

# Entrenching social citizenship

## *The progressive case for social and economic rights*

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Since taking office the Brown government has placed renewed emphasis on the challenges facing Britain in a fast-changing global world. Asserting its determination to be proactive in response, it has framed new policies across diverse sectors with reference to the need to equip Britain and its people for the twenty-first century.

The rationale for Brown's new constitutional reform agenda continues this theme. According to the *Governance of Britain* Green Paper published last July:

Without a shared national purpose, and a strong bond between people and government, we cannot meet the challenges of today's world, whether in guaranteeing security, delivering world class education and health services, building strong communities, or responding to the challenges of globalisation. (Ministry of Justice, 2007, 5)

So, while Labour's 1997 package of constitutional reforms – devolution, the first round of Lords reform, freedom of information legislation and the 1998 Human Rights Act – laid important foundations, we must now 'go further', on a 'journey towards a new constitutional settlement'.

In broad terms, the Green Paper identifies two dimensions to constitutional renewal: greater accountability over the exercise of Executive power; and a renewed relationship between government and individual, grounded in an enhancement of the 'rights and responsibilities of the citizen'. Accordingly the Green Paper suggests measures to bolster Parliament (such as new powers concerning decisions to go to war) and to increase policy making transparency (publishing the National Security Strategy, and a pre-Queen's Speech consultative process). With respect to the second dimension, the Green Paper's proposals proceed along two lines. First, underlining the importance of the relationship between citizen and state at local level (and extending the trajectory set by the local government White Paper (DCLG, 2006)), it outlines new measures to enhance local accountability, such as a duty on public bodies to consult locally on 'major decisions', and a power to ballot locally on spending. Second, it promises to review the very parameters of the citizen-state relationship with a nationwide consultation on both a 'British statement of values' and British Bill of Rights.

So as not to pre-empt these 'national conversations', the Green Paper leaves wide open all questions about the content of a 'statement of values' and Bill of Rights, and their legal character – bar one. Already ruled out, by strong implication, is any 'incorpora-

tion' of social and economic rights into the relationship between individual and state. In other words, British citizenship is to remain strictly civil-political in nature. In justifying this presumptive position the Green Paper suggests that broadening Britain's constitutional vision to include social and economic entitlements would entail a substantial transfer of power to the judiciary. Because Bills of Rights are enforced by courts, it indicates, one that included social and economic rights would give wide new distributive powers to judges, unacceptably usurping the role of democratically elected bodies (Ministry of Justice, 2007, 61).

This article accepts the government's starting point: the consequences of contemporary social and economic change for Britain make this a moment for constitutional renewal. But by contrast with the position taken in the Green Paper, I argue that a new settlement must explicitly embrace the social and economic, as well as civil and political, dimensions of individual and collective life in Britain, for four main reasons. First, a vision of equality reaching beyond formal political participation into the social and economic domains in fact runs true to British constitutional values historically. Second, because such a vision is critical to the prospects of mobilising people in Britain around the government's constitutional reform agenda and, now and for the future, around Labour itself as a progressive force in British politics. Third, constitutionalising social and economic aims would assist in achieving the self-same policy goals on which, by the government's assertion, Britain's ability to meet the challenges posed by deepening global integration now hangs. Fourth, and contrary to an often expressed view, because there exist avenues for advancing constitutional social and economic goals other than enforcement by courts which, far from marginalising Britain's democratic institutions, could radically enrich and transform them.

## **Rewriting history**

Constitutions don't just regulate the exercise of power. Explicitly or implicitly, they also define its ends. In the British case, the Prime Minister has argued, eight hundred years of constitutional and political history have been dedicated, more than anything else, to advancing one value. *Liberty*, argues Brown, is the 'single most powerful thread' running through our history. It has been a 'passion for liberty' that has determined our decisive political debates and inspired our 'defining political moments' – from Magna Carta, 'the civil wars and revolutions of the seventeenth century, through to the liberalism of Victorian Britain and the widening and deepening of democracy and fundamental rights throughout the last century' (Brown, 2007b).

