focus on “responsibilities” rather than “rights”, Field and Forsey might seem like the grit in the oyster of this collection. However the answer to their central conceptual challenge at least, may perhaps be found in Tom Paine’s thoughts from over two hundred years ago. Rights and responsibilities are inextricably linked by “reciprocity”. No one’s liberty and dignity can be practically maintained without the equal and opposite duty on the rest of us to maintain it. That applies as much in the workplace as it does

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on the street and in the global supply chain. That means protecting rights in the living room, classroom and boardroom as well as the court room. With the help of shared values and positive debate, a Labour government will protect them in the Cabinet room as well.

# 1: POWER TO THE PEOPLE: A NEW VISION OF LIBERTY

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Lisa Nandy MP

*Unbridled capitalism has undermined the rights and freedoms that we once took for granted. They can only be restored through a fundamental reimagining of the relationship between state and private interests and a new settlement for the people.*

The political earthquakes of recent years can be summed up by the Brexiteers' rallying cry, 'take back control'. Across the world, rising insecurity, a lack of agency over the things that matter in our lives – family, work, community – and a growing minority whose concerns and priorities are not heard or acted upon has created unprecedented political anger. We have learnt that freedom matters to us as much in Britain as it does in repressive regimes across the world where people die in its defence.

This 'age of anger', as Pankaj Mishra has described it, is a global phenomenon and has deep roots. The dominance of multinationals, now more powerful than many nation states, has entrenched a system built on an army of insecure, low-paid workers whose lives are not properly their own. A state that feels itself powerless to change the system instead tries to deal with the consequences, not the cause, getting tough on benefit claimants and demonising the unemployed.

When capital is dominant, purchasing power is no longer simply an indication of social or economic standing, but a prerequisite for such basic human rights as safe, clean,

affordable housing. In recent months a single tower block in one of the most affluent areas of London horrifyingly came to symbolise the inhumanity of modern capitalism. The sweep of this dominance of capital is breathtaking – those who are poor also lack political strength, power or control over fundamental goods such as love, work, time and dignity. These are the spheres of inequality that the philosopher Michael Walzer helped us understand 35 years ago.

Unlike their own philosophical predecessors, the politicians of the modern right contend that freedom means allowing unbridled markets to operate without restriction. While economists like Adam Smith were only too well aware of the proper limits to markets, many modern politicians are little more than mouthpieces for private interests. To our shame, it is the people and not the left who have reminded us that real freedom – freedom from the arbitrary will of others – is threatened by this consensus which has allowed market forces to permeate almost every aspect of modern society, from education and healthcare to employment and civil society. Through a series of political shocks, the people have told us that the dominance of unbridled capital is now economically, socially and politically unsustainable.

Liberal socialism provides an essential counterbalance, built on the restatement of equal worth and guaranteed by a human rights framework. Only human rights can guarantee us all a shared stake. But it is in communities most deprived of these freedoms that the concept of human rights has become most widely discredited, seen as something that belongs to others, which prevents you and your family from living a fulfilled life, enforced by remote, faceless agencies whose values and motives are unclear. At its most extreme, human rights are seen not just as ‘other’, but as the enemy, by a right-wing orthodoxy that attacks our shared life and institutions. Labour’s failure to embrace human rights – at worst

viewing them as incompatible with socialism – is one of the great tragedies of our recent history. As I wrote in the *New Statesman* two years ago, the clues to our future lie as much in *Rights of Man* as in *Das Kapital*.

Too often we have accepted the idea that the social emancipation of the 1960s and 1970s is inevitably linked to so-called “market freedoms” – to unravel one means to unravel the other. But this is a false choice. Nearly half a century ago Martin Luther King talked about two types of freedom: freedom from the chains of discrimination, and the other, freedom from living on a lonely island of poverty in the midst of a vast ocean of material prosperity. The Grunwick strikers, feminist activists and race relations campaigners of the 1970s understood that the struggle for liberty was at once a fight for social and economic emancipation, an individual and a collective struggle. Those collective rights, celebrated and championed throughout our history have been lost in recent years and must be restored.

This is true of the Human Rights Act which is often portrayed as simply advancing freedom for some groups of individuals over others. But take the case of Richard and Beryl Driscoll, who, at 89 years old, were told after a lifetime together that council rules prevented them from ending their lives in a care home together. The courts disagreed, judging that family life takes precedence over bureaucracy, not just for them but for any one of us. It is just one example of how the Human Rights Act enables us, collectively, to protect ourselves against arbitrary interference with our liberty.

Whether it is an overbearing state or an immoral market, the principle of intrinsic, universal human rights continue to provide our best defence against tyranny in an astonishingly wide range of cases, from the rights of the Hillsborough campaigners to be heard, to the actions of the company

Trafigura who were eventually held to account for dumping toxic waste off the Cote d'Ivoire.

But for rights to be meaningful, they must be enforceable and the conditions to enable this do not currently exist. In recent years, with judicial review restricted and legal aid slashed, those who seek redress through the courts find themselves faced with insurmountable obstacles. As a consequence, many of the rights fought for and won over the last 100 years have been rendered meaningless at a stroke. Charities and trade unions which have so often advanced these rights have themselves come under attack through the Lobbying Act and Trade Union Act. Restoring access to justice and repealing those restrictive laws are essential.

The state must also act to limit the power of corporations. This can only be achieved through international action, through those very institutions – the EU and NATO – which have been so attacked and discredited in recent decades. It will require courage and conviction to change this. Action cannot be limited simply to regulation but must instead restate the dominance of democracy to ensure that decisions are driven by the interests of people not profit and that shared challenges, such as climate change, are negotiated in the interests of the many. It means nothing short of a reimagining of the relationship between government and private interest, creating a transparent, accountable global system in which no company is too powerful to be held to account and in which an economy exists to work for us, not us for it.

More challenging for the left is the pressing need to reimagine the role of the state. For too long government has been the domain of a shrinking few with power held remotely in too few hands. But as John Stuart Mill understood “a state which dwarfs its men... will find that with small men no great thing can ever really be accomplished”. In recent decades the left has come to believe its inherent purpose

is simply the redistribution of wealth and in doing so has neglected the restoration of power in its widest sense. The era of a state in which decisions are made by a small few is over. In future the role of governments will be to facilitate shared decisions, not simply to make them.

This cannot be realised unless people are given the time, resources and voice to take the driving seat in decision-making and negotiate shared challenges together. This is the “more exacting” socialism that Attlee described, demanding not “submission and acquiescence but active and constant participation”. It will require a left that takes seriously the prospect of devolution. Not just the George Osborne model of transfer of decision-making from one group of men in Whitehall to another in the town hall, but a commitment to a genuinely federal model in which real power is held much closer to people. As the current city-region experiment has shown, this is simply not achievable without a thriving civil society whose role, to facilitate debate, give voice to the voiceless and hold decision-makers to account, is not merely tolerated but warmly embraced.

Without this, more complete, democracy the concept of human rights will continue to be contested and freedom will remain, as Janis Joplin once said, just another word for nothing left to lose. Now that we have seen the disastrous political consequences that despair breeds, it would be criminal not to take heed. If the fractures that have emerged can be healed, it will demand of us nothing less than a commitment to liberal socialism, underpinned by an unshakeable belief in our intrinsic human rights that restores power to its rightful owners once more.

## 2: TALKING ABOUT FREEDOM: LABOUR AND THE ARTICULATION OF LIBERTY

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Jason Brock

*Liberty is often perceived to be a secondary concern for Labour. Yet this is rooted not in a lack of commitment to the values of liberty but more in a failure of discourse. It is time for the left to reconnect with the debate and make a positive offer to the people.*

Is Labour a 'liberal' party?

John Dunn maintains that socialism is unsure if it has come to fulfil the aims of liberalism or, instead, to destroy its ideological rival.<sup>1</sup> This, of course, is not simply a semantic issue but a fundamental question of political values and a conflict stemming, in no small part, from the breadth and diversity of both socialism and liberalism. Perhaps the issue is best explored by considering the great maxim of the French Revolution: *liberté, égalité, fraternité*. Assuming that we substitute 'community' for 'fraternity' (for, even setting aside definitional issues, the former is more inclusive) we must find ourselves here with three values that seem central to both socialism and liberalism. The question we should ask ourselves, then, is what kind of liberty, what kind of equality, and what kind of community do we seek? Here, unfortunately, we enter something of an intellectual quagmire.<sup>2</sup>

If we acknowledge that a political party cannot (coherently) be both a party of liberalism and of socialism and take as read that Labour is a broad socialist party, we might want to take a moment establish its core values and ascertain how liberty fits with these. In recent years, Labour's general lexicon most commonly expresses its commitments to social justice (bearing witness to the centrality of community) and fairness (which often seems to me to be a roundabout way of emphasising equality in the form of 'luck egalitarianism'). References to 'freedom' or 'liberty' are somewhat rarer public utterances, most commonly appearing only in the context of civil liberties and human rights. A simple assessment would therefore conclude that liberty is a second-order concern for Labour today, and this is somewhat reinforced by the relative paucity and brevity of references to freedom and liberty in the 2017 manifesto. We will return to this point later, but for now I will accept the thesis that a developed commitment to liberty is not commonly held to be a key component of Labour's electoral appeal.<sup>3</sup>

How might we explain Labour's apparent apathy towards liberty in the present day? Returning to our trinity of liberty, equality and community, we could posit that a choice exists in how we decide to order these values in a kind of zero-sum game arrangement. Thus if we place community as our most important value and equality as our second value (or vice versa) we must accept that liberty recedes into a more distant position. This assumes that the three values have an inherent antagonism at some level – a supposition that doesn't seem totally unreasonable if we were to proceed from an assumption that liberty must be found in the absence of restraint or interference. We are all aware, however, that this presentation of liberty as a negative is only one side of the coin and socialists and proto-socialists have advocated positive liberty since Jean-Jacques Rousseau at least. Beyond this, the presumption

that the socialist's values of liberty, equality and community are independent of one another is a fallacy – the existence of freedom without an equality of its distribution throughout the community is not socialism. Instead, we should seek to situate Labour's difficulty in articulating liberty as being the result of the success of Margaret Thatcher's Conservatives in defining freedom as an economic issue to be achieved through free markets. Thatcher's success in presenting the 'interference of the state' as antagonistic to a liberty of market choice changed the language of political discourse and forced Labour to seek a new narrative, something summed up neatly – if simplistically – in the change of party emblem in 1986 which removed the hitherto prominent display of the word 'liberty'.

