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Debunking the “Criminals’ Charter”: Education as an antidote to human rights sensationalism

Abstract

This article explores the issue of human rights sensationalism. The proliferation of human rights stories in the UK media and on the political stage that are exaggerated at best or entirely apocryphal at worst has arguably contributed to widespread hostility and scepticism towards the topic. Whilst not a panacea, formal education has the potential to alleviate the attitudinal problems caused by hyperbolised or erroneous accounts of human rights. The next generation should be equipped with the knowledge, skills and values necessary for questioning and challenging populist and reductive human rights stories, in particular those that perpetuate divisive “them and us” dichotomies. The English education system, however, appears to be moving away from supporting teaching practices that would provide learners with the tools required for this task, and this article argues that this is particularly detrimental at a time when teaching young learners about human rights is becoming of increasing importance.

Introduction

In an era defined by social media and instantly accessible digital information, knowledge is at everyone’s fingertips. Whilst this undoubtedly has benefits – for the rapid dissemination of local and international news, for example – it has arguably also exacerbated the problem of anti-human rights rhetoric and sensationalism around human rights. The proliferation of human rights stories in the British media and on the

political stage that are (deliberately?¹) exaggerated at best or entirely apocryphal at worst has contributed to widespread hostility and scepticism towards the very idea of human rights.² This article argues that whilst not a panacea, formal education, particularly with young learners, has the potential to alleviate the attitudinal problems caused by hyperbolised or erroneous human rights reporting. It highlights, however, that the English education system is ostensibly moving away from supporting teaching practices that would be likely to provide learners with the knowledge, values and skills necessary for questioning and challenging populist and reductive human rights stories and headlines.

Misconception and sensationalism surrounding human rights has been identified as prevalent and problematic within both academic commentary and the mainstream media. Susan Marks, for example, noted in 2014 that “if once you had to turn in the UK to specialist sections of the progressive press to read about issues of human rights, today you are as likely to read about them on the front pages of the

¹ A. Wagner, “The Monsterring of Human Rights” (19 September 2014), p.10, at <https://adam1cor.files.wordpress.com/2014/09/the-monsterring-of-human-rights-adam-wagner-2014.pdf> [Accessed 12 November 2016].

² K. Kaur-Ballagan *et al*, “Public Perceptions of Human Rights” (Equality and Human Rights Commission, 2009), pp.15-16; A. Park *et al* (eds), “British Social Attitudes: The 23rd report: Perspectives on a changing society” (Sage, London 2007), chapter 7, p.161; K. Bell, & S. Cerny, “Developing public support for human rights in the United Kingdom: reasserting the importance of socio-economic rights” (2014) 18(7-8) *The International Journal of Human Rights* 822-841 at p.832; W. Jordan, “Scepticism about human rights as well as the ECHR” (YouGov, 20 July 2014), at <https://yougov.co.uk/news/2014/07/20/scepticism-about-human-rights-well-echr/> [Accessed 20 November 2016]; Wagner, “The Monsterring of Human Rights”, p.2; & Lord Dyson, “What is wrong with human rights?” (Hertfordshire University, 3 November 2011), p.1, at https://www.supremecourt.uk/docs/speech_111103.pdf [Accessed 20 October 2016].

conservative press, both in its up-market titles and at the more populist end of its spectrum”.³ Most of this commentary, she observes, is “pretty bilious”,⁴ with certain sections of the tabloid press arguably predominantly responsible for the proliferation in negative attitudes towards human rights. Headlines such as: “Human rights farce”;⁵ “The danger is we’ve become immune to Human Rights lunacy. It’s vital we stay angry”;⁶ and “Human rights is a charter for criminals and parasites our anger is no longer enough”,⁷ undoubtedly influence the views of the general public.⁸

Stories about human rights in the media and political sphere are frequently drawn upon to support the proposition that human rights protection has gone too far; that the framework is abused by those who are unworthy, such as prisoners, criminals or those claiming on tenuous grounds that they have a right to a family life in this country.⁹ Indeed, some of the tabloid stories have become so notorious that it may be

³ S. Marks, “Backlash: the undeclared war against human rights” (2014) 4 *European Human Rights Law Review* 319-327 at p.319.

⁴ Marks, “Backlash: the undeclared war against human rights”, p.319.

⁵ The Sunday Express, “Human rights farce” (The Sunday Express, 7 June 2006) at <http://www.express.co.uk/news/uk/859/Human-rights-farce> [Accessed 28 September 2016].

⁶ M. Hastings, “The danger is we’ve become immune to Human Rights lunacy. It’s vital we stay angry”, at <http://www.dailymail.co.uk/debate/article-2359048/The-danger-were-immune-Human-Rights-lunacy-Its-vital-stay-angry-says-MAX-HASTINGS.html> [Accessed 28 September 2016].

⁷ Mail on Sunday Comment, “Human rights is a charter for criminals and parasites our anger is no longer enough” (Daily Mail, 15 July 2012), at <http://www.dailymail.co.uk/debate/article-2173666/Human-rights-charter-criminals-parasites-anger-longer-enough.html> [Accessed 28 September 2016].

⁸ Kaur-Ballagan *et al*, “Public Perceptions of Human Rights”, para 2.4.