But this cannot be the whole picture. Certainly, liberty has been a rallying call down the ages. But so have the distinct, if related, ideas of justice, equality, democracy, human dignity, economic freedom and the right to earn a decent standard of living – ideas whose content has in turn undergone constant change, wrought by ongoing political contestation and social struggle, against a background of human experience repeatedly transformed by technological innovation and cross-cultural encounter. In their meanings, all these political values are also interdependent. Understandings of liberty, at any particular moment in British history, have owed as much to the contingent scope and content of the others as it has to its own trajectory, and vice versa. Consequently, we do better to see Britain's constitution as kaleidoscopic – an array of political and ethical values ever present as its

colours, yet the perceived shape of each depending always on the rest – than we do to view it in monochrome.

It is true that the Prime Minister qualified his main proposition. British liberty, he suggested, in contrast to its American version, encompassed concern for social virtues and ‘civic responsibilities’. Ever since the Enlightenment, the British ideal had been coupled to an appreciation that freedom was only achievable ‘when society was prepared to overcome the barriers that prevented people from realising their true potential’. Thence sprung ‘the modern view of freedom – freedom to aspire – the opportunity and the chance to live a rounded life in which for everyone there is a place for choice and talent to flourish’, instead of any simple right to be left alone. Brown drew attention, too, to the role, down the centuries, of successive social movements in advancing the ‘frontier of liberty’, alongside its development by polemicists and theorists (Brown, 2007b).

Nonetheless, this account remains deficient. Roberto Unger has argued that the cause of the political left rests in essence on two ideas: *democracy*, which Unger interprets as the claim that relations between persons should not be hostage to social division and hierarchy; and *self-realisation*, becoming ‘a real person discovering infinities within and engaged in the work of self construction’, for all (Unger, 2006). Both these foundational ideas assume the finite nature of our existing social and cultural worlds, in contrast to a human possibility, as individuals and collectively, that is endless. From this discrepancy comes the idea of human emancipation which, ultimately, makes possible *hope* – hope that we can together construct alternative institutions, worlds and ways of being that are fairer, more humane, happier and more beautiful than those in which we now exist; hope, in other words, that empowers belief in the possibility of collective social transformation – *sine qua non* of progressive mobilisation.

If this is right, then a liberty-centred reading of British political history – even one tempered by references to civic duties and the social barriers to self-realisation – remains lopsided. Unger’s first pole of progressive politics has dropped out of the picture: democracy, which of itself, and not merely ancillary to the exercise of individual autonomy and self-actualisation, demands the identification and elimination of oppressive power, exploitation and control from society’s ‘horizontal’ relations. So interpreted, democracy reveals the true source of concern for and function of equality for progressives. Equality has been the heuristic by which hierarchy, in its various forms and locations, has through time been uncovered. Far from a simplistic concern with material levelling, equality has served to illuminate those differences of status and entitlement, based on and spuriously justified by reference to artificial categories, that have sustained social hierarchies and perpetuated their consequences. Indeed, only by seeing the concepts of democracy and equality and their interrelation in this way can we begin to explain the expansion, not just of the franchise (as distinctions based on hereditary line, title to land, profession, gender and race, were gradually erased) but also the expanding ambit of state law and institutions over the eighteenth and nineteenth centuries, as they reached gradually further into markets and the social domain, encompassing, for instance, education, housing and healthcare.

This reveals why, beyond issues of historical omission, narrating British constitutional development exclusively through the lens of liberty is deeply hazardous for the left. Many of the key gains of progressive politics can be attributed to the problematisation of public-private divides: the terms of employment contracts, however exploitative, were once

regarded as a wholly private affair, beyond Parliament's reach; privacy and property for generations shielded from political scrutiny the inferior status and abuse of slaves, the servant class, women and children; the extent to which states should be permitted to regulate the 'free' market remains even now a key ideological battleground. In Britain, as elsewhere, it has taken generations of political activism, contestation, and at times direct confrontation, to bring erstwhile private spheres of market, property and home within the ambit of politics.