A change of lexicon does not equate to an abandonment of the actual principle, though. In 1964 Harold Wilson declared the pursuit of 'a greater freedom' and that, as socialists, Labour 'believe that no man is truly free who is in economic thralldom ... who lacks the opportunities in both the material and the immaterial sense to a fuller life and the fullest realisation of his talents and abilities'.<sup>4</sup> This sense has remained remarkably persistent within Labour, albeit with many changes of policy as to how this should be realised. New Labour's working tax credit, child tax credit and Sure Start centres, for example, can all be seen as policies that aspired to promote positive liberty in this Wilsonian vein, as well as social justice and equality of opportunity.

By acknowledging this ongoing commitment to a liberty that transcends the simple expression of rights we can guard against a charge of 'the strange death of liberal Labour'. At the same time, however, we should perhaps be concerned that Labour has such difficulty in articulating the language of liberty, especially since a failure of discourse can lead to a failure of policy innovation and implementation (as can

arguably be said to have happened to Labour post-2001). Before turning to consider some ways forward from this apparent impasse I would like to first examine the key strands of thought in the post-1945 Labour party that have engaged with the value of liberty as a way of potentially highlighting some possibilities for the future.

### Traditions of liberty in Labour

Labour's 'big tent' – or 'broad church' if you rather – has proven to be an extremely effective way of ensuring dynamic policy-making while keeping the party intellectually invigorated. There are too many approaches and schools of thought to offer a comprehensive overview, but, in terms of questions of liberty, three 'traditions' have had a particularly important role in shaping Labour's attitude towards questions of liberty. I will characterise these, in my own terms, as the technocratic-paternalistic approach, the co-operative tradition, and the Hobsonian tradition.

### Technocratic-paternalistic

Technocratic thought has a long lineage in Labour but truly came into the ascendancy after the second world war. The influence of John Maynard Keynes and William Beveridge on Labour's post-war welfare state is very well documented and there can be no doubting the effect that Beveridge's particular brand of liberalism had in shaping a Labour commitment to tackle the five 'giant evils' and to realise a fuller and more positive liberty for all through economic planning and the pursuit of full employment. The state's emancipatory potential was recognised and older notions of liberty as a simply negative construct, already much challenged before this point, were pushed aside. The governments of Attlee,

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Wilson and Blair all used the state as a tool to pursue a socialistic notion of liberty through either direct intervention (mostly the former two) or through the creation of regulation (mostly the latter). The boundary between technocracy and paternalism is, however, rather porous and it has proven easy to lose sight of the goal of liberty when other issues, principally the cause of efficiency, are pursued. Douglas Jay once declared that 'the gentleman in Whitehall really does know better what is good for the people than the people know themselves' and this line of thought has on more than one occasion been embraced by Labour governments.<sup>5</sup> The technocratic approach offers a very good means of redressing inequality in society, but on the less tangible issue of liberty it is often found wanting.

## Co-operative tradition

Socialists, unlike other political traditions, have rarely considered any potential tension between democracy and liberty. Whereas liberalism might stress the possibility that the rule of the people and the individual's right to do as they please could be in conflict in some cases, socialism has instead tended to identify true liberty as stemming from self-rule and democracy. This idea is most obvious in Labour when one looks at its co-operative tradition. Co-operators extend the principle of democracy into the economic sphere and, in seeking to provide both workers and consumers with meaningful and direct business ownership, they advocate a form of self-empowerment that is integral to the realisation of positive liberty. The strength of industrial democracy as an ideal oscillated over time, but it was a notable current in Labour during the 1960s and 70s as the limitations of nationalised industrial management became apparent.

## Hobsonian tradition

John Atkinson Hobson was an important figure, now somewhat forgotten, in the intellectual development of the Labour party during the inter-war years. Hobson was one of the many intellectual figures that abandoned the Liberals for Labour during this time and his thought, if not his name, had a long legacy. He is probably best known for giving Labour an economic theory of the 'maldistribution of income', providing the theoretical basis for microeconomic intervention (as opposed to Keynesianism's purely macroeconomic policy). More importantly, though, was the Hobsonian idea of liberty as the release of individual toil via state provision of the necessities of life to allow for the cultivation of personality and human flourishing on a higher plane. This notion permeated Labour – being an especially notable influence on G.D.H Cole – even without its source being always apparent. The Hobsonian understanding of liberty is compatible with the technocratic approach and can furnish the latter with a coherent intellectual basis vis-à-vis the pursuit of greater liberty.

## Why Labour should talk about liberty

Throughout this chapter, I have taken liberty as a broad notion rather than dealing with individual liberties, which I would suggest are generally best understood as rights (which is often exactly what they are). Labour has never stopped openly discussing civil and human rights and has been a great advocate for minority rights, disability rights, women's rights and LGBT rights – although there is still much work to be done in all of these areas. My primary concern, though, is that Labour has lost its narrative about liberty as an overarching goal. I have not defined this idea

precisely, partly because it is a constantly shifting notion and partly because different Labour traditions perceive it differently, but we could take the elementary positive liberty concept of 'self-mastery' as our starting point and proceed from there.

Labour does not need to choose between its various traditions, and it should not attempt to do so since the party's best dynamism comes from its creative political tensions. It should, however, seek to return to a rhetoric and practice that emphasises a commitment to liberty alongside its commitments to social justice and equality. Accepting, as I do, that promising the electorate 'self-mastery' is unlikely to be a compelling offer in and of itself, we should consider something of what Labour's commitment to liberty might look like.

It is clear that the old liberal value of passive toleration is insufficient today – people do not generally simply wish to be tolerated, they would like to be openly embraced as part of a diverse, progressive and cosmopolitan culture. Labour must therefore develop a programme that is bold in identifying and overcoming the insidious barriers that hold individuals back. Guaranteed interview schemes and protected characteristic shortlists are surely not part of our ideal society, but they can and do play a vital role in overcoming the structural and institutionalised prejudices that permeate society.

More fundamentally, Labour must reconnect with the idea that liberty is to be found in ensuring that all individuals are free from fundamental privation and therefore able to exercise their individuality and passion. The 21st century offers an opportunity to look beyond the 'big state' as a means of achieving this and we should consider whether, for example, universal basic income has come of age. In the world of work too Labour should consider whether the current antagonism from many quarters towards 'big business' opens the way

for a promotion of co-operative enterprise, providing thus a means of not only expanding and strengthening democracy but also of reinforcing the bonds of societal responsibility.

Finally, if Labour is to pursue a bold programme of socialism it must not forget that the end goal of this is greater liberty as well as greater equality and social justice (lest it lapse back towards its paternalistic tendencies). It should reconnect with the language of liberty and freedom and therefore make a positive offer to empower individuals in a way that has meaning to their lives beyond the purely economic. People today seek 'meaning' from their work, leisure and consumption. There is a great opportunity here to embrace this sentiment and direct it towards, in Wilson's words, a greater freedom.

## Notes

1. John Dunn, *Western Political Theory in the Face of the Future* (Cambridge, 1993), p. 29.
2. Actually this is rather fortunate if, like me, your 'bread and butter' is contemplation of this sort.
3. This leaves open the possibility that the electorate, or sections of it, might simply associate Labour and liberty to such an extent that they will positively vote for it without this link needing to be made explicit. My own doorstep experience – primary in Reading – suggests otherwise, but perhaps I should be sceptical of my inductive reasoning.
4. Harold Wilson, *The Relevance of British Socialism* (London, 1964), pp. 108–9.
5. Douglas Jay, *The Socialist Case* (London, 1937), p. 317.

### 3: SPEAKING OUT: PRIVACY AND FREEDOM OF EXPRESSION

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Robert Sharp

*Protecting freedom of expression and privacy rights would make our democracy stronger and our people safer. And our domestic approach should be the template for an international policy which supports free speech and human rights worldwide.*

In law, the right to freedom of expression sets limits on what the state can do to limit and censor speech. Neither the Human Rights Act nor the European Convention on Human Rights say anything about the limits on speech that individuals and companies might impose on the spaces and platforms that they own and control.

Yet many ongoing free speech controversies are about what may be expressed in private realms. How do we stop fake news spreading on social media? Who should be granted a platform at a student union? When is it appropriate for a political party to suspend one of its members because of something they said? These are undeniably important issues with which the Labour party must engage, but they are not problems for a government to fix with legislation.

Moreover, the punishments that are imposed upon those who engage in unacceptable speech are relatively minor. The ignominy and inconvenience of being suspended from Twitter or being 'no platformed' pale in comparison to the power of the state to impose fines, restrict movement and put people in prison.

There do exist free speech issues where the exercise of government power can profoundly affect people's lives. Most are related to security issues, and any government-in-waiting must enter the next general election with a clear and confident approach to these challenges. A timid Labour party might be tempted to adopt illiberal policies in these areas in the hope of appeasing the right-wing media. But a confident Labour party, secure in its values, can persuade the electorate directly that policies that protect freedom of expression and privacy rights will actually make our democracy stronger and our people safer.

### Mass surveillance

The first challenge is that of mass surveillance. The Snowden leaks of 2013 revealed that GCHQ had been illegally retaining communications data on a mass scale. Exposed as doing something to which parliament had never consented, David Cameron's government rushed the Data Retention and Investigatory Powers Act (DRIP) through parliament in just two days. This was a profoundly anti-democratic act that Jeremy Corbyn branded a 'travesty', Tom Watson called 'democratic banditry resonant of a rogue state' and David Davis called 'improper'.

The DRIP Act had a sunset clause, and so in 2016 the newly installed prime minister Theresa May bulldozed through the more permanent Investigatory Powers Act 2016. This was a marginally better law, with enhanced oversight provisions, but the central power to collect and retain the communications data of everyone was included in the final bill.

It was, and remains, a fundamental invasion of privacy. It is analogous to the government taking a record of every book and newspaper article we read, and taking a photocopy of every letter we send and receive, 'just in case' one of us turns

out to be a criminal. It is surveillance without suspicion, without even the partial shield afforded by anonymity.