⁹ R.J.A. McQuigg, “The Human Rights Act 1998 - Future Prospects” [2014] 35(2) *Statute Law Review* 120-132 at p.120. See also O. Bowcott, “European courts have nothing to offer UK, says justice secretary”, at <http://www.theguardian.com/politics/2013/dec/18/european-courts-nothing-offer-uk-justice-secretary> [Accessed 28 September 2016]; & J. Huppert, “Should we repeal the Human Rights Act?” (Total Politics), at

difficult to find a person in the UK unaware of them: the right to a family life enabling an illegal immigrant to remain in the UK because he owned a pet cat is one such tale; a convicted serial killer drawing upon human rights as justification for obtaining access to hardcore pornography whilst incarcerated is another.

Many of the most sensationalised tabloid stories concerning human rights have, however, been discredited as either exaggerated or entirely apocryphal.¹⁰ For example, the above claim that convicted serial killer, Dennis Nilsen, had used human rights to demand access to pornographic material whilst in prison was largely fabricated by the media; the court had, in fact, denied permission for Nilsen to bring the claim as there was no arguable case that his rights had been breached.¹¹ A similarly apocryphal tale concerned suggestion that in the middle of a police siege, a suspect was given fried chicken and cigarettes due to concerns about his human rights. It was later confirmed that the police used standard negotiating tactics to encourage him to descend from his roof-top position and that human rights played no part in the stand-off.¹²

This article argues that human rights sensationalism in the UK media and political sphere has contributed to widespread hostility and scepticism towards the very idea of human rights, and is likely to be relevant to the decline in support for civil

<http://www.totalpolitics.com/print/160582/should-we-repeal-the-human-rights-act.shtml> [Accessed 30 September 2016].

¹⁰ See e.g. A. Wagner, “Catgate: another myth used to trash human rights” (The Guardian, 4 October 2011), at <http://www.theguardian.com/law/2011/oct/04/theresa-may-wrong-cat-deportation> [Accessed 30 September 2016]; & Liberty, “Human Rights Act Myths”, at <https://www.liberty-human-rights.org.uk/human-rights/what-are-human-rights/human-rights-act/human-rights-act-myths> [Accessed 30 September 2016].

¹¹ Huppert, “Should we repeal the Human Rights Act?”.

¹² Liberty, “Human Rights Act mythbuster”, at <https://www.liberty-human-rights.org.uk/human-rights/what-are-human-rights/human-rights-act/human-rights-act-mythbuster> [Accessed 30 September 2016].

liberties since the mid-1980s.¹³ Formal education could, however, help to alleviate the problem. In section 2, the issues caused by negative media and political portrayals of human rights will be discussed in greater detail, and section 3 will then outline how social media is likely to have exacerbated the problem. The article concludes in section 4 by arguing that formal education may have the potential to alleviate some of the attitudinal problems caused by human rights misreporting. It suggests that whilst the English education system appears to be moving away from supporting relevant teaching practices, only through being equipped with appropriate knowledge, values and skills will learners be able to question and challenge populist and reductive human rights rhetoric.

The Likely Consequences of Sensationalised Human Rights Reporting

Anti-human rights rhetoric in the UK has many guises. Recently, much of this has centred on the claim made by politicians that European institutions have no place deciding on issues that ought to be within the remit of the national courts. For example, former Justice Secretary, Chris Grayling, relied heavily upon this argument in support of his proposal that the UK should replace the Human Rights Act (1998) with a UK Bill of Rights, and, if necessary, ultimately withdraw from the European Convention on Human Rights (ECHR) altogether.¹⁴ He claimed in 2013 that the European Court of Human Rights (ECtHR) has “nothing to offer the UK”, and that European judges were unjustifiably imposing “ever-more-detailed legal requirements on

¹³ Park, *et al*, “British Social Attitudes”, chapter 7.

¹⁴ R. Mason, “Grayling says European court of human rights has lost legitimacy” (The Guardian, 30 December 2013), at <http://www.theguardian.com/law/2013/dec/30/grayling-european-court-human-rights-legitimacy> [Accessed 4 October 2016].

Parliament”.¹⁵ Other Conservative MPs have similarly maintained that the UK ought to remove itself from the jurisdiction of a “supranational quango”.¹⁶ This anti-European human rights rhetoric intensified ahead of the referendum on Britain exiting the European Union (EU), and has continued apace following the UK’s decision to leave on 23 June 2016.

Similarly, whilst not intending to rehash the familiar stories regarding the UK media’s reporting of allegedly unacceptable European interference in the domestic sphere, some of the more notorious examples serve to highlight the problem. Three of the most high-profile human rights issues to experience vociferous denigration in the UK media for being clear examples of the ECtHR unjustifiably exceeding its authority include judgments concerning: (i) prisoners’ right to vote; (ii) whole-life tariffs; and (iii) the deportation of radical Muslim cleric Abu Qatada.

Though most will have at least some familiarity with these issues, a brief overview of each is instructive. Regarding the first, the UK is yet to comply with the ECtHR’s 2005 ruling against a blanket ban on prisoners being given the right to vote,¹⁷ with David Cameron voicing in 2012 that “the thought of prisoners voting made him ‘physically sick’”.¹⁸ The second concerns the UK’s failure to implement the ECtHR’s judgement regarding periodic reviews of whole-life prison tariffs.¹⁹ Grayling has been quoted as saying that the judgment prevents murderers from spending the rest of their

¹⁵ Bowcott, “European courts have nothing to offer UK”.

¹⁶ J. Henley, “Why is the European court of human rights hated by the UK right?” (The Guardian, 22 December 2013), at <http://www.theguardian.com/law/2013/dec/22/britain-european-court-human-rights> [Accessed 4 October 2016].

¹⁷ *Hirst v United Kingdom* (2006) 42 EHRR 41.

