Green Party response to the Government consultation on a proposed Bill of Rights and Responsibilities

by Matt Follett, based on research by James Burgess

The Green Party believes that the fundamental, inalienable rights of each person in a democratic society must be set out in a written constitution. The Green Party welcomes the debate on a Bill of Rights and Responsibilities as a key step towards such a constitution.

We are concerned that the current debate on a Bill of Rights and Responsibilities has come about, as Liberty note¹, not through a concern for protecting human rights, but through a desire to extend Government powers in these areas. The Conservatives have called for the Human Rights Act (HRA) to be scrapped, and would abolish the Act with their version of a British Bill of Rights and Responsibilities. Labour has repeatedly undermined the provisions in the HRA through legislation and policy-making in the areas of anti-terror, criminal justice, policing and asylum, despite being the Government to bring in the Act. The Government have also done little to explain or promote the HRA to the public².

The Government Green Paper does not clearly distinguish human rights from other rights and issues of social justice, and the resulting discussion is somewhat unfocused. As a result, it risks down-grading the importance of key rights and liberties.

The Green Party sees a Bill of Rights and Responsibilities as an opportunity to protect those well-justified human rights expressed in the European Convention on Human Rights, as well as to secure other rights that we believe to be important for everyone living in the UK. Whilst the HRA provides important protection of some human rights and civil liberties, it does not go far enough. As a start, the Government should fully incorporate the European Convention on Human Rights into UK law, with full legal backing. Below we discuss other areas of rights and social justice which we also see as fit for inclusion in a Bill of Rights and Responsibilities.

Whilst the both Labour and the Conservatives want to introduce a Bill of Rights and Responsibilities to highlight the responsibilities of individuals, and to promote “good behaviour,”³ the Green Party views responsibilities not as a counterbalance to individual and collective rights, but as integral with them.

² Ibid. p. 4.
³ Francesca Klug, “Protecting rights: how do we stop rights and freedoms being a political football?” (p. 4) Unlock Democracy article 2009.
Human rights discourse often draws on the universal nature of such rights. Accepting the universal dimension to the concept of human rights requires recognition of the cultural dimension, in that different cultures do not always share the same view of what constitutes a good life. The Green concept of responsibilities as an integral part of rights transcends such possibly conflicting views. It is everyone's responsibility to allow space for differing value systems, while ensuring that their own concept of rights does not curtail recognition of their responsibilities towards all humankind and the life support system.

Should a Bill of Rights and Responsibilities be introduced in the UK, the Government should consider ways of ensuring that all those affected by the Bill have direct democratic involvement in the process.

**Responsibilities**

The Green Party believes that no rights should be contingent upon responsibilities. It is useful, however, to express the responsibilities that individuals and groups have. We are concerned that the debate on responsibilities has focused around prescriptions on the behaviour of citizens. Citizens’ responsibilities should be seen as integral with individual and collective rights, rather than as a counterbalance to them. The discussion of the responsibilities of elected representatives would be a welcome addition to the debate, and the Green Party believes that these responsibilities should also be included in a Bill of Rights and Responsibilities.

**Criminal Justice**

*On the duty to obey the law*

The Green Party seeks to maximise the extent to which obedience to laws is based on consent and to minimise the need for conformity through deterrence. Citizens should be able to live in safety, free from interference and free to lead fulfilling lives, protected by just laws. However, there is no automatic moral obligation on all people to obey their governments, and there are occasions when people may openly and peacefully protest an unjust law. The Green Party endorses the right to civil disobedience and to protest peacefully against unjust laws and practices.

Rather than prescribing a duty to obey the law, responsibility in this area should relate more to working collectively to address circumstances that can lead to criminal activity before that stage is reached, and to tackle what has become criminal behaviour under the Labour Government (e.g. antisocial behaviour).

**Education, Children and the Family**

The Green Party believes that a Bill of Rights and Responsibilities should fully incorporate the UN Convention on the Rights of the Child. This would
provide a strong foundation from which the Government can fulfil the responsibilities it has to help children achieve wellbeing.

**Economic Responsibilities**

**On the duty to pay taxes**
The Green Party agrees that a duty to pay taxes should be included in a Bill of Rights and Responsibilities, but the taxation system must be fair, genuinely progressive and democratically accountable. A Bill of Rights and Responsibilities should give responsibility to citizens to democratically approve public expenditure at a local and national level, through the most direct method practicable. The Bill should also allow for citizens and groups of citizens to democratically oppose certain expenditure.

**Civic responsibilities**

**On the duty to vote**
The Green Party believes that whilst democratically taking part in civic life is important, and part of what it means to lead a fulfilling life as a citizen, there should not be any obligation to vote. The emphasis here should be on providing the structures that facilitate the most direct form of democracy, from the local level up.