'If you have nothing to hide you have nothing to fear' say the apologists for these practices, as if the clothes on our backs and the curtains on our windows were only ever used to conceal wrongdoing. A private life, where we are free to read, write and to do as we please without the question and judgment of others, is the right of every person.

Privacy also facilitates freedom of expression, and mass surveillance interferes with that freedom. It is difficult to write honestly and freely when you think someone may be looking over your shoulder. Our reading choices can be affected if we worry that those choices may be exposed. And we will think twice about communicating with others if we fear our correspondence might be read.

This has a significant effect on the work of investigative journalists, whose sources often speak out only on condition of anonymity. The right of a journalist to protect a source is embedded in Article 10 case law but mass surveillance short-circuits their ability to do this. When we know that all the telephone calls and emails we make are being logged and cross-referenced, any expectation of anonymity disappears – and so do the whistleblowers.

The awareness that the authorities are always looking over your shoulder as you type, text and tweet is also chilling for political organising. Anyone who campaigns to radically change government policy, or who simply questions the behaviour of our institutions, faces the very real possibility that they will be placed under surveillance. Environmentalist and Green party politician Jenny Jones was designated an 'extremist' and watched. At the height of the campaign for justice for her son Stephen, Doreen Lawrence was put under surveillance.

Present-day campaigners therefore have a genuine reason to be worried. Anti-frackers, the Occupy movement and even the Grenfell Justice Group are rightly concerned that their communications are being logged and recorded, available at any time for a member of the security services to inspect should they deem it necessary.

The current state of affairs was enacted by a Conservative government. But Labour, still disjointed after the summer of post-Brexit in-fighting, failed to mount an effective opposition. The party failed to push many of its amendments to a vote, and ended up siding with the government on the final wording of the Bill. Votes in favour of human rights were left to the SNP, the Liberal Democrats, and the Green MP Caroline Lucas.

That Labour acquiesced to the Investigatory Powers Act makes it seem as though mass surveillance is now a settled consensus. But that is not so. A legal action at the European Court of Human Rights will be heard in late 2017 and will open the issue for debate once again. Should the ECHR rule against the United Kingdom and declare mass surveillance to be a human rights violation, Labour must resist the temptation to bash the court (as Theresa May's Conservatives surely will). Instead, the party should be poised to announce an alternative policy – one that abides by international human rights standards.

This is an area where Labour can take a collegiate approach. The Liberal Democrats have always taken a strong position against mass surveillance (even while part of the coalition government) and the Greens and the Scottish National Party had clear party lines against such powers during the passage of the Investigatory Powers Act. Outside of the so-called progressive alliance, there are many individual Conservative party politicians who consistently speak out in favour of civil liberties. So a Labour government with even a small

working majority could find a large parliamentary majority that would push through a manifesto commitment for more proportional surveillance powers.

Labour therefore has a chance to correct its failure in 2016 to properly oppose mass surveillance, and begin a process to reform one of the most invasive surveillance regimes anywhere in the world.

### Official secrets

If it had not been for the Edward Snowden leaks, no-one would ever have known about the government's surveillance overreach. A brave whistleblower and a team of investigative journalists exposed extensive human rights violations. The security services rattled their sabres, and even tried to intimidate the Guardian newspaper by destroying computer equipment that had held some of the leaked data – but no prosecutions were brought against any journalists.

If the establishment gets its way, this could change in the future. The Law Commission recently published a consultation with proposals to toughen the sentences linked to exposure of state secrets. While it is right that certain information is protected, any official secrets law urgently needs a public interest defence written prominently into the statute. Such protections were conspicuously absent from the Law Commission's proposals.

Although the commission's paper was met with an outcry we must nevertheless remain wary. The most appropriate policy response from Labour would be a proactive pledge to introduce a public interest defence into the law. This would ensure that government wrongdoing can never be concealed behind the Official Secrets Acts.

## Extremism

Counter-extremism policy is another area where defenders of free speech must be vigilant. The existing PREVENT strategy is inherently problematic, because it is the part of the CONTEST framework that seeks to make interventions before anyone actually joins a conspiracy or commits a crime.

Of course everyone in society must work together to change attitudes, and many people believe that it is right for the government to fund interventions that steer vulnerable people away from the purveyors of Islamist and far-right hate. Nevertheless, such upstream counter-extremism work finds itself flirting with assumption, extrapolation and prediction – notions that speculative fiction writers might call ‘thought-crime’ or ‘pre-crime’.

The government’s most recent proposals for counter-extremism legislation are extremely worrying. Among the suggestions were a set of new civil orders, that would have allowed the police to prevent people from assembling with others or from speaking in public: a serious curb on free speech.

Thankfully, Labour politicians have led the opposition to these ill-conceived extremism disruption orders (EDOs). The Joint Committee on Human Rights, chaired by Harriet Harman, effectively skewered the civil orders in its report published in 2016. The report pointed out that such orders ‘could be used in a profoundly illiberal way. The obvious concern is that such orders could be used as a means to avoid having to make a criminal case to the requisite standard of proof.’

The government has still not gone ahead with counter-extremism legislation or further white papers, despite having pledged to do so. Part of the reason for this is that it cannot manage to present a working definition of ‘extremism’ that

does not inadvertently criminalise religious proselytism, peaceful yet radical activists, and republicans. The 2017 Queen's speech instead promised a 'commission'.

If Labour wishes to propose new legislation in this area it would do well to avoid such semantic contortions that can only add ambiguity to the law. Furthermore, we should also be mindful of the fact that banning or proscribing certain kinds of speech can have unintended consequences.

First, those who are subjected to any kind of ban can use it as a badge of honour. Just as ASBOs conferred a bizarre kind of cachet on those who received them, so an EDO can make a 'free speech martyr' out of a radical preacher or a far-right agitator.

Second, banning extremist rhetoric will force it underground. Hidden away, such speech cannot be properly countered and can mutate into something worse.

Finally (and to my mind, most importantly), banning someone from speaking is an act that alienates that person from democratic society. Conversely, allowing someone to speak and to express their ideas (however terrible) ensures that they 'buy into' the democratic system. Since the people who turn to extremism and terrorism do so when they are alienated from the rest of society, a policy that formalises this alienation through civil orders would surely be a bad idea and not one that Labour should support in any form.

## The international stage

When we argue for free speech, we usually begin with statements of broad moral and political principle. Freedom of expression is inherently good, because it furthers human flourishing. Freedom of expression is the mechanism by which a democracy comes to a decision. Freedom of expression powers the 'marketplace of ideas.' Freedom of expression drives art and culture.

Not everyone is persuaded by these arguments. As Benjamin Franklin warned, there are many people who are happy to 'give up their essential liberty to purchase a little temporary safety'. And even the most well-meaning politicians very often prioritise the security of citizens over the liberties of those citizens. In a stable democracy, no-one really expects serious human rights violations to come to pass.

So the statements of principle should, where possible, be paired with more pragmatic arguments. In my opinion, the way in which our domestic approach to free speech affects the world beyond our borders is a particularly persuasive and pragmatic reason to keep our free speech protections strong. The Labour party considers internationalism to be one of its core values, and a robust approach to freedom of expression at home allows us to credibly defend the free speech of comrades around the world. Indeed, when so many trades unionists, anti-monarchists and anti-capitalists around the world are persecuted for what they have said, I would suggest that anyone who does not take a stand in favour of freedom of expression is not really an internationalist at all.

For reasons historical and cultural, Britain's human rights laws set an example to the rest of the world. They are a manifestation of our 'soft-power' and one reason why the UK is so effective in Universal Periodic Review and Human Rights Council proceedings at the United Nations.

When the UK fails to live up to the high standards expected of us, other countries notice. How can Foreign and Commonwealth Office diplomats credibly oppose the sinister monitoring of online discussion in China, when GCHQ is running a comparable mass data collection programme in the UK?

How can NGOs credibly protest the prosecution of Cumhuriyet journalists Can Dündar and Erdem Gül

in Turkey for ‘revealing state secrets’ when our own Law Commission has proposed that the UK adopt a similar law?

And how can activists effectively protest the treatment of writers like Raif Badawi in Saudi Arabia, imprisoned for merely imagining a new political system, when the UK Home Office is cooking up mechanisms to shut up our own radicals?

One of the last parliamentary debates that Jeremy Corbyn participated in as a backbencher was on human rights in Saudi Arabia. While the Conservative minister struggled to say a word of condemnation for the harsh sentence imposed on Raif Badawi, Corbyn spoke of the need for the British government to rethink its cosy relationship with regimes that abuse human rights, particularly in relation to the arms trade.

No-one doubts that a Labour government led by Jeremy Corbyn would work to end weapons sales to rights abusing regimes. One specific policy it could adopt would be to ensure that British companies never export surveillance software to those countries either. The Wassenaar arrangement theoretically prohibits the export of surveillance technology to human rights abusers, but its principles are often not enforced because individual countries must update their own laws each time the Wassenaar lists are revised. Even the EU has been slow to do this in the past, allowing companies based in member states to export powerful snooping technology to countries like Bahrain that have been shown to deploy it against peaceful opposition activists.

Post-Brexit, the UK will be making dozens of new trade deals and will take on full responsibility for declaring what can be exported where. A Labour government can ensure that those trade deals are tied to support for free speech and human rights. Such a foreign policy will benefit everyone. But to make it work we need to get our own house in order first.

## 4: A PRINCIPLED POSITION: IMMIGRATION AND OUR VALUES

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Andrew Nookes

*What should a liberal post-Brexit immigration policy look like? The left needs to lead that debate and push for a system built around the principles of equality and value.*

It was August 2012, and I distinctly remember being laughed at when I asked my new Belgian employer whether I would need a work visa to get through the border on my way from London. It was a joke I would – quite rightly – never live down: the French, Italians and Austrians I worked with having grown up adventuring around the European continent without so much as a border check.

Many of us who feel naturally attached to free movement, even as it served as the lightning rod for a leave vote in the EU referendum, have personal experiences of it that provoke quite a visceral emotional reaction when we think of it being dismantled. For me, it meant the chance to make that all important first step into the career I love. It meant delicious “street frites” washed down with authentic Belgian beer, the beautiful Christmas market in Brussels and friendships with people from across Europe that have lasted to this day. For many of us, at a time when we are confronted in Britain by a government that’s determined to create a hostile environment for immigrants, free movement stands as a gold standard for the kind of immigration system – and indeed the kind of open, multicultural world – we want to see.