¹⁸ F. Webber, “UK: the way to pariah status in Europe” (2013) 55(2) *Race and Class* 99-108 at p.103; see also *Hansard* Official Report, 3 November 2010, Vol 517, at p.921

¹⁹ *Vinter and others v UK* (Application Nos. 66069/09, 130/10 and 3896/10), Judgment of 9 July 2013.

lives in prison,²⁰ yet commentators have pointed out that what the decision in fact requires is simply periodic reviews of such sentences.²¹ And regarding the final issue, the Government sought desperately to circumvent ECtHR rulings that deporting Qatada to Jordan would be in breach of the ECHR because his trial would be based on evidence extracted through torture. According to Frances Webber, “instead of accepting the paramount importance of the international rule against torture and its fruits, the government has once again cast the issue as one of national sovereignty – of European judges interfering to stop Britain disposing of a national nuisance”.²²

Negative, and often inflammatory, media and political coverage of human rights issues such as these arguably has two perceptible effects. The first is an entrenching of the view that human rights constitute a “criminals’ charter”,²³ overlooking the rights of victims and protecting only those “unworthy”. With tabloid stories suggesting that “the stranglehold which human rights now exercises on the way we conduct our affairs” benefits only terrorists and fat cat lawyers,²⁴ and that Britain has become “a land where the ‘rights’ of a killer are exalted, where crime victims matter not a jot and where a remote tribunal tramples over every sense of morality and self-respect”,²⁵ it is

²⁰ Bowcott, “European courts have nothing to offer UK”.

²¹ Bowcott, “European courts have nothing to offer UK”.

²² Webber, “UK: the way to pariah status in Europe”, p.104; see also *Chahal v UK* (1996) 23 EHRR 413.

For discussion of the importance of upholding human rights principles in these scenarios, see Dyson, “What is wrong with human rights?”, pp.5-7.

²³ Mail on Sunday Comment, “Human rights is a charter for criminals”; for discussion, see Wagner, “The Monstering of Human Rights”, p.2; Bell & Cemlyn, “Developing public support for human rights in the UK”, pp.826-827; & Kaur-Ballagan *et al*, “Public Perceptions of Human Rights”, para 3.4.

²⁴ Hastings, “The danger is we’ve become immune to Human Rights lunacy”.

²⁵ Daily Mail, “When ‘human rights’ are an insult to us all” (Daily Mail, 21 August 2007), at <http://www.dailymail.co.uk/news/article-476633/When-human-rights-insult-all.html> [Accessed 8 October 2016].

not difficult to see how views such as this gain traction in the public consciousness.²⁶ Allegedly, according to one of the tabloid newspapers that regularly denigrates human rights, 75 per cent of Britons think that human rights equate to a “criminals’ charter”.²⁷

The second effect is a deepening of anti-European sentiment, with Lord Dyson observing that criticisms of the ECtHR are in all likelihood fuelled by “xenophobia and Euro-scepticism”.²⁸ In this regard, Jon Henley observed that “Britain’s current attitude seems to be informed most strongly by the wider problems of its relationship with Europe, and the belief among many Conservatives that loudly defending “British sovereignty” and attacking all things European will not lose them any votes”.²⁹ The Brexit vote is arguably testament to this, and indeed, it became apparent around the time of the referendum that the difference between the EU and the Council of Europe was neither well-known nor understood.³⁰ It seems many people assumed that an exit from the EU would automatically result in a curbing of the powers of European judges to intervene in domestic human rights issues.³¹

²⁶ Hastings, “The danger is we’ve become immune to Human Rights lunacy”.

²⁷ J. Doyle, “Human rights laws are a charter for criminals, say 75% of Britons” (Daily Mail, 16 April 2012), at <http://www.dailymail.co.uk/news/article-2130224/Human-rights-laws-charter-criminals-say-75-Britons.html> [Accessed 29 September 2016].

²⁸ Dyson, “What is wrong with human rights?”, p.19.

²⁹ Henley, “Why is the European court of human rights hated by the UK right?”.

³⁰ B. Fung, “The British are frantically Googling what the E.U. is, hours after voting to leave it” (The Washington Post, 24 June 2016), at <https://www.washingtonpost.com/news/the-switch/wp/2016/06/24/the-british-are-frantically-googling-what-the-eu-is-hours-after-voting-to-leave-it/> [Accessed 19 November 2016]; see also Bell & Cemlyn, “Developing public support for human rights in the UK”, p.826.

³¹ For discussion of this confusion generally, see A. Wagner, “No, The Sun, The Human Rights Act is not the EU” (UK Human Rights Blog, 10 February 2013) at <https://ukhumanrightsblog.com/2013/02/10/no-the-sun-the-human-rights-act-is-not-the-eu/> [Accessed 11 October

In light of the proliferation of such negative rhetoric around human rights, it is perhaps unsurprising that the ECtHR expressed concern in 2013 about “‘frequent misrepresentation’ and ‘seriously misleading’ British press reports of its activities”.³² And it is not just at the regional level that sensationalised reporting in the UK is considered to be problematic. In 2015, following publication of a Sun column in which migrants were denigrated as “cockroaches”, the UN High Commissioner for Human Rights intervened to urge “UK authorities, media and regulatory bodies to take steps to curb incitement to hatred by British tabloid newspapers, in line with the country’s obligations under national and international law”.³³ Yet, by the end of 2016, the position remains ostensibly unchanged, with the European Commission against Racism and Intolerance (ECRI) publishing a scathing report highlighting the role played by UK politicians and the media in the prevalence and perpetuation of intolerant and prejudiced attitudes.³⁴

Concerning the role of the media, the ECRI identifies that “certain tabloid newspapers, which are the most widely-read national dailies, are responsible for most of

2016]; Wagner, “The Monstering of Human Rights”, p.9; & Full Fact, “The debate over human rights law” (Full Fact, 21 April 2015), at <https://fullfact.org/law/debate-over-human-rights-law/> [Accessed 11 October 2016].