**On the duty to treat NHS and other public sector staff with respect**
People’s good behaviour towards public sector staff, and indeed all other people, could be fostered in a stronger, more caring society, rather than by prescription in a Bill of Rights and Responsibilities. However, it may be appropriate to include principles of equality and respect for all people in such a Bill.

**Living within environmental limits**
The environment is too important an area to leave decisions on its welfare solely to Government or Parliament, which are swayed by partisan party political lines and vested interests. It is essential that rigorous, strong principles of environmental protection and genuinely sustainable practices be protected in a Bill of Rights and Responsibilities.

The current UK principles on sustainable development do not go far enough in their measures to protect the environment. The definition of sustainable development provided in the government Green Paper is routinely used to justify many current unsustainable practices. It is humankind’s responsibility to enhance or maintain the quality, diversity, integrity and wholesomeness of human society and the life support system. Those activities which are exploitative, or threaten either the well-being of others, society, the life support system or the future of these must be avoided.
Other countries have successfully incorporated environmental protection into their written constitution, notably Ecuador. There is no reason why the responsibilities we all have in relation to the environment cannot be included in a well-worded Bill of Rights and Responsibilities.

A thorough, informed public debate, beyond the scope of this Green Paper consultation, must be carried out on the environmental responsibilities of citizens, the government, businesses and groups.

**Areas of Government responsibility**

The Green Party would like to see a public discussion around which areas of Government responsibility should be included in a Bill of Rights and Responsibilities. These responsibilities might cover the responsibility for good public administration, which we discuss below in the rights section; the responsibility to protect against unfair discrimination; greater accountability of elected representatives; the responsibility to fairly represent constituents and the views of constituents at a local and national level, and; the responsibility to facilitate public debate, and civic participation in decision-making.

**Rights**

As stated in the introduction, the European Convention on Human Rights should be fully incorporated into UK law, and should be included in full in a Bill of Rights and Responsibilities, with legal backing. The Green Party favours a Bill that would provide full legal redress in the case of breaches of rights.

**Criminal justice**

On the rights of detainees, and the rights of those accused of a crime to a fair trial

Any Bill should address the use of secret evidence – evidence that the defendant is not allowed to see – and guarantee that the rights of those accused of a crime include being able to know the accusations levelled and having sight of any evidence. At present these rights are not universally upheld by eg the Special Immigration Appeals Commission and this undermines the right to a fair trial. The Green Party would also like to see an urgent review of the so-called exceptional measures that have become the norm in suppressing dissent, eg anti-terror legislation that has been routinely used against protesters, members of the press and so forth.

In order to provide full protection, including against serious miscarriages of justice, the rights of detainees, and those accused of a crime, must be upheld in a Bill of Rights and Responsibilities.
On the rights of criminals and terrorists
The rights of criminals, terrorists and other unpopular minority groups must similarly be upheld in the Bill, in keeping with the principle that human rights are inalienable and fundamental.

On habeas corpus
The Government proposes in its Green Paper that the principle of habeas corpus be kept out of a Bill of Rights and Responsibilities on the grounds that the right to be free from unlawful or arbitrary detention is clearly embodied in the European Convention and in the Human Rights Act. However, we have seen time and time again the Government seeking to extend the permitted period of detention without trial. Already it is far too long and since introducing the Human Rights Act, the government have gone about breaking down the protections offered in order to extend executive power. We need an explicit affirmation of habeas corpus in a Bill of Rights and Responsibilities to curtail the erosion of civil liberties we face now, and to protect against such erosion again in the future.

Equality
The Green Party proposes principles of equality grounded in a respect for rights and responsibilities. A Bill of Rights and Responsibilities should recognise that a healthy society is based on voluntary cooperation between empowered individuals, free from discrimination based on race, gender, disability, sexual orientation, age, religion, social origin or any other prejudice. The legitimate interests of all people are of equal value. Everyone has a right to construct their own conception of the good life, whilst ensuring that their own concept of the good does not curtail recognition of their responsibilities towards the rest of humankind and the environment or in anyway restrict space for differing value systems.

Public administration
Principles of good public administration should be included in a Bill of Rights and Responsibilities as a step towards their inclusion in a written UK constitution.

We live in a state where over centuries of struggle some democratic rights and institutions have gradually been grafted on to a feudal monarchy. In that feudal monarchy all power flowed downward from the monarch, and the people were subjects and not citizens. Gradually some of that power has been delegated to bodies like Parliament, or to local authorities, and citizens have acquired some rights. However, we still retain many of the elements of its feudal past, including some remnants of the royal prerogative. We believe that the basic principle of Government should be the reverse of this; power should flow upwards from the people, and from their most local levels of Government to the higher levels.
The Green Party believe we are a long way off the ideal state of affairs, and to get there much reform is first required. As such, the views on good administration set out below are aspirational, and their inclusion in a Bill of Rights and Responsibilities should be interpreted as such. In terms of legal effect, we would recommend that Government has a duty to make substantial progress towards reform.