But, clearly, free movement means something different to millions of other people. For those who supported Brexit because they wanted it to end, free movement means pressure on wages and job shortages rather than an opportunity to advance your career. It means added stresses on health-care and education, and a shortage of housing. And it means rapid social and cultural changes in communities that are not used to it. These complaints, which many of us have heard on the doorstep or from friends, neighbours and relatives, are rooted in a particular tapestry of experience, fears and circumstances. Whether real or sometimes only perceived, they ought to be listened to.

On both sides of the immigration debate, many appear to have boxed themselves into political silos and turned what ought to be a constructive discussion into an uncompromising war of words. Others, meanwhile, have sought to instrumentalise immigration for their own political ends, either cynically exploiting people's fears to win votes and then being forced to enact policies – most notably the net migration target – that stand contrary both to sense and justice, or using it as an opportunity for virtue signalling, digging in to entrenched positions without any interest in gaining agreement beyond their own small groups of supporters.

It is time for us to break out of this pattern. That means critically engaging with our own assumptions, prejudices and mistakes. It means trying to understand alternative perspectives. It means starting from first principles rather than from our own long-established and entrenched positions. It's time for us to ask what kind of an immigration system we want to see. Which principles should underpin it? What do we want it to achieve? How can it command public confidence?

Now is the time to ask these questions because, for better or worse, Brexit is the defining political moment of this generation, a moment that will change decades of policy

and overhaul entire economic and political systems. Our immigration system is up for debate, and is going to change whether we like it or not. The left should not be absent from that discussion. In fact, we should be leading it.

A good place to start is to ask whether free movement between the EU and the UK really is the gold standard many of us instinctively think it is. Setting personal experiences aside, it is a complicated picture. There are clearly many advantages to free movement. It allows unfettered family migration from within the EU, meaning no one loses their right to a family life. This is a vast improvement on the UK's non-EEA (European Economic Area) immigration rules, which require British citizens and non-EEA immigrants to earn more than £18,600 in order to sponsor their non-EEA spouse to live with them in the UK. It is also, within the confines of the EU/EEA, inherently non-discriminatory. Scientists and bankers, nurses and teachers, builders and retail workers can all enter the UK, and from any country in the EU or EEA.

Free movement is discriminatory, though, if we look beyond the EU and the EEA. Like the single market, it offers enormous benefits to those within it, but excludes and even disadvantages those who are outside. This is all the more problematic when you consider all the new restrictions we have seen over the last decade in response to the public backlash against immigration. The introduction of minimum income requirements for spousal visas and to secure indefinite leave to remain, restricting the ability of foreign students to work here after their courses finish, the introduction of eye-watering visa fees have all fallen exclusively on non-EEA migrants because the EU/EEA system could not be touched. Although EEA migrants of course should not be blamed for this disparity, and are rightly relieved that they have not been affected, it is clear that there is a real dividing line

between non-EEA and EEA migrants in this country – a fact that even led to some non-EEA migrants voting for Brexit because they wanted to correct the inequality.

When we consider what a liberal, post-Brexit immigration system should look like, then, our priority should not solely be to preserve free movement with the EU but to consider the system as a whole, and what would be the most liberal, open policy that could also command public support. Brexit offers both the opportunity and the risk of reforming our entire immigration system, including immigration from outside the EU and the EEA, and non-EEA immigrants must be considered alongside EEA immigrants.

The first principle underpinning any new immigration system should be to minimise discrimination based on nationality. Immigrants living in the UK should all enjoy the same voting rights, family reunion rights and access to welfare, all areas where EU or EEA nationals currently have superior rights. And ideally, restrictions on migration in the first place would not vary so much between people from the EEA and elsewhere.

A new system should also prioritise family migration for the most liberal treatment. The story of non-EEA family migration in Britain today is one of children torn from their parents and couples forced to live apart for years. This needs to be corrected urgently, and the right to family life should generally trump opportunities for economic self-advancement.

Our immigration system should also avoid entrenching inequality. The high costs of visa fees – it now costs around £2,000 just to apply for a spousal visa with the immigrant health surcharge included – plus minimum income requirements and preferential application processes for those willing to pay more are starting to turn our immigration system into a luxury for the affluent. A reformed system should have equality at its heart. The fees must be lowered, the

minium income requirements abolished, or at least drastically reduced, and application processes should be the same for everyone, regardless of wealth.

Next, we should base our immigration system on value, not numbers. The senseless net migration target not only fuels hostile and unfair policies, it also fails to recognise economic necessity. Value would be a far better guiding principle: the value of someone's claim to live in the UK, and the economic, scientific or perhaps even cultural value of their possible contribution to British life. This includes people who might be lower skilled but who work in occupations that are important to our economy, or who fill the shortages in professions such as nursing or teaching.

An immigration system built on these principles of equality and value could contain multiple tiers, including a new global tier for very highly skilled or talented individuals from across the world, such as scientists, senior doctors, chief executives and others. It might also include another immigration route for highly skilled professions and those with a skills shortage to which the EU and possibly other selected countries might have preferential access. This could be a form of free movement, or it could be subject to restrictions such as having a job offer in place before migrating or sector-based quotas. For lower skilled workers, national or even regional sector-based quotas could be set each year in consultation with industry, with preference given to UK nationals, followed by EU/EEA nationals, followed by the rest of the world. This would not be a numbers game in the same way as the net migration target, which is an arbitrary figure designed to achieve a solely political goal, but rather a flexible system designed to decide each immigrant's admittance on the basis of their particular skills and the current economic need for those skills.

A system like this, which is a variation on a proposal recently suggested by the think tank British Future, would demonstrate more sensitivity to public concerns over immigration by giving the UK greater control over lower-skilled migration. Of course this is a tricky path to tread, and many would caution against treading it at all. By designing a system that bends to those public concerns, we arguably risk legitimising xenophobia and the hate crimes that result from it. Sometimes it seems like we have no good answers to the social problems of xenophobia and racism, so instead we reach for immigration reform as something tangible, albeit wrongly prescribed.

Tackling xenophobia and the criminal behaviour that sometimes springs from it is beyond the scope of this essay, but deserves far more attention than it currently gets. However, we must remember that some concerns about immigration are distinct from xenophobia or racism. Downward pressure on wages, and access to welfare, healthcare and housing are all legitimate concerns. It is also legitimate for people to struggle to acclimatise to the social and cultural changes that take place in their communities when large numbers of immigrants arrive in a relatively short period of time. We all hope that in time people will adapt and take pride in diversity, in the way that we have seen in London. but it is not necessarily xenophobic or racist to be daunted by the pace of change in one's social or cultural landscape. Designing a system that takes all of this into account is sensible if we want it to be sustainable.

The type of new immigration system I have outlined would be compliant with human rights, responsive to the country's economic needs, and respectful of the particular historical relationship and cultural ties we have with the EU. But it is not the only system that would be. There are multiple variations that could conform with these principles,

some including forms of free movement with the EU and some not, and the system we eventually choose should be the product of reasoned debate and careful analysis. The most important thing is that whichever system we settle on should have the right principles behind it, rather than the current downward spiral of nativist rhetoric and draconian instincts that currently seem to guide our immigration policy. It is time for progressives to respond to this debate with ideas that prioritise human rights and the economy, without dismissing all public concerns about immigration as necessarily xenophobic.

## 5: FOR THE MANY: ECONOMIC AND SOCIAL RIGHTS AS HUMAN RIGHTS

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Andrew Fagan

*It has been too easy for populists to mobilise people against human rights, pitting them against the very values which could transform their lives. Putting economic and social rights at the centre of the debate could change all that.*

### Prospects of change?

**W**e live in confusing but strangely exciting times. The unexpected outcome of the 2017 UK general election, the metamorphosis of Jeremy Corbyn into a cultural icon and, most importantly, increasing public focus on poverty, inequality and social marginalisation anticipate what may constitute a momentous shift in the centre of political gravity in the UK. Having so often been declared dead, or worse irrelevant, democratic socialism is alive and well. This pamphlet argues that a refashioned commitment to human rights has a vital role to play in democratic socialism's continuing struggle towards creating an economically fair and socially just United Kingdom.

But in contrast to many liberal commentators and human rights defenders, I shall not argue for a return to the pre-2016 status quo. Human rights occupied a prominent place in the pre-Brexit, pre-Trump age. Yet many of the ways in which they were advocated inadvertently contributed to the

electoral successes of right-wing pseudo-populists, even as legions of human rights defenders decried these outcomes. Despite the animating spirit of human rights, the doctrine has typically failed to engage with the underlying causes of the growing levels of poverty, inequality and social marginalisation, which, of late, have been driving politics in the UK. It doesn't have to be this way.

### Human rights: a weapon for the right?

Any radically-motivated critique of human rights in the UK must avoid lending credence to the reactionary campaign which has been waged against the doctrine for many years. And any attempt to reclaim human rights for the radical left must also recognise the scale of the challenge involved. After all, one might reasonably conclude that among the principal beneficiaries of human rights advances are those who have been orchestrating a campaign of hatred towards them in the UK as a means to their own partial political and economic ends. In stark contrast to the progressive aspirations of so many human rights defenders, human rights appear to have all too often provided a powerful political weapon for the reactionary and increasingly pseudo-populist right.

Many people in the UK live in a chronic state of fear and anxiety and feel a profound dissatisfaction with the way things are. There is a great deal to be concerned about: job insecurity, old age, increasingly uncertain access to health care, the lack of safe and affordable housing, schools, and even the pot-holes in the roads. Overcoming this growing collective discontent requires sustained intellectual and political effort. The intellectual effort involved is relatively straightforward and consists of objectively identifying the true causes of the discontent. The political effort is both far more practically significant and far more difficult to

achieve. Having identified what (and who) is to blame for the continuing dilapidation of large parts of the UK, democratic socialists must then strive to persuade those most affected to support policies which seek to establish justice and fairness for all. Call me an optimist, but I believe that there now exist real opportunities to achieve this most difficult of political tasks.