³² Henley, “Why is the European court of human rights hated by the UK right?”.

³³ OHCHR, “UN Human Rights Chief urges U.K. to tackle tabloid hate speech, after migrants called ‘cockroaches’” (24 April 2015) at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15885&LangID=E> [Accessed 13 October 2016].

³⁴ ECRI, “ECRI Report on the United Kingdom” (Council of Europe, 4 October 2016). The ECRI is an independent human rights monitoring body set up by the Council of Europe specialising in questions relating to racism and intolerance.

the offensive, discriminatory and provocative terminology”.³⁵ The Sun and Daily Mail are singled out for criticism, with reference to specific examples of their irresponsible reporting, including the infamous Sun headline “1 in 5 Brit Muslims’ sympathy for jihadis”. And regarding political discourse, the report emphasises that “prejudicial comments from well-known political figures have an impact on the public and legitimise intolerance”.³⁶

Such rhetoric is only likely to intensify in the post-Brexit climate, and with the Conservative Government’s plan to scrap the HRA and replace it with a British Bill of Rights.³⁷ Theresa May announced shortly after becoming Prime Minister that she would continue to pursue this agenda,³⁸ and indeed has already revealed proposals that would see the UK military opting out of the ECHR.³⁹

It is not difficult to understand how this exaggerated or erroneous press and mainstream political discourse around human rights can influence the views of great swathes of the public, and it seems that such widespread hyperbolised reporting is not endemic across Europe. The UN High Commissioner for Human Rights has noted, for example, that “elsewhere in Europe, as well as in other countries, there has been a similar process of demonization taking place, but usually led by extremist political

³⁵ ECRI, “Report on the United Kingdom”, p.18.

³⁶ ECRI, “Report on the United Kingdom”, p.18.

³⁷ Commission on a Bill of Rights, “A UK Bill of Rights? The Choice Before Us” (volume 1, 2012), at <http://www.justice.gov.uk/downloads/about/cbr/uk-bill-rights-vol-1.pdf> [Accessed 25 September 2016].

³⁸ J. Stone, “Plans to replace Human Rights Act with British Bill of Rights will go ahead, Justice Secretary confirms” (Independent, 22 August 2016) at: <http://www.independent.co.uk/news/uk/politics/scrap-human-rights-act-british-bill-of-rights-theresa-may-justice-secretary-liz-truss-a7204256.html> [Accessed 8 October 2016].

³⁹ P. Walker & O. Bowcott, “Plan for UK military to opt out of European Convention on Human Rights” (The Guardian, 4 October 2016) at: <https://www.theguardian.com/uk-news/2016/oct/03/plan-uk-military-opt-out-european-convention-human-rights> [Accessed 10 October 2016].

parties or demagogues rather than extremist media”.⁴⁰ The role of mainstream media in the proliferation of human rights sensationalism thus appears to be something of a troubling British phenomenon. To what extent, then, is it likely to have been influenced by the prolific rise of social media and instantly accessible digital news?

Social Media and Human Rights Sensationalism

The rise of social media over the past decade has been unprecedented. At the end of 2006, Facebook had approximately 12 million monthly active users worldwide.⁴¹ By the second quarter of 2016, this figure stood at 1.71 billion.⁴² Other social media outlets, such as Twitter and LinkedIn, have similarly proliferated as the digital world has crept into more and more facets of social life.⁴³ An increasing feature of a number of these sites has been their use for dissemination of news and information, with many users predominantly accessing current affairs through these webpages rather than in print newspapers or other channels. Articles are liked, shared and commented upon by

⁴⁰ OHCHR, “UN Human Rights Chief urges U.K. to tackle tabloid hate speech”.

⁴¹ The Associated Press, “Number of active users at Facebook over the years” (Yahoo! News, 2 May 2013) at: <https://www.yahoo.com/news/number-active-users-facebook-over-230449748.html?ref=gs> [Accessed 15 October 2016].

⁴² Statista, “Number of monthly active Facebook users worldwide as of 2nd quarter 2016 (in millions)” (Statista), at <https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/> [Accessed 15 October 2016].

⁴³ See Statista, “Number of monthly active Twitter users worldwide from 1st quarter 2010 to 2nd quarter 2016 (in millions)” (Statista), at <https://www.statista.com/statistics/282087/number-of-monthly-active-twitter-users/> [Accessed 15 October 2016]; & Statista, “Number of LinkedIn members from 1st quarter 2009 to 2nd quarter 2016 (in millions)”, at <https://www.statista.com/statistics/274050/quarterly-numbers-of-linkedin-members/> [Accessed 15 October 2016].

users, and one consequence of this digital trend in news dissemination is that stories and information are both global and instantly accessible.