Fixating on liberty, we cut ourselves off from this heritage. We lose a chance to show that, just as much as liberty, the Britain of today has been shaped by faith in the values of democracy and equality, the courage of ordinary people to voice a critique of existing social and economic arrangements, and their determination to change them in pursuit of a vision of the collective good. We further forfeit the authority that history presents for entrenching earlier generations' achievements, as well as renewing and extending efforts now, 'to overcome the barriers [preventing] people from realising their true potential', through a fresh assault on inequalities that mask hierarchy, whether 'public' or 'private' in origin. Affording lexical priority to liberty lends credence to the libertarian notion that a constitution must protect individuals from government interference, instead of guaranteeing conditions for the universal exercise of autonomy by protecting individuals from both state *and* subordinating social power.

This is an ideological own-goal for any progressive party, and one that holds clear dangers with respect to sustaining, let alone extending, active popular support. Liberty with a capital 'L', and the ancient civil liberties most strongly associated with it – freedoms of conscience, expression, assembly, privacy and property – simply do not speak to the experiences of injustice and disempowerment faced daily by the majority of people today. These lie in the fields of work and resources, local community and family, rather than in the civil and political arena traditionally conceived, and as such they require collective action, not state indolence (consider violence between teenagers, carer poverty, and the deepening wealth divide). Ruling out discussion of social and economic inequities at the start of a national conversation about Britain's constitution will drastically reduce its relevance and appeal for people struggling against them and so the likelihood of their participation in it. More profoundly still, such an exclusion would sow doubt in the minds of many about Labour's continuing capacity for empathy, identified as the key to its electoral success since 1997 (Miliband, 2007), the extent and endurance of commitment to its own core values, as well as its ability to see where they lead in a twenty-first century setting.

## **Meeting new challenges**

Moving on from these broad political and ideological themes, I want to argue that constitutionalising social and economic goals is critical to meeting the key policy challenges that the government has set itself in the areas of national competitiveness; public services and participation; and community integration and cohesion.

### *Competitiveness*

As the Leitch review starkly revealed, the UK's mid- and long-range economic prospects now hang on its ability to turn around its skills and training performance (HM Treasury 2006; see

also OECD 2007a, 2007b). Addressing 'inequality, deprivation, and child poverty ... and a generation cut off permanently from labour market opportunity' will require a doubling of skills attainment by 2020.

How can this be achieved? Because individuals must themselves drive training provision, it will be critical, according to Leitch, to raise individuals' 'aspiration and awareness of the value of skills to them and their families'. To this end, Leitch urged 'high profile, sustained awareness programmes', and went so far as to recommend a 'national framework of individual rights and responsibilities' in relation to lifelong skills training. This goal has been taken on board by the Prime Minister, who has argued that 'increased global competition ... demands people themselves make decisions about how they will upgrade their skills and they must themselves therefore be involved in the economic decisions' (Brown, 2007).

Against this background, there are clear benefits to putting entitlements to access to lifelong skills upgrading on a constitutional footing as part of a wider package of social and economic rights. Firstly, and obviously, doing so would in itself serve as a major and sustained awareness-raising strategy of the kind Leitch demands. Secondly, in practice, access to training opportunities – as to employment and decent pay – is not yet fairly distributed across society. Only once affordable childcare is universally available, and part-time workers enjoy rights and pay equal to those of full-timers, for instance, will the Leitch right to training in reality take root; only with mechanisms to replace income during re-training or between-work periods, can those with dependants on low incomes contemplate adopting the higher risk strategies now asked of them. Exercising the rights and responsibilities of contemporary economic citizenship demands that a set of conditions going wider than the provision of training be in place. The social contract reflected by a renewed British citizenship ideal will only be fair, legitimate and widely accepted, if it reflects this wider picture.

This leads to a further, bleaker, consideration. David Cameron's labour market policy is to appoint private employment agencies, on a commission basis, to get the unemployed into work. In return, not for a right to lifelong training, but for the 'right' to be 'profiled', benefits recipients would be fixed with a duty to take any job 'reasonably' offered them, attracting benefits sanctions of up to three years' duration should they fail to do so (Conservative Party, 2007). A clearer illustration of the potential for misuse of rights and responsibilities rhetoric, untethered to a broader statement of the content of social and economic citizenship, could hardly be wanting. The opportunity therefore needs to be seized to enshrine a just, forward-looking framework of rights and responsibilities across the social and economic fields, to prevent their distortion by any future Tory government, and the widespread unfairness and wasted human potential that would certainly be its result.