### The political value of poverty and marginalisation

So where does this fear and anxiety come from? Ever larger swathes of the UK population are falling victim to the combined effects of decades of neo-liberal economic policies, successive governments' adulation of the private sector and a stubborn refusal to engage in any form of structural analysis. The poor and the marginalised became increasingly electorally, and thus politically, irrelevant, as successive elections were won by garnering the electoral 'custom' of sections of the aspiring middle classes. Arguably, one of the most important changes in the UK's political culture over the past year has been the renewed political importance of the poor and the marginalised. This may be an unintended consequence of the leave campaign's tactics during the EU referendum of directly targeting many who have every reason to feel aggrieved and angry at the perpetual failure of the temperate political classes truly to engage with many of their concerns. The rising political significance of economic inequality and insecurity may also be compounded by the emergence of a new, yet to be fully recognised, social class distinction in the UK between those who can afford to 'go private' and the many more who cannot.

Confronted by diminishing levels of popular enthusiasm for neo-liberalism and the rising political focus on those who are most adversely affected by the prevailing order,

those who benefit most from all of this inequality face an increasingly difficult task of deflecting blame and attention away from the root causes of it all. The populist vilification of human rights and, in the case of Brexit, the human rights of foreigners, is best understood against this backdrop. In portraying human rights claimants as, for example, terrorists, paedophiles, prisoners, migrants and refugees to those who have good reason to feel aggrieved by many aspects of their lives, the right seeks to mobilise some of the very people most affected by inequality and marginalisation in support of maintaining the conditions which reduce them to electoral and economic 'cannon-fodder'. In this way, 'ordinary' people are encouraged to take sides against the very values and ideals which can help transform their fate.

### Beware the gentrification of human rights

Popular hostility towards human rights is, ultimately, politically irrational for the vast majority (if not all) of those who continue to fall for that scam in the UK. It would be in the interests of everyone who is presently distracted from paying attention to the true causes of their plight to embrace rather than reject human rights. Yet, as we have seen, the practice of human rights has all too often, albeit inadvertently, contributed to the rise of the pseudo-populist right. A refashioned approach to human rights could be far more effective in addressing the concerns of the poor and marginalised.

Part of the reason why it has proven so easy to mobilise so many people against human rights in the UK is that the UK human rights community has, generally, failed to adequately engage with many of the challenges confronting those who are vulnerable to poverty, inequality and social marginalisation. Human rights lawyers and many human rights professionals are more likely to be perceived as belonging

to the so-called 'liberal elite' than to the many people who suffer poverty, inequality and social marginalisation. This is then compounded by the characterisation of the broader human rights community as disproportionately focused upon the specific concerns of terrorists, paedophiles, prisoners etc. Human rights are not, generally speaking, visibly defended and fought for within impoverished and vulnerable communities. It is not surprising that so many people see the human rights community as alien to their own. The unduly gentrified habitus of much of the UK human rights community is, I believe, part of the reason why more people who should support human rights, do the opposite. Largely ignored (if not condemned) by many members of a gentrified cadre of professional 'saviours', some amongst these impoverished and marginalised communities are easily drawn towards right-wing pseudo-populism and its assault upon human rights.

### The partial content of UK human rights law

Part of the very purpose of human rights is precisely to defend marginal and unpopular causes. Of course these should not be abandoned in favour of more 'popular' issues. And, while human rights lawyers might be criticised for being remote from the concerns of our most deprived citizens, it is crucial to acknowledge that their professional efforts are determined by the prevailing content of human rights law. And here, little attention is given to economic and social rights as human rights.

Much of the human rights community is agitated by the concern over the future of the UK Human Rights Act (HRA) and opposition from large elements of the Conservative party to the European Convention on Human Rights (ECHR). It is of course important to defend these highly significant legal

instruments. But we should also acknowledge that they only include a limited, ideologically partial, collection of human rights, namely the so-called civil and political rights. A separate instrument, the European Social Charter (ESC), provides a mostly ineffective mechanism for upholding British citizens' economic and social rights. The charter's ineffectiveness is, arguably, most apparent in the right-wing media's almost complete disregard for it. Essentially those human rights which are so central to combating poverty, inequality and social marginalisation in the UK attract limited attention and the protections around them are largely ineffective. As distinctly human rights, economic and social rights have been almost entirely ignored by many. There is an urgent need to address this situation.

### Making it real

Numerous liberal human rights theorists and many neo-liberal state authorities have denied that economic and social rights are human rights. But if human rights exist at all, then they must extend to include all individuals' entitlement to the means to lead a sufficiently dignified life, one which includes the essential freedom from want. Human rights are fundamentally concerned with human welfare and thus must extend to providing systematic and effective protections against the many forces which condemn far too many people to poverty, inequality and social marginalisation. Notwithstanding the limitations of the UK HRA and the ECHR, international human rights law broadly agrees and recognises the *de jure* existence of a comprehensive body of economic and social rights, including rights to an adequate standard of living, to work, to a fair wage, to social security, to education and to an adequate standard of health care, amongst others. These rights form a body of international

law which the UK has committed itself to. However, they are not part of domestic UK human rights law and exert only an indirect influence upon the economic and social rights regime in the UK. Despite, or perhaps because of this, there is growing public concern for economic and social rights within the UK. Not so long ago, we were regularly told that such concerns were born out of the 'politics of envy'. Now with so many people employed on insecure, zero-hour contracts, with continuing and glaring wage inequalities; with access to benefits increasingly determined by discretionary criteria; with the NHS having been driven to breaking point and the wholesale infrastructural decay of impoverished and marginalised communities across the UK, there is clearly an urgent need to effectively protect and promote economic and social rights. We need to make them real.

### The necessity of a radical approach

Poverty, inequality and marginalisation are the consequences of prevailing economic policy. Capitalism enriches a few and impoverishes the many. The ludicrous 'trickle-down' alibi offered for the Washington Consensus, which has had disastrous consequences for countless millions of people across the globe is, one hopes, in its final death throes. Right-wing political parties have persuaded generations of voters to support an ideology which, to quote Bruce Springsteen, has brought only death to many of their home towns. The so-called 'wretched of the earth' are no longer only to be found in developing world slums: growing numbers of people in the UK are facing poverty, inequality and marginalisation. One must not forget, however, that *de jure* economic and social rights have co-existed with these unjust and unfair conditions.

Too many people in the UK human rights community have neglected economic and social rights. Too many within the UK human rights community have been prepared to tolerate, even if they do not celebrate, a prevailing economic platform which has manifestly failed millions of people in the UK. To embrace human rights is to embrace a concern for all people, including the most vulnerable and marginalised members of our society. If we are to work effectively towards realising the promise of economic and social rights, we must recognise the need to embrace a political vision which fundamentally rejects the perpetual prioritisation of the partial interests of the few.

Economic and social entitlements are not discretionary human rights. Thinking of oneself as a bearer of fundamental human rights is inherently empowering and fundamentally alters the terms of the social contract between the powerful and the powerless. From the perspective of human rights, the poor and the marginalised are not the 'losers' they are sometimes portrayed as, but human beings whose fundamental rights are being violated. Placing economic and social rights at the centre of the human rights debate challenges the prevailing narrative which seeks to blame and ridicule the 'have-nots'. Safe and affordable housing is not a privilege, which is dependent upon market forces. It is a fundamental human right. Access to adequate healthcare should not be dependent upon one's ability to pay or, indirectly the same thing, one's post-code. It is a fundamental human right. But it is not enough to recognise that these are human rights for this will not, on its own, ensure that they can be enjoyed by all. You shouldn't have to stand up and fight for your fundamental rights, but often you do, particularly when the rights you are fighting for pose a challenge to the prevailing order.

## Fair and Free

Human rights have a fundamentally important role to play in transforming British society. A crucial start can be made by systematically encouraging people to identify themselves as bearers of human rights, rather than opponents of them.

## 6: AN ACCOUNTABLE FORCE: LABOUR AND LAW AND ORDER

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Louise Haigh MP

*Our approach to law and order should balance protecting citizens with a commitment to fairness and accountability. Our police force needs the resources to do its job – but must be accountable to the people if it is to police by consent.*

It is true to say that Labour has on occasion harboured contradictory outlooks on the civil liberties agenda. Broadly the party has had a balance to strike between a genuine willingness as a responsible government or government-in-waiting to do anything we can to keep the country and the people we seek to serve safe; and our origins as a movement in the struggle against the intrusive and repressive power of the state.

The real myth, though, is that Labour is possessed of a sort of group-think which sees the civil liberties agenda as the lily-livered pursuit of a metropolitan fringe. It is a simplistic misreading of who we are as a party and our history as a movement.

We know only too well, over almost two centuries, how the power of the state can be used to smear and corral ordinary people who have fought for their class and community.

The Tolpuddle Martyrs were the first and most vivid example of this, shipped off to Australia for daring to fight for their rights as trade unionists.

The great Jack Jones, the powerful leader of a lawful trade union movement protected by the Universal Declaration of Human Rights, found himself under the surveillance of the British security services.

And, over the years, that surveillance didn't stop at the leadership. Livelihoods were destroyed by illegal black-lists of construction workers drawn up by employers with involvement from the secret services. Their misdemeanours? Such high crimes as wearing anti-nazi badges and "being a strong trade unionist".

At Orgreave, miners saw the police used against them and memos released under the 30-year rule reveal a trace of political direction, an anathema to our idea of a police force rooted in the community.

And when ordinary, decent people fought for justice after Hillsborough they were subjected to smears and lies.

In the consciousness of Labour this symbolises one thing above all: although the state can and must be a force for good, at its worst it can repress and deny justice, particularly for the most marginalised.

Perhaps because of our campaigning on these injustices, a sense was born that Labour was not the party of law and order. Of course, nothing could be further from the truth. A rich seam of practical politics on this agenda runs through Labour and our time in government. This is perhaps best symbolised by Jim Callaghan; a working-class prime minister who was an advisor to the Police Federation during opposition and passed acts as prime minister which toughened criminal laws and gave the police a payrise they richly deserved.

Under the last Labour government our words on law and order were matched with action and police numbers reached levels no previous Conservative government came close to. It was a sign of how we knew instinctively that a well-

resourced and accountable police force keeps our communities safe.