Whilst this trend has benefits – stories are likely to reach much broader audiences than in past decades, for example⁴⁴ – there are also arguably disadvantages. News items with little or no foundation in the truth can easily gain traction in a digital world where the viewers and sharers of such stories become *de facto* regulators.⁴⁵ As Adam Wagner identifies, “controversial [legal] judgments provide regular opportunities for ‘human rights gone wrong’ stories and long-running campaigns, often bolstered by inaccurate reporting and infected with editorial masquerading as news”.⁴⁶ These articles can attract likes, shares and comments, and be circulated to a far wider global audience than a similarly dubious item in a print newspaper. Stories about human rights can gain momentum and stir up outrage and condemnation in the online environment even if they bear little or no resemblance to the truth.⁴⁷ An example identified by human rights website RightsInfo is that the Mail Online news item suggesting that ECtHR cases are being decided by unqualified and unelected European judges is quite simply wrong.⁴⁸ RightsInfo clarifies that not only must judges hold appropriate legal qualifications, but they are also elected by the Council of Europe’s Parliamentary assembly, which is itself

⁴⁴ See L. Goddard, “Social Media, Gen Y and human rights: a defence” (2014) 23 *Human Rights Defender* 5-7 at pp.5-6; & Bell & Cemlyn, “Developing public support for human rights in the UK”, p.830.

⁴⁵ Wagner, “The Monstering of Human Rights”, pp.9-11. See also S. Joseph, “Social Media, Political Change, and Human Rights” (2012) 35 *International and Comparative Law Review* 145-188 at p.172.

⁴⁶ Wagner, “The Monstering of Human Rights”, p.11.

⁴⁷ Wagner, “The Monstering of Human Rights”, pp.2 & 7.

⁴⁸ S. Doughty, “Human rights court ‘is a threat to democracy’: Ex-Lord Chief Justice blasts unelected Strasbourg judges” (Daily Mail, 1 October 2014), at <http://www.dailymail.co.uk/news/article-2775796/Human-rights-court-threat-democracy-Ex-Lord-Chief-Justice-blasts-unelected-Strasbourg-judges.html>

[Accessed 2 November 2016].

made up of representatives from each Member State, including the UK.⁴⁹ The UK Human Rights Blog similarly consistently debunks a number of inaccurate claims made about human rights by the tabloids.⁵⁰

In this digital world of scare-mongering and attention-grabbing headlines, websites that present a more balanced or nuanced account of human rights struggle to compete. Websites such as RightsInfo and Full Fact aim to accurately report on rights, but face an uphill struggle in ensuring that their message is distributed as widely as news stories that propagate human rights fallacies. RightsInfo has 13,549 followers on Facebook and Full Fact 26,574.⁵¹ The Sun, by contrast, has 2,464,696 followers and the Mail Online, the website of the Daily Mail, 6,386,430.⁵² It is thus not difficult to deduce which news items will be viewed and shared more widely, yet often these tabloid stories provide the very source of the public misconceptions that websites such as RightsInfo seek to combat.⁵³

Human rights therefore frequently attract negative press in the online world, with Lord Dyson observing in 2011 that “some of the media seem to think that human

⁴⁹ RightsInfo, “The 14 Worst Human Rights Myths”, at <http://rightsinfo.org/infographics/the-14-worst-human-rights-myths/> [Accessed 28 October 2016].

⁵⁰ See A. Wagner, “No, The Sun, “Euro judges” do not “go against UK in 3 out of 5 cases”. More like 1 in 100” (UK Human Rights Blog, 27 August 2014), at <https://ukhumanrightsblog.com/2014/08/27/no-the-sun-euro-judges-do-not-go-against-uk-in-3-out-of-5-cases-more-like-1-in-100/> [Accessed 28 October 2016]; & A. Wagner, “The Sun just keeps getting it wrong on human rights” (UK Human Rights Blog, 4 August 2014), at <https://ukhumanrightsblog.com/2014/08/04/the-sun-just-keep-getting-it-wrong-on-human-rights/> [Accessed 28 October 2016].

⁵¹ Information correct on 2 November 2016.

⁵² Information correct on 2 November 2016.

⁵³ See, for example, RightsInfo, “The 14 Worst Human Rights Myths”, which debunks a number of claims about human rights made in the tabloid press.

rights bashing is easy meat”.⁵⁴ It is not difficult for exaggerated or apocryphal tales to gain traction when they have headlines that are deliberately intended to provoke outrage and hostility, with the result that “human rights myths have an almost unstoppable momentum”.⁵⁵ It is thus imperative to consider just how that momentum might be stopped, with the next section arguing that formal education may prove a valuable place to start.

Education as an Antidote to Human Rights Sensationalism

In the post-Brexit environment, and particularly given the absence of an independent press regulator as recommended by the Leveson Report,⁵⁶ the pertinent question becomes: what can be done to mitigate the effects of harmful media rhetoric around human rights? This section argues that at least part of the solution may lie in the education sector. Indeed, as Wagner observes:

Human rights myths are compounded by the low level of public education on human rights, meaning basic misunderstandings and errors persist. And the more the old myths are repeated and amplified, the more believable the news myths appear to be – a kind of public *mis*education.⁵⁷

⁵⁴ Dyson, “What is wrong with human rights?”, p.1.

⁵⁵ Wagner, “The Monstering of Human Rights”, p.7.

⁵⁶ The Right Honourable Lord Justice Leveson, “An Inquiry into the Culture, Practices and Ethics of the Press: Volume IV” (The Leveson Inquiry, November 2012).

⁵⁷ Wagner, “The Monstering of Human Rights”, p.13.

The author has written elsewhere about the importance of Human Rights Education (HRE) for giving young learners a voice in the school environment;⁵⁸ for empowering them to stand up for their own rights and the rights of others;⁵⁹ and perhaps most importantly for the current argument, for enabling them to challenge widespread misconceptions about, and negative attitudes towards, human rights.⁶⁰ By introducing learners to the relevant values and concepts around human rights at an early age, and by encouraging them to critically engage with this material, they are more likely to be able to question and challenge populist and reductive human rights rhetoric.