All decision-making and action throughout all levels of government, including international government, shall be governed by the principle of subsidiarity: namely that nothing should be done centrally if it can be done equally well, or better, locally. Government actions must always be subject to the rule of law, which must be overseen by an independent judiciary.

The highest form of democracy is direct participation. This is best achieved through the decentralisation of society, so that decisions can be made through face-to-face discussion. All the major political decisions which affect our lives should ideally be made with our active participation. This requires that as much economic and social activity as possible should be carried out on a human scale; that is, in a way that allows individuals and groups access to, and influence over, such decisions. Direct democracy will encourage cross-party cooperation and weaken the hold of ideologies and factions.

Such direct democratic participation requires citizens to be able to access the information they need in order to be able to take part in decision-making. Freedom of information, and openness of government and its procedures, are therefore integral principles in the creation of a more democratic and decentralised society.

Given the scale of human activity in the world today, and the indirect impact that much of this activity has on people living in different areas, it is clear that not all decisions can be made locally. The best form of democracy for large-scale activity is voting, in elections and referenda, in such a way that the outcome reflects the pattern of voting and no vote is wasted. Delegated authority and trust must be accompanied by full accountability.

**Economic and social rights**

Both Labour and the Conservatives are committed to excluding legally enforceable economic and social rights from a Bill of Rights and Responsibilities. The Government argues instead that the country should meet social and economic needs through the Government’s policy decisions and legislative programme, perhaps expressing some of the underlying values that have given rise to the UK welfare system in a Bill of Rights and Responsibilities. The argument is based on the premise that writing welfare entitlements into a Bill of Rights and Responsibilities would put control of resource allocation in the hands of judges, rather than a democratically elected Parliament.

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The Green Party position is that it is possible, and desirable, both to write welfare entitlements into a Bill of Rights and Responsibilities and to retain Parliamentary control of resource allocation.

On the issue of legal effect with respect to economic and social rights, the Green Party largely supports the recommendations of the Joint Committee on Human Rights set out in the twenty-ninth report of session 2007-08. The report notes the findings of a previous report by the Committee on economic and social rights, which reported that although the substance of many of the rights found in the International Covenant on Economic, Social and Cultural Rights are currently covered by individual pieces of UK legislation, there were gaps. Furthermore, where there were gaps, the UK courts could not always give redress. The report “rejected the Government’s argument that all economic and social rights are inherently non-justiciable,” and drawing on the example of South Africa advised that such rights could be given further legal effect whilst still retaining separation of the legislature, executive and judiciary, and maintaining parliamentary control of resources.

The Joint Committee on Human Rights recommends that the Government’s obligations to respect economic and social rights of citizens should take the form of “a duty of progressive realisation of economic and social rights by reasonable legislative and other measures, within available resources”8. The Green Party believes this should be the basic level of commitment from Government, and would welcome measures that secure economic and social rights more concretely.

Economic and social rights should include the following:

1. Full implementation of the European Convention on Human Rights, with legal backing;
2. The Working Time Directive should be incorporated into a Bill of Rights and Responsibilities, giving people the right to a fair pay and more freedom in relation to their work life;
3. The right to basic material security for all, with provision of a wide range of opportunities for personal fulfilment in both a material and non-material sense;
4. The right to free health care, the right to social care, and the right of terminally ill people to assisted suicide;
5. The right to pursue one’s own conception of the good, so long as this does not contradict a person’s responsibility towards others and the

8 Ibid. p. 48.
environment;
6. The right of all to decent housing, including the right of homeless people to be housed;
7. The right to free education, to the age of 18;
8. The right to creative and rewarding work;
9. The right to democratic approval of resource expenditure at a local and national level, through the most direct method practicable, and the right to democratically oppose public expenditure.

Political rights

On the right to asylum and the rights of refugees
The Green Party believes that the right to asylum and refugee rights should be included in a Bill of Rights and Responsibilities. A thorough public debate over a period of time is needed on this subject before a final decision on the specific rights to be included is made.

On the right to vote
The Green Party supports the inclusion of the right to vote in a Bill. The right to vote and to stand in elections should be based on residence rather than nationality, and the voting age should be reduced to 16.

Freedom of speech and right to dissent
Freedom of speech is glaring by its absence from the Green Paper. Whilst there are provisions in the Human Rights Act for freedom of expression, such rights are constantly threatened by attempts to curtail eg freedom of speech and the right to protest peacefully.

The right to freedom of speech, the right to peaceful protest and the right to freedom of assembly and association should be protected by law in a Bill of Rights and Responsibilities.