But in the years since we were last in power, what has happened on the law and order front is truly unprecedented. Look around Europe, all gripped by the same financial crisis, and police forces have remained remarkably steady, with leaders of all political persuasions recognising that if you cut the police, you may save cash but communities will suffer. Iceland and Lithuania, both crippled by deep recessions, were two of only three countries which saw their police numbers fall proportionally more than our own.

Violent crime has risen, neighbourhood policing has collapsed and the crucial link between communities and police so vital for intelligence to fight terror has shrivelled. The Conservatives shamefully accused the police of “crying wolf” over cuts but now we see the reality; the wolf is at the door.

As a result, some people feel nothing less than under siege in their own communities. Labour needs to be vocal in its opposition to the cuts and in ensuring police have the powers and the protections to be able to tackle these issues.

Law and order is a Labour tradition and a Labour issue. But that doesn't mean we are not in favour of reform.

We must ensure that our police are properly accountable and that the right checks and balances are in place. In the 1980s, the police effectively became an arm of the state; police authorities were sidelined and the confusing tripartite relationship between chief constables, police authorities and the home secretary meant that too much power, and political control, sat in the latter's hands.

Painful incidents raised deep questions about the relationship between the police and the communities they serve and whether they were in fact accountable. Labour didn't do enough in government to correct this. We didn't

have an answer on accountability so instead we centralised everything. We replaced accountability with key performance indicators (KPIs), which were not only inappropriate for a service like the police but actively undermined our democracy in their excessive political interference. Setting KPIs from Whitehall meant that resources and day-to-day operations were directed by politicians rather than senior police officers and it enabled a leadership culture that was more about box-ticking than it was about tackling crime and policing communities.

Theresa May, to her credit, recognised this and abolished all central targets when the coalition entered government. I didn't support the creation of police and crime commissioners (PCCs) but at least they have made local politicians properly accountable for policing. Accountability is the first and best way to keep the public and the police working in the same direction. I believe there are still issues with the model: the legislation is still too ambiguous about the relationship; recent court rulings have brought tensions between the operational independence of chiefs and the political nature of PCCs back to the fore. I fear that, by the very nature of the role, PCCs run the risk of becoming institutionalised and less able to hold their forces to account.

In the past it has always taken an event of note to lead to police reform. Despite the importance of policing and the impact it can have if done well or badly, it occupies very little of our public discourse unless something really disastrous has happened. The Brixton and Toxteth riots, the murder of Stephen Lawrence, the Hillsborough disaster and a series of deaths in police custody have all led to gradual reform.

As a former special constable in the Met Police, I can attest to the fact that our training was replete with concern for diversity and equalities. I am confident that the police have come an incredibly long way from the days when the

force was undeniably institutionally racist but we still have work to do and recent progress with body-worn cameras, proper crime reporting and justification of the use of force is welcome.

But other fundamental changes are also taking place, thrusting the civil liberties agenda firmly back into the spotlight: the internet and its omnipotence is raising questions about our rights in the digital age.

Monolithic private companies know more about us than our friends or family and emerging technologies are leaving the government flat-footed.

The response to the Westminster attack earlier in the year was revealing. Amber Rudd claimed that banning end-to-end encryption could have enabled our intelligence services to prevent it because the attacker, Khalid Masood, sent a WhatsApp message moments before the attack. The most obvious bone of contention with her case is that he was not on any watch list, let alone being monitored in real time, so how having access to his unencrypted messages would have stopped him is unclear.

It was a vivid example of a government failing to understand emerging technology and reaching the worst possible conclusion. You simply cannot create a 'back-door' encryption key only for the good guys. The Ransomware hacks earlier this year which crippled the NHS originated from the NSA in the United States before they were leaked and spread with furious speed.

Our individual rights are now so closely intertwined with our digital rights that we have to guard against heavy-handed measures from a government which scarcely understands the internet. These reactions should concern us just as much as any assault on our traditional civil liberties.

But the simple fact is that in order to meaningfully protect the liberties of citizens, the power of all public and corporate

entities with access to private information must be used in a clear and publicly accountable way.

It's very tempting to transfer this function to the social media companies. We rightly tell Facebook and Google that they should take more responsibility for the content that is promoted on their platforms but if excessive liability is placed on intermediaries, companies end up taking on censorship and surveillance functions without sufficient transparency, accountability or public oversight. In doing so, we run the risk of creating a privatised police state. Legislation is, in any case, far too slow for technology.

The government's creep on internet liberties, proposals around encryption and now moves around facial recognition software should concern us. Above all, in all of these areas, we must avoid 'mission creep'. Just as we hold the police accountable in their use of force, so must we do so in their use of data and any violation of our privacy. To do otherwise questions the police's legitimacy, which must absolutely be sustained. Without it, we fail the fundamental test of the British model of policing – the ability to police by consent.

## 7: RIGHTS AND RESPONSIBILITIES REVISITED

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Frank Field MP and Andrew Forsey

*To reconnect with the people who have deserted Labour, the party needs to place a sense of duty at the heart of its programme. Citizens should earn their rights by fulfilling their duties to each other.*

The early skirmishes in the Brexit negotiations have largely been fought on the battlefield of rights and liberties. ‘How will the rights and liberties of European nationals living in this country, as well as British citizens living in European countries, be enshrined?’, and: ‘What will happen to workers’ rights in post-Brexit Britain?’ are just two of the questions dominating the political debate around our withdrawal from the European Union.

This discourse around the rights and liberties of individuals, as well as of certain groups in our society, has been a main driving force behind centre-left politics for pretty much our entire political lifetimes. But it has not always been a force for good.

It is over that same period, and with it the ascension of this discourse to such a dominant hegemonic position within the Labour party, that working-class voters have upped sticks and deserted the centre-left – particularly in recent years.

Even the resurgence in the overall Labour vote at the most recent general election was not strong enough to return our share of the working-class vote (47 per cent) back to when

we last won a general election, in 2005 (48 per cent). But merely to have reached this level of 12 years ago would not have been that much of an achievement: in 1997 Labour took 59 per cent of the working-class vote.

An even more alarming story emerges when one looks at the gap between Labour and Conservative support among working-class voters – Labour’s lead over the Tories hit 38 percentage points in 1997; by 2005, it had declined to 23 points; in 2017, it fell even further to nine points.

The conclusion delivered by these numbers should represent an emphatic warning to the Labour party: despite her awful campaign, Theresa May was not far away from achieving her objective of totally hollowing out Labour’s working-class vote.

How so? Our argument is that it is Labour’s often visible discomfort when having to talk about the duties and responsibilities each of us holds, rather than the rights and liberties bestowed upon certain groups and individuals, that alienates large swathes of working-class voters.

Labour desperately needs to set out a programme for applying a layer of protection to Britain’s most vulnerable. But our past misdemeanours in the eyes of working-class voters put us at an immediate disadvantage. We are in such a weak position that proposing new measures to protect this most vulnerable group requires new political skills. Our offer needs to be centred around the needs of the working and lower middle class. The poor will be protected in its wake.

To overcome these perceived past misdemeanours, we need to embrace the fact that the acquisition of additional duties, rather than rights, by each of us as individual citizens, as well as collectively by the great powers of the land, stands the best chance of making a difference to people’s lives in a way which commands broad public support, particularly among working-class voters.

So one of Labour's fundamental tasks ahead of the next election is to put together a reform programme on welfare, employment, skills, housing and anti-social behaviour which counters our toxic perception among voters.

Take the benefits system as a first example. The comfort zone into which the centre-left is all too often tempted to retreat is to view welfare as a right. What follows from this worldview is a programme which then seeks to extend this right to growing numbers of people, so that more of us draw benefit from the state while the bill footed by taxpayers continues to grow.

The political and fiscal climate of the past decade has placed this worldview, and with it the Labour party, well and truly on the back foot. It has been too uncomfortable for Labour to realise that such a worldview simply does not wash with voters, particularly those captured by George Osborne's analogy of a low-paid worker walking past the window of their neighbour whose blinds are still down, living a life on benefits.

Paradoxically, it is the benefits system which offers Labour the chance to set out the clear beginnings of a programme which applies new layers of protection by bestowing new duties and responsibilities. Indeed, it was in this spirit that Sidney and Beatrice Webb outlined the guiding principles of any politically viable programme to counter destitution:

*"The maintenance of a definite standard of civilized life is certainly a universal obligation; but to secure its fulfilment is not within the power, and therefore not within the moral duty, of the individual alone. It is the joint responsibility of an indissoluble partnership between the individual and the community, in which neither must fail in duty."*

Despite the huge gains registered by the Webbs, as well as a select few of their disciples, destitution has re-emerged with a vengeance in this country. Labour's main task in this regard is to redesign the welfare contract known as the claimant commitment, so that it sets out clearly the duties the government must fulfil in placing claimants into work and protecting them from hunger and homelessness, as against claimants' duties to look for work.

All of us know from our constituencies that there are families who simply do not think about work. One young woman who broke the mould by starting an apprenticeship was ostracised by her family for waking them up early each morning while she was getting ready for work. Labour should insist that such families are referred onto a much-reformed Troubled Families programme that has a bar to success which is not set on the ground, but demonstrates a clear ability to transform people's lives.

Elsewhere, in the labour market, the introduction of the national living wage has put the focus of the political debate firmly upon employers' duties towards the wellbeing of their workforce. Labour's task here is to capitalise upon the national living wage as the bedrock of a new contract in the labour market, focusing particularly on those sectors in which employers are prone to avoiding, or evading, those duties under the guise of 'flexibility'.

Trade union activism has set off a legal domino effect against bogus self-employment in the gig economy: Uber, Pimlico Plumbers and Addison Lee have all been found by the courts to be wrongly classing their workers as 'self-employed'. A swift legislative response to the Taylor review is now required to apply a stronger layer of protection. A crucial test here will be to extend the national living wage to those who are wrongly labelled 'self-employed'.

Next, the Low Pay Commission should be tasked with setting higher minimum wage rates in those sectors of the economy that could easily afford to pay it without shedding jobs. Moreover, companies should be given the duty of publishing the pay ratio between their highest and lowest paid staff, including contract and agency workers, and to peg subsequent increases at the bottom of the pay scale to those at the top. A requirement to offer all workers on zero-hours contracts the option of a fixed-hours alternative would also help even up the scales.

The introduction of a further duty aimed at blue-collar workers would position Labour firmly on the front foot, by giving those workers hope and demonstrating that we are not falling back into our normal comfort zone.