As the author has argued previously, “the provision of HRE for learners of primary school age is considered to be fundamentally important, for unless teaching on issues such as human rights begins at this stage of formal education, learners’ attitudes, values and beliefs ‘are likely to be well entrenched and difficult to change by the secondary school’”.⁶¹ These formative years represent “a critical period for the development of attitudes”,⁶² and therefore “an early human rights pedagogy can contribute to inhibiting students from adopting egocentric and ethnocentric views of

⁵⁸ A. Struthers, “Breaking Down Boundaries: Voice and participation in English primary classrooms” (2016) 24 *The International Journal of Children’s Rights* 434-468.

⁵⁹ A. Struthers, “The Underdeveloped Transformative Potential of Human Rights Education” *Journal of Human Rights Practice* [in press].

⁶⁰ A. Struthers, “Human Rights: A Topic Too Controversial for Mainstream Education?” (2016) 16(1) *Human Rights Law Review* 131-162.

⁶¹ Struthers, “Human Rights: A Topic Too Controversial for Mainstream Education?”, pp.131-132 quoting Carrington and Troyna, “Children and Controversial Issues” in Carrington and Troyna (eds), *Children and Controversial Issues* (1988) 1 at p.7.

⁶² K. Frantzi, “Human Rights Education: The United Nations Endeavour and the Importance of Childhood and Intelligent Sympathy” (2004) 5 *International Education Journal* 1 at p.4.

rights”.⁶³ By teaching young learners about human rights, the potential for them to have ingrained prejudices by the time in later education when these issues are traditionally confronted can be minimised.⁶⁴ Formal primary schooling is thus particularly apposite for equipping learners with the tools to be critical and questioning of information and ideas, and “for shaping the attitudes that will contribute to the building of a universal culture of human rights”.⁶⁵

It is perhaps unsurprising, therefore, that HRE is now considered to be of such importance that relevant provisions can be found in a number of key human rights instruments, including within the core human rights treaties.⁶⁶ Many initiatives that carry less weight legally, but that often contain more detailed provisions for HRE implementation, additionally make up an ever increasing body of soft law in this area.⁶⁷ Most of these instruments mandate the provision of HRE at every stage of formal schooling from pre-school to higher education and,⁶⁸ where this is not expressly stated, it can reasonably be assumed that this requirement is implied.

⁶³ Frantzi, “HRE: The UN Endeavour and the Importance of Childhood”, p.4.

⁶⁴ Struthers, “Human Rights: A Topic Too Controversial for Mainstream Education?”, p.135.

⁶⁵ Struthers, “Human Rights: A Topic Too Controversial for Mainstream Education?”, p.132.

⁶⁶ See e.g. International Covenant on Economic, Social and Cultural Rights 1966, Article 13(1); UN Convention on the Rights of the Child 1989, Article 29(1); Convention on the Elimination of All Forms of Discrimination against Women 1979, Article 10; and International Convention on the Elimination of All Forms of Racial Discrimination 1965, Article 7.

⁶⁷ See, for example, the UN Declaration on HRE and Training (2011); UN World Programme for HRE (2005-ongoing); and UN Decade for HRE (1995–2004).

⁶⁸ UN Declaration on HRE and Training (2011), Article 3(1) & (2); UNESCO, “Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms” (1974), p.2 at para 2; UNESCO International Congress on Teaching of Human Rights, “Final Document” (1978) SS-78/ CONF.401/33, p.2 at principle 8; and UNESCO, “Malta Recommendation on Human Rights Teaching, Information and Documentation”

The author's existing research has shown, however, that some teachers and parents believe that young learners ought to be shielded from supposedly controversial issues, such as human rights, for as long as possible.⁶⁹ This so-called "cocoon theory" dictates that, whilst they are young and innocent, "children's security should not be disturbed by confronting them with issues that a mature adult has difficulties coping with".⁷⁰ The theory has, however, been met with vehement criticism for not only failing to appreciate the maturity and competency of many young people,⁷¹ but also for being unrealistic in the modern world:

"In the twenty-first century, characterized by the proliferation of easily accessible digital information, children are likely to be exposed to controversial issues to an extent far greater than their counterparts at the end of the twentieth century. Alexander's advice that teachers will 'have to work out specific educational responses to such issues, because as specific issues these now confront children' is thus arguably more applicable today than when originally penned."⁷²

(1987), paras 1.1, 1.3 and 2.2.

⁶⁹ Struthers, "Human Rights: A Topic Too Controversial for Mainstream Education?", pp.143-144.

⁷⁰ R.J. Alexander, *Primary Teaching* (1984), p.34.

⁷¹ G. Short, & C.A. Reed, *Issues in Holocaust Education* (Ashgate, Hampshire 2004), p.118; & K. Shawn, "What should they read, and when should they read it? A selective review of Holocaust literature for students in grades 2 through 6" in J.P. Robertson (ed), *Teaching for a Tolerant World* (National Council of Teachers of English, Illinois 1999) 422-436 at p.423.

⁷² Struthers, "Human Rights: A Topic Too Controversial for Mainstream Education?", p.144, quoting Alexander, *Primary Teaching*, p.35.

