

Sixty years after the Universal Declaration of Human Rights: How has the relationship between the individual and the state changed?*

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In a forum where human rights, in particular the rights in the Universal Declaration, are under debate it may be helpful to remind ourselves that human rights have been relatively recently recognised, that they are in many respects controversial, and that there is a lot more to the role of the state and the relationship between the individual and the state than the identification and protection of human rights. I want to focus a little on the wider concept of citizenship of which human rights form a part.

Subjecthood

It has been a commonplace to claim that in Britain individuals are 'subjects'¹ rather than citizens.² The implication of *subjecthood* is that individuals are in a compact with government in which we owe the government allegiance – loyalty - in exchange for which we get protection. *Citizenship* involves a much deeper and more complex set of arrangements between the individual and the state – perhaps even between individuals.

The citizenship of entitlement

Since the end of the second world war – about the time that the UDHR was adopted - it has actually been something of a simplification or caricature of the position of individuals in Britain to regard us as subjects.³ Marshall in his seminal work, *Citizenship and Social Class*, 1950, noted that we all by then enjoyed what he referred to as political, civil and social rights, which together added up to a citizenship of entitlement. What was new was that this was conceptualised as 'citizenship'. A system of social and economic rights had been put in place from about 1948, most notably in the National Assistance Act 1948. It is significant that this was the year of the UDHR. Both reflect the spirit of that age. But only since 2000 have we had our own Human Rights Act. But these observations give only a very partial picture of the position of the individual in the state. The aspects of individuals' existence that are

* A paper delivered on 29 October 2008 at University College London reflecting on the sixtieth anniversary of the Universal Declaration of Human Rights on the occasion of the launch of the *UCL Human Rights Review*.

¹ See A. Dummett and A. Nicol *Subjects, Citizens, Aliens and Others*, 1990

² See D. Heater *Citizenship: The Civic Idea in World History, Politics and Education*, 1990.

³ See the still seminal work T.H.Marshall *Citizenship and Social Class*, 1950.

served by government have changed enormously over the last sixty years. Marshall's version of citizenship involved individuals receiving, as of right, social benefits that enabled them to live as full members of society. The state was a provider. This concept of citizenship was largely passive.

Productive citizenship

In the post second world war period until the 1980s the Labour party was virtually owned by its affiliated trade unions. Business and middle class interests had great influence in the Conservative party, though it was not institutionalised in the ways it was in Labour. The human rights aspect of this was in the closed shop arrangements from which unions derived much of their power: those arrangements were held to be incompatible with the ECHR by the European Court of Justice in the case of *Young, James and Webster v. UK*.

Governments in the 1960s and 1970s took to negotiating policy with trade unions and business. This was often about anti-inflation measures. The process had serious implications for the relationships between individuals and the state and society. In 1979, a year of massive transitions, Middlemas produced his oeuvre *Politics in Industrial Society*, in which he focused on the *corporate bias* which the influence of powerful trade unions and business gave rise to in government.

The point about all this is that *producers* – both workers and owners of businesses – had the greatest influence in politics. Production and productivity were the aspects of individuals' existence that concerned politicians. This was reflected in the ways in which the party divides operated. And the many people who fitted into no productive category or who did not regard that aspect of their existence as the most significant, were left out in the cold – and literally so in the Winter of Discontent of 1978-9.

The Conservative government under Mrs Thatcher that was elected in 1979 put an end to that corporate bias and the emphasis on productive citizenship. The trades unions were disempowered in various ways, including the growth in unemployment among those who would have joined them, and by privatisation, legislation banning secondary picketing, requiring ballots before strikes and so on.

Property-owning citizenship

In the 1980s many individual working class people were empowered, notably through the right to buy granted to council tenants in the 1980s; and to some small extent through encouragement to purchase shares in the privatised industries. This changed their psychology and identity – they came to regard themselves as middle class rather than working class. This brought substantial electoral pay-offs for the Conservative party. The focus on the role and power of individuals in relation to the state shifted away from their productive to their property owning lives, and the opportunities for self-determination that property brought to them. Of course, for the growing band

of the unemployed who were neither producers nor property owners, that shift was unimportant.

Market operator citizenship

In the early 1990s the *Citizen's Charter*⁴ initiative was introduced, alongside the introduction of choice in public services, e.g. as to schools. This approach morphed into *Service First* in 1998. The provision of many services for which public bodies were responsible was contracted out under the competitive tendering regime – as aspect of the shift towards governance. And individual users of these services were given soft law rights to complain, to choose, and even to exit. Individuals, no longer so important to politicians in their roles as producers, could become instead not only property owners but also consumers.

Citizens as rights bearers

In the latter part of the 1990s further transitions affecting citizenship took place under New Labour, notably the explicit statutory protection of civil and political rights under the Human Rights Act 1998 and rights of access to information under the Freedom of Information Act. Under these Acts ordinary unorganised individuals have acquired additional layers in their identities, as rights-bearing individuals.. Here the two transitions, towards a principled constitution and the development of the relationship between the individual and the state converge for a while.

Responsible citizenship

Recently emphasis has shifted from rights to the responsibilities that citizens may be required to accept. There are strong concessions to citizenship and against individualism in the Human Rights Act and the European Convention on Human Rights, much of which it brings home. While the rights under this Act reinforce the opportunities of individuals to participate in the political process, via freedom of expression and association in particular, they explicitly recognise that it can be legitimate to restrict those rights in the public interest. This is part of what citizenship is about – recognition that we live in a society (which, recall, Mrs Thatcher denied) and there has to be give and take, reciprocity, both in consideration of other individuals and for the general or greater good.

Citizenship as equal membership of a people served by its government

Citizenship is a very slippery concept, but I suggest that one of its elements is equal membership of a cohesive population that is served altruistically and selflessly, by its governmental institutions. Does this exist in the UK? Do we feel that we are one people and that we are all served by our politicians? This

⁴ Cm. 1599, 1991.

is essentially a matter of the psychology of citizens. The government is right to be concerned whether there are sections of the population who do not have a sense of national identity or belonging or who feel that certain other sections of the population than themselves do not belong. This is the next frontier in the development of concepts of citizenship.

Conclusions

To return to the UDHR, we can see that it and the values that it articulates are crucial to the operation of a civilised democratic society. But we can also see that the protection of the rights that it proclaims is not the end of the story. If rights are part of citizenship, they are not the whole thing. And of course merely declaring them does not make them happen. Even incorporating the UDHR or instruments such as the ECHR does not guarantee that the rights become real, or that the task of creating citizenship has been achieved.