The government has enjoyed much success in placing large numbers of people on benefit into jobs. But many of those people have merely been transferred from a low benefit income to jobs paying poverty wages from which they struggle to escape.

The game-changing move from Labour would involve the creation of local employment services with a broad reach among low-paid workers, to bring together work opportunities offering higher earnings and help those workers take advantage of these opportunities. Its main benefit to workers would be the provision by a dedicated caseworker of information, advice and guidance to remove barriers to a higher income. But in accepting this support people would need to sign up to a clear and agreed set of duties outlined in a contract aimed exclusively at helping those workers earn more money and lifting themselves free of means-tested benefit.

On skills, too, Brexit affords us a major opportunity to train mainly working-class youngsters who would otherwise be

locked out of a job. Such a programme is essential if we are to avoid the emergence of post-Brexit skills shortages.

Labour should begin planning to require youngsters leaving school with few, if any prospects, to undertake boutique apprenticeships which, after 10 weeks, would equip them with the basic skills they need to earn family wage packets within a year on the job. Once they are in such a position, those graduates should repay the teaching and maintenance costs incurred during those 10 weeks, through a new fund based on the student loans system. Moreover, in meeting its duty of offering widespread access to these apprenticeships, the government would need carefully to think through and apply sanctions against those who are not serious in taking up these new opportunities.

One of the aims of such a programme would be to supply a post-Brexit workforce which rapidly expands the size of our housing stock, thereby helping the great powers of the land fulfil another core duty in protecting people from destitution: the provision of a safe and decent home for every citizen.

Labour would greatly improve the quality of life for huge numbers of people if it thrashed out a new housing contract between landlords and their tenants. A legal duty upon landlords to provide housing that is safe and decent would need to be accompanied by tenants' duties to behave themselves and, if they are unemployed, to look for work during their tenancy. Some of our larger housing associations should then be invited to bid for monies from the welfare-to-work budget, to help this latter group find work.

If it is to be effective, the new contract must be enforced robustly. Hence the need to deduct benefits from problem tenants and to prosecute landlords who claim housing benefit for substandard accommodation in which children's clothing is caked in mould, for example.

More broadly, while it seems obvious to say that each of us should have the duty to behave in a civil way towards one another, a deeply depressing theme in places like Birkenhead is the hopeless failure of the authorities to enforce this duty.

One way of instilling civility would be to introduce a 'social highway code', the bones of which are agreed upon by all of the major religions that are practised in this country, that is taught in all schools.

But what of the authorities' duties to protect decent people in the here and now? On countless occasions law-abiding citizens are left dumbfounded by the inadequacy, or total non-existence, of the authorities' response to their reports of crime and anti-social behaviour. What steps would a Labour government take on this score, to prevent ordinary people's lives being made a total misery? Would it give the police new duties, for example, to initiate a rapid response to reports of crime and anti-social behaviour?

Labour will need to place a sense of duty at the heart of any programme to improve the lives of blue-collar workers. None of this will happen, though, if the party does not first ask itself whether it has the willingness and the sheer guts to rethink its approach to social justice in modern Britain. Any programme emerging from this exercise must demonstrate to the electorate that Labour expects citizens to earn their rights by first fulfilling their duties to one another.

## 8: BARS TO JUSTICE: THE VALUE OF RIGHTS AND REMEDIES FOR ALL

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Laura Janes

*A culture that respects the rule of law for all, including prisoners, would not only change their lives, but demonstrate the strength and virtue of the nation.*

The point of the rule of law is that everyone agrees to be bound by it: if you don't follow the rules, there are consequences.

Those that breach the criminal law can expect sanction, the harshest one being the deprivation of liberty.

But criminal sanction is not there just to punish. It also aims to prevent future flouting of the law. The prison rules for adults go further: they aim to transform prisoners to lead "good and useful lives".

One aim of the criminal justice system is to engender respect for the law.

It is perplexing then that those deepest into the system, prisoners, are some of the most removed from accessing the law, both while in prison, as well as before and after.

The cuts to legal aid for prisoners in 2013 were one of the few cuts to public spending in recent history aimed at depriving a whole group of people from accessing justice. And, as the then Justice Secretary, Chris Grayling, told Jeremy Corbyn, who was a justice committee member at the time, these cuts were ideological. Prisoners were not thought deserving of legal aid to seek remedies for their

legal problems. Yet, that ideology flies in the face of both the principle of the rule of law, which says that the law is for everyone, and the notion that prisoners should be guided back to lawful lives.

And it is not only contrary to the whole point of the criminal justice system. If those deemed undeserving are to be deprived of access to justice, it reveals a weakness within our wider community.

Winston Churchill is famously misquoted as saying the way a society treats its prisoners is the measure of how civilised it is. What he actually said about our attitude to criminals is far more powerful:

*“A calm and dispassionate recognition of the rights of the accused against the state and even of convicted criminals against the state, a constant heart-searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry of all those who have paid their dues in the hard coinage of punishment, tireless efforts towards the discovery of curative and regenerating processes and an unfaltering faith that there is a treasure, if only you can find it in the heart of every person – these are the symbols which in the treatment of crime and criminals mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue in it.”*

If the treatment of the helpless, including prisoners, is a measure of the stored-up strength of the nation, at present we are as weak as we have ever been.

Our prisons are in crisis: violence is rife and a prisoner takes their own life once every three days. Abuse in prison is widespread. At the same time prisoners have been too disempowered by the removal of huge swathes of legal aid for them to do much about it. At the time of writing, this

woeful situation continues, notwithstanding a judgement from the Court of Appeal in April 2017 that much of the removal of legal aid for prisoners resulted in systemic unfairness and was therefore unlawful.

Legal aid is necessary but is not sufficient. Many prisoners arrive in prison with long histories of unmet civil legal need, even in areas where legal aid remains available such as homelessness. Take the case of children under 18 in prison for whom the Howard League provides a specialist legal service.

The description by Mr Justice Munby in 2002 of children in prison is an accurate description of many of the children I represent today at the Howard League. He described them as:

*“vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse or neglect... over half the children have been in care... significant percentages report having suffered or experienced abuse of a violent, sexual or emotional nature... very significant percentages... were homeless ... over half not attending school... many had a history of treatment for mental health problems. Disturbingly high percentages had considered or even attempted suicide...”*

The description is particularly tragic because the situation it highlights is avoidable. So many of the issues faced by the Howard League’s clients before they came to prison had the possibility of legal remedy. Yet even where legal aid exists, so many people do not know that their problem has a legal solution, or how to access it.

When Mr Justice Munby spoke 15 years ago, legal aid was far greater in scope than it is now but it was not reaching everyone who needed it.

Public legal education on a grand scale is required, combined with a cultural change to support the disenfranchised and the helpless to become active legal users. Something more than chucking money at the problem is required – it is a wholesale change in the way we think about law and rights.

Rights must become regarded as essential as the air we breathe, as essential as our need for food and shelter. Obtaining a remedy when things go wrong must be as normal a response as going to the doctor when you feel unwell.

There must be a shift in thinking and language, from legal remedy being a technocratic rarity orchestrated by professionals, to it becoming the norm for all people. Rights must be taught at school, they must feature in children's television programmes and stories. They must be talked about not just by politicians and lawyers but by parents, celebrities and teachers. As rights become part of our language and culture we will become more comfortable with remedy. As remedies become more and more attainable, violations will become less and less common. Rights will cease to be the preserve of the few or a sign of impudence in those we do not usually expect to exercise them.

I was struck recently by a comment from a medical professional working in a prison who talked about a young person's "sense of entitlement" arising from his involvement with a legal challenge being brought on his behalf. The implication was that having a sense of entitlement was in some way bad or unhealthy.

Yet the Supreme Court has recognised the benefits to society of people knowing their rights – and responsibilities:<sup>1</sup>

*"People and businesses need to know, on the one hand, that they will be able to enforce their rights if they have to do so, and, on the other hand, that if they fail to meet their obligations,*

## Fair and Free

*there is likely to be a remedy against them. It is that knowledge which underpins everyday economic and social relations. That is so, notwithstanding that judicial enforcement of the law is not usually necessary, and notwithstanding that the resolution of disputes by other methods is often desirable."*

The only way to engender personal responsibility in people in contact with the criminal justice system and thereby ensure less crime and fewer victims of crime, is to honour their rights. This means creating a culture in which they themselves are respected and enabling all them to access appropriate remedies.

The Howard League is currently involved in an international participation project with children in prison to educate them, and listen to them, about their rights. The attitude to children in prison in several other countries in Europe is strikingly different: they are treated as children and there is nothing difficult or complicated about informing them of their rights other than the practical hurdles of teaching them. Here in England and Wales, the idea of teaching children about their rights and creating a potential power shift between prison officers and children feels almost revolutionary.

Compulsory incarceration is the ultimate manifestation of state power. In prison, everything is regulated and subject to rules. In the community the reverse is true: our rights exist in the gaps between laws. Achieving fairness, putting things right or getting a remedy when things have gone wrong in this heavily regulated environment ought to be simple.

It is no coincidence that our prisons are full of those who are already outside the reach of the law by virtue of their long histories of unmet legal need. Those imprisoned in their communities by poverty and other social pressures are also removed from the benefits of the law, whether by ignorance of it, lack of confidence or means to use it.

Estrangement from the law compounds the stinging sense of injustice felt by prisoners who are already receiving the harshest punishment the state can give for flouting the law. Conversely, empowering prisoners to access and use the law to help them to lead positive lives would be a good first step for the nation if it is to store up much-needed strength for the future.

*The Howard League for Penal Reform is a charity that has no political affiliations.*

## Notes

1. R (on the application of UNISON) (Appellant) v Lord Chancellor, 2017, paragraph 71.

## 9: THE RIGHT TO WORK: WHOSE RIGHT, WHAT WORK?

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Virginia Mantouvalou

*The right to work is protected in human rights law. But being able to work must mean working without exploitation. And protection from exploitation should not be dependent on having the right paperwork.*

“[The employers] did not give me [enough] to eat. Only once a day, limited food. I was hungry. That is why I said I made a sacrifice: you need to work, you sacrifice everything”. This is what Geraldine, a domestic worker, said to me in one of the interviews for a study I conducted on migrant domestic workers in the UK. People need to work, and in human rights law and theory it is commonly said that everyone has a human right to work. What does it mean to have a right to work when some in our society have to sacrifice so much in order to work?