What, then, is likely to be the benefit of educating young people about human rights? As suggested above, public acceptance of hyperbolised or inaccurate human rights reporting may relate to a general paucity of knowledge about the topic. This results not only in confusion over specific human rights issues, such as the difference between the EU and the Council of Europe, but also extends to an inability to be critical of human rights reporting. Because the public generally have limited knowledge in this area, the media is able to exaggerate stories – or in some cases, simply make them up – without widespread reprisal.

Improved HRE with young people has the potential to mitigate this issue. By providing learners with relevant knowledge about human rights, their governing instruments and their protection mechanisms, and by equipping them with the skills necessary to be critical and questioning of what they are being told, media sensationalism around human rights may face its harshest critics in the next generation. If young people are able to challenge stories and headlines, and not simply accept claims in the public domain at face value, then media outlets may be forced to be more responsible in their reporting of human rights issues.

Providing HRE that enables learners to be questioning of reductive and populist human rights rhetoric is neither difficult to do, nor likely to be negatively received by young people. As human rights fundamentally involve “fascinating human stories which *interest* people”,⁷³ teaching in this area can be a rich educational experience. Learners are likely to be particularly engaged in material that they can relate to their own lives.⁷⁴ They should, therefore, be taught to understand and engage with

⁷³ Wagner, “The Monsterring of Human Rights”, p.13.

⁷⁴ G. Meintjes, “Human Rights Education as Empowerment: Reflections on Pedagogy” in G.J. Andreopoulos and R.P. Claude (eds), *Human Rights Education for the 21st Century*. (University of

human rights in a way that makes them relevant to their own experiences, as opposed to viewing the topic as something of a binary “them and us” issue; the “them” here denoting either the rights of those in distant lands or, perhaps more pertinently to the current discussion, those “unworthy” people who ostensibly abuse the system.⁷⁵ When learners understand that human rights are important protections for their own fundamental rights, they are less likely to view the topic as abstract and unrelated to their lives, and more likely to be critical of media messages that emphasise the irrelevance or “danger” of human rights.

One way in which schools can do this is to emphasise positive examples of change in the UK that have been brought about through human rights.⁷⁶ For example, relevant decisions have *inter alia*: lifted the ban on homosexuals serving in the armed forces;⁷⁷ influenced the controversial issue of deaths in custody;⁷⁸ challenged the hugely unpopular “bedroom tax”;⁷⁹ instigated investigations into allegations of torture by

Pennsylvania Press, USA 1997) 64-79 at p.77; see also Bell & Cernlyn, “Developing public support for human rights in the UK”, p.829.

⁷⁵ Kaur-Ballagan, *et al*, “Public Perceptions of Human Rights”, p.44.

⁷⁶ RightsInfo has an accessible list of human rights cases that transformed Britain, available at:

<http://rightsinfo.org/infographics/fifty-human-rights-cases> [Accessed 12 November 2016].

⁷⁷ *Smith and Grady v UK* (2000) 29 EHRR 493; see also Bowcott, “European courts have nothing to offer UK”.

⁷⁸ See e.g. *Jordan v United Kingdom* (Application No. 24746/94), Judgment of 4 May 2001; *Paul and Audrey Edwards v the United Kingdom* (Application No. 46477/99, Judgment of 14 March 2002; *Edwards v United Kingdom* (2002) 35 EHRR 487; & *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51.

⁷⁹ See e.g. *R (on the application of Carmichael and Rourke) (formerly known as MA and others) (Appellants) v Secretary of State for Work and Pensions (Respondent)* [2016] UKSC 58; & *Burnip v Birmingham City Council* [2012] EWCA Civ 629.

members of the British armed forces;⁸⁰ and protected the anonymity of journalists' sources.⁸¹

Teaching in this way also has the added benefit of combating ideas of human rights exceptionalism in the UK; namely, the suggestion that we do not need human rights law because we already adequately protect rights. Once again, this idea is commonly reinforced in the tabloid press, with the Daily Mail reporting in 2013 that for decades the ECtHR caused the UK little trouble, "because it recognised that we were not what it was there for".⁸² Grayling similarly alluded to this idea when he claimed that "we have tended to be ahead of the rest of the world in terms of liberalising our laws so I don't really believe that the European jurisdiction of...Strasbourg...makes this country a better place than it would be otherwise".⁸³ If young people were able to recognise and appreciate the significance of human rights to their own lives, they would be more critical and challenging of media messages that perpetuate the idea that human rights are irrelevant to advanced democracies such as the UK.

Through being equipped with the capacity to question and challenge what they read and what they are told, the next generation may also prove crucial in busting common myths about human rights. For example, misconceptions about the extensive reach and power of the ECtHR need to be dispelled if human rights are to become an accepted system of important protections for fundamental rights. The ECtHR does not dictate how governments should implement the decisions it hands out, but rather

⁸⁰ *Ireland v United Kingdom* (5310/71) [1978] ECHR 1.

⁸¹ *Goodwin v United Kingdom* [1996] 22 EHRR 123; see also Henley, "Why is the European court of human rights hated by the UK right?".

⁸² Hastings, "The danger is we've become immune to Human Rights lunacy".