### A human right to work

The right to work is protected in human rights law. Human rights documents do not say that everyone should have a job, even less so that everyone should have the job of his or her dreams. One of the most influential documents, the Universal Declaration of Human Rights, states that: ‘Everyone has the right to work, to free choice of

employment, to just and favourable conditions of work and to protection against unemployment.’

The International Covenant on Economic, Social and Cultural Rights also protects the right, and the committee that monitors its implementation has said that the right to work does not impose on state authorities an immediate obligation to provide a job to everyone. However, there are some immediate obligations that states have: for example, they cannot force people to work. States also have obligations to progressively realise the right to work through vocational programmes or other policies that promote full employment. In addition, the committee has said that the right to work is interdependent with other labour rights, like the right to fair working conditions and trade union rights. Because of this interdependence, we cannot say that people employed in unfair conditions enjoy their right to work. If the right to work is to be a meaningful and valuable addition to a list of human rights, it must be viewed as a right to non-exploitative work.

It is no surprise that the right to work features prominently in human rights law. Work promotes important values. People feel dignified when they work because they earn income that helps them meet their needs and desires. Work also promotes people’s self-fulfilment. Society values working people, and discredits the idle. Work promotes social inclusion, while unemployment has a stigma attached to it. People form friendships and other social relations at work. It is an important component in people’s identity; this is why one of the first questions that we ask when we meet someone is what work they do. In protecting work as a human right, the international community has recognised the value of work.

### Whose right?

Human rights law makes the right to work universal. Universality is a normative concept here, which means that everyone should enjoy a right (not that everyone actually enjoys it). Human rights are sometimes conditional, and this is not necessarily illegitimate. For example, only people who are imprisoned have prisoners' rights. Indeed, when it comes to the right to work, in practice in most legal orders, the right to work is not universal. In particular, child labour is limited or prohibited to protect children.

But the right to work is also very often conditional upon citizenship as legal status, rather than one's status as a human being: only a country's nationals or certain categories of migrants have a legal right to work. Immigration law sets restrictions to the universality of the human right.

In the UK, third country nationals – those who do not come from a member state of the EU – usually need a work permit; they have a right to work only for so long as their visas permit. When the visas expire, they have no legal right to work. A migrant who is undocumented – someone who has come into a country without a visa and a work permit or someone who has entered a country with legal documents that later expire – has no right to work at all. Immigration rules mean that some migrants do not have a right to work, or that their right to work is very restricted. Unlike the regulation or prohibition of child labour, the purpose of which is to protect children, the restriction on migrants' work is not designed to protect migrants, but to protect the national labour market. This is generally viewed as a legitimate exercise of state sovereignty. Are there any limitations to this?

## What work?

Geraldine, the worker quoted above, arrived in the UK under an overseas domestic worker visa. About 17,000 such visas are issued each year for workers who accompany visitors in the UK for periods of up to six months. This visa made her right to work conditional upon being employed by the employer with whom she arrived. This visa scheme was recently slightly amended, but remains highly restrictive. These types of visas give the employers the sense that they own the employee, because they 'own' the employee's right to work. This sense of ownership may explain why the employers often keep the employee's passport.

Geraldine was never paid for her work, even though she worked extremely long hours, with no time off. Having escaped her abusive and exploitative employers, she no longer had a right to work. Yet she was desperate to do so. She had dependants back home whom she had to support or they would become destitute. Having no visa, she found various part-time, exploitative jobs. The vulnerability that was at first caused by her very restrictive visa terms became even more extreme once she took on a purely undocumented status. But Geraldine, like many other workers in this kind of situation, was too scared to go to the authorities. The fear was that the police would arrest, detain and deport her – a threat that employers often use. Another worker explained to me why she would not go to the police: "Because if the police asked me [...] about my passport, they would put me in jail – if I didn't have a passport [...]. I thought it was [best] not to take my passport from my employer [holding it]."

To make things worse for undocumented migrants, because they have no right to work, any employment contract that they form is illegal in English law. For this reason, they do not have any rights stemming from their contract – they

cannot even claim wages for work that they have performed. Employers can freely exploit them. And this is what employers actually do: "Sometimes if you have an interview and you tell [the prospective employers] that you don't have papers, they take advantage of you and they give you a small salary", one undocumented worker told me.

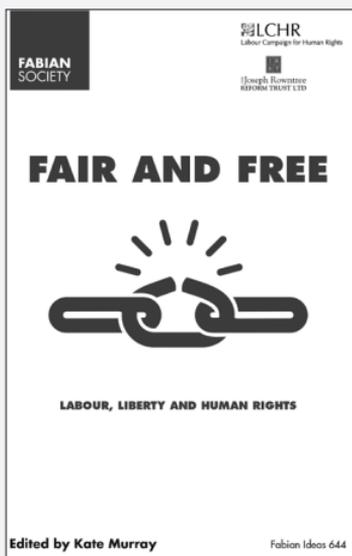
The exploitation of certain categories of migrant workers by employers who take advantage of their vulnerability created by immigration law is troubling. That the state sometimes creates this vulnerability through immigration rules is morally repulsive. It also violates their right to work, if this right is understood as a right to work in fair and just working conditions or a right to non-exploitative work.

If human rights, such as the right to non-exploitative work, are universal, can they legitimately be made conditional upon someone's status as a documented migrant? There are many examples of undocumented workers who are seriously exploited, in the UK, in Europe and elsewhere. A recent judgment of the European Court of Human Rights shed light to some extreme aspects of this problem. The court examined the case of a group of strawberry pickers in Greece. These were undocumented workers who had not been paid for their hard work. When they protested, armed guards of the employer shot them. The European Court ruled specifically that Greek authorities violated the European Convention on Human Rights, in that they knew of the exploitation and abuse suffered by these workers, yet did nothing to address it. The undocumented status of these workers did not make them any less entitled to the protection of their right to be protected from exploitative work.

The above is admittedly an example of extreme abuse, but it highlights the vulnerability of this category of workers and the obligation of state authorities to protect them from exploitation. And, even though they are not always as

extreme, there are many other forms of exploitation suffered by migrant workers that need to be addressed as urgently.

The human right to work must protect everyone against exploitative work. Very restrictive immigration regimes, particularly in certain sectors, are linked to numerous instances of violations of labour and human rights. Undocumented migrants, too, are particularly at risk. To the extent that certain labour rights are human rights, these cannot be made conditional on a work permit. Immigration rules should not be enforced in breach of human rights. If immigration control is the aim of restrictive regulations, then they will probably be counterproductive: the more employers know that they can exploit undocumented workers, the more they will seek to employ these workers. Most importantly, it is problematic as a matter of principle, and it breaches the right to non-exploitative work, which is implicit in human rights law.



## Fair and Free

Labour, liberty  
and human rights

### How to use this discussion guide

The guide can be used in various ways by Fabian local societies, local political party meetings and trade union branches, student societies, NGOs and other groups.

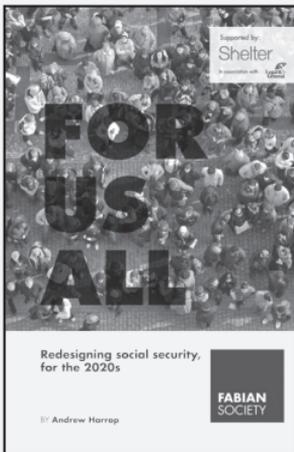
- You might hold a discussion among local members or invite a guest speaker – for example, an MP, academic or local practitioner to lead a group discussion.
- Some different key themes are suggested. You might choose to spend 15–20 minutes on each area, or decide to focus the whole discussion on one of the issues for a more detailed discussion.

A discussion could address some or all of the following questions:

1. Are liberalism and socialism incompatible? Is 'liberal socialism', as Lisa Nandy suggests, essential if we are to heal the fractures in our divided society?
2. How has Labour dealt with the tension between rights and responsibilities? How should it best continue to do so?
3. How do we strike the right balance between protecting freedom of speech and privacy and keeping citizens safe?
4. In an age of zero-hours contracts, benefit reform and a housing crisis, would embracing social and economic rights as human rights pave the way for a transformation in the life chances of some of society's most vulnerable people?

**Please let us know what you think**

Whatever view you take of the issues, we would very much like to hear about your discussion. Please send us a summary of your debate (perhaps 300 words) to [info@fabians.org.uk](mailto:info@fabians.org.uk)



## For Us All

### Redesigning social security, for the 2020s

Andrew Harrop

For Us All examines the reform of social security for children and working-age adults, in the 2020s. For six years of the Cameron government, 'austerity' dominated all discussion of benefit policies. Now it is time to turn a page and start to consider the long-term future of social security, as part of a strategic agenda for raising British living standards. Social security for pensioners is now on a strong and sustainable footing. But the system for non-pensioners will be worse in 2020 than it was in 2010 – and will carry on getting worse, unless policy changes.

The report examines the reason why current policies are failing and then assesses improvements to means-tested, contributory and universal benefits as well as private support, proposing that the end-point might be a tiered system with elements of them all.

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# Fair and Free

## Labour, liberty and human rights

Labour has struggled to form a coherent approach to liberty and human rights. Many on the left reject the authoritarian aspects they perceive to have characterised New Labour's 'tough on crime' agenda including attempts to introduce identity cards. Others argue that the left has failed to create a discourse around liberty and human rights that meets citizens' very real concerns. How do we reach out beyond the view that civil liberties are purely a concern for the liberal elite? Can we respond to the new challenges to our rights posed by the digital age and the explosion of social media? How do we reframe the liberty debate to capture the rights that many citizens hold most dear? Is it possible to make the UK a beacon for human rights in the post-Brexit world?

This collection examines the left's tradition of upholding key rights and freedoms and explores a number of ways in which a fresh vision of liberty could transform lives, institutions and relationships with the rest of the world.

With an introduction by Shami Chakrabarti and contributions by Jason Brock, Andrew Fagan, Frank Field MP, Andrew Forsey, Louise Haigh MP, Laura Janes, Virginia Mantouvalou, Lisa Nandy MP, Andrew Noakes and Robert Sharp.

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