⁸³ Bowcott, "European courts have nothing to offer UK".

invites states “to find solutions to situations collectively deemed acceptable”.⁸⁴ Similarly, a generation equipped with the knowledge, skills and values acquired through the provision of HRE would better understand the important nuances relevant to human rights protection, and thus be able to scrutinise and challenge pervasive media stories that suggest human rights benefit only those “unworthy”. Judgments in favour of groups such as “immigrants, asylum seekers, criminals, benefits claimants, terrorist and sex offenders” are most likely to attract vocal opposition,⁸⁵ yet by definition human rights law must protect *everyone*. Lord Falconer argues that “you cannot have reliable human rights if the only human rights that survive are those that the executive are happy to tolerate, and not the human rights that are inconvenient to the executive or unpopular”.⁸⁶ Thus, put simply, “any good instrument which protects the most vulnerable will produce results which are unpopular”.⁸⁷

Given the potential for education to alleviate some of the issues surrounding human rights sensationalism in the UK, it is unfortunate that the English education system is ostensibly moving further and further away from engaging with HRE. The

⁸⁴ Henley, “Why is the European court of human rights hated by the UK right?”. When the ECtHR makes a decision on the meaning of the ECHR, the UK government is obliged to give effect to that decision. However, the means through which it does so is through the UK legislature and that decision ultimately rests with Parliament itself. States are, therefore, granted the widest possible margin of appreciation for the implementation of ECtHR judgements, and the UK supreme court remains the final arbiter of human rights law.

⁸⁵ Wagner, “The Monstering of Human Rights”, p.4.

⁸⁶ P. Wintour, “Attempt to scrap Human Rights Act will not get past Lords, Falconer warns Gove” (The Guardian, 22 May 2015) at <http://www.theguardian.com/law/2015/may/22/falconer-scrap-human-rights-act-thrown-out-house-of-lords-gove> [Accessed 18 October 2016].

⁸⁷ R. Myers, “Opinion: It’s Time for Conservatives To Stand Up For Human Rights” (RightsInfo, 1 April 2016) at <http://rightsinfo.org/time-conservatives-stand-human-rights/> [Accessed 20 October 2016].

2014 reforms to the National Curriculum were intended to minimise prescription in both content and teaching methods, but simultaneously to emphasise more strongly “the fundamentals of core academic subjects and allocate them substantial time”.⁸⁸ One result of the reforms was that subjects in which HRE had traditionally found a natural home, such as citizenship and personal, social and health education (PSHE), were withdrawn or considerably pared back at primary level. The new curriculum for primary schools thus entered into force in September 2014 omitting any reference to human rights.

New compulsory guidance on teaching fundamental British values (FBV) arguably provides scope for teaching about human rights values, yet it neither directs teachers to engage with the broader human rights framework nor explicitly recognises the values it contains as stemming from universal notions of rights.⁸⁹ Teaching on FBV does not require learners to have an understanding of: the broader framework of human rights; the international documents in which these values are prevalent; or the protection mechanisms which seek to guarantee them for all human beings. Only teachers interested in rights issues are thus likely to make a connection between FBV and human rights, and the author has cautioned elsewhere about the potential for teaching in this area to be subversive and discriminatory.⁹⁰

HRE within the English education system has been shaped to a great extent by changes in the political tides: with each change of government comes a change in the

⁸⁸ Department for Education, *Reform of the National Curriculum in England* (2013), paras 1.6 & 1.17.

⁸⁹ See generally A. Struthers, “Teaching British Values in Our Schools: But why not human rights values?” *Social and Legal Studies* [DOI: 10.1177/0964663916656752].

⁹⁰ Struthers, “Teaching British Values in Our Schools: But why not human rights values?”.

education policy landscape concerning human rights.⁹¹ It is difficult to entrench areas such as HRE when some governments see benefit in its provision and others consider it to be superfluous to requirements. In this regard, the newly reformed National Curriculum is moving the English education system further from compliance in policy terms with its international HRE obligations. With the absence of express reference to human rights, and given the withdrawal and paring down of the citizenship and PSHE guidance respectively, the current Government's lack of commitment to HRE seems undeniable.

This is not only regrettable from the point of view of the UK's compliance with its international legal obligations, but is likely to perpetuate the current cycle of ignorance surrounding human rights. If the curriculum does not mandate the provision of HRE, then teachers will continue to receive little, if any, training on the topic.⁹² Without relevant training, teachers themselves may be likely to consider human rights to be controversial and avoid teaching about them. This, in turn, means that they are unlikely to be equipping learners with the knowledge, skills and values necessary for being critical and questioning of human rights rhetoric. When great swathes of the public are influenced and affected by hyperbolized or erroneous media portrayals of human rights, it is simply unrealistic to expect teachers to be immune to them. Something of a vicious circle is the inevitable result: teachers are reluctant to provide HRE in a cultural landscape that is sceptical of human rights; learners then emerge from formal education with little understanding and acceptance of human rights;

⁹¹ A. Struthers, "Educating *About, Through* and *For* Human Rights in English Primary Schools: a failure of education policy, classroom practice or teacher attitudes?" (PhD Thesis, University of Warwick, September 2015), chapter 3.

⁹² Struthers, "Human Rights: A Topic Too Controversial for Mainstream Education?", p.161.

negative perceptions of human rights persist and affect the next generation of teachers; and so on.

Until the commitment to HRE is taken seriously in the education sector, learners will continue to emerge from primary schooling lacking the capacity to question and challenge what they are being told. And without the inculcation of relevant skills at a young age, their opinions towards topics such as human rights may become entrenched and difficult to change, both at later stages of formal education and beyond. Children of primary school age should be equipped with the knowledge, skills and values necessary to question and challenge populist and reductive human rights rhetoric, if there is to be any chance of altering the status quo. The next generation arguably provide our best hope of ensuring that the media and politicians do not have the ability to negatively influence public opinion on human rights with such reckless abandon. It seems we must, as ever, look to the next generation to rectify the mistakes of our own, yet those responsible for curriculum development in England appear to have missed the memo.

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