### *Co-production*

Post-'choice', Labour's public services agenda comprises a renewed emphasis on performance (quality and standards); user-centredness (voice, personalisation); and (especially local) accountability (Brooks, 2007). This remains a 'Third Way' agenda, in that it takes the role of government not to be one of centrally defining, and then itself delivering public service outcomes, but of providing a framework for the local definition of goals and

coordinating diverse service providers to achieve them. But, going beyond the Third Way, this approach recognises the *agency* of service users, individually and collectively as communities, transforming them from passive ‘consumers’ into ‘co-providers’ of public services, with a vital function in setting priorities, designing delivery mechanisms, and providing information about where outcome-goals have been met, and where they have not, so helping systems to adapt and improve over time (Brown, 2008). This is mirrored by the Brownite vision for local democracy, where the quest is to find ‘new ways and means to bring together citizens to discuss both specific challenges ... and concrete proposals’, by expanding opportunities for ‘local debate, dialogue and interaction’. To get the ball rolling, a programme of Citizens Juries addressing, for example, children’s issues, crime and security, and a Citizens Summit, are commencing this year.

A full articulation of the social and economic dimensions of citizenship will be vital to achieving these new roles envisaged for service users and local communities, and to delivery of their anticipated benefits, for a number of reasons.

First, as empirical studies show (e.g. Fung, 2001), there will be little or no public ‘buy-in’ to government efforts to involve citizens unless the substantive issues that citizens view as those of greatest importance are addressed. For the moment, this may not be a problem: public services and the topics so far set for Citizens Juries’ consideration would appear to have ‘grassroots appeal’. It needs to be remembered, though, that there will be a range of actors at the helm of local deliberations – different political parties, and also, given their interest in public service delivery, the private and ‘third’ sectors. This creates a risk, whether as a result of political orientation, or inexperience, of ‘anticipatory exclusion’ from local deliberation of the people who stand to gain most from their voices being heard. Constitutionalising a vision of individual and collective wellbeing, in the form of a Bill of Rights or ‘statement of values’ that includes social and economic entitlements, would by contrast provide a universal framework to guide local deliberation, its ends and processes (initial agenda-setting, for example), and ensure that ‘structural incentives’ to equal participation across society are in place.

Second, combining a framework of social and economic aims with adoption of a capability analysis of rights (Sen, 1985) would allow consistent measurement of levels of their attainment by individuals, and so also of assessing inequalities between localities and groups, and identifying changes in public service provision that might contribute to reducing or eliminating them. On this basis, even if not legally binding (see below), a ‘statement of values’ could supply an important tool for performance evaluation – and a valuable epistemic dividend on public participation in public service delivery.

Thirdly, a specific constitutional commitment to equal access to participation in public decision-making, including that taking place at local level, could be crucial, as a basic guarantee of procedural fairness, for solidifying public support for and trust in new democratic governance structures as they emerge. For example, it might be used to support calls for resources to enable full participation, such as sign language interpretation, or alternative formats needed to ensure children’s opinions are heard. This matters because empirical studies also show that deliberation is only an effective problem-solving device if there is rough power-parity between participating groups. Given social realities, however, even within a deliberative forum where all participants are, in formal terms, equally entitled to speak, differences in confidence and experience, other- or self-perceived social status,

intrude. Essential to the credibility of deliberative mechanisms, and people's willingness to engage in them, therefore, is that there are levers in place to neutralise, as far as possible for the purposes of the discussion, the effects of social power inequalities outside the room, so as to ensure all views are received fairly and with respect. If they are not, the likely outcome is default, by those who do not feel included, followed either by disengagement, or a reversion to antagonistic behaviour (Fung, 2004).

### *Cohesion*

The Green Paper holds up an ambitious conception of British citizenship that can glue our disparate individual existences back into a harmonious unity. Despite increasingly diverse characteristics and backgrounds, it says, citizenship remains the 'overarching factor that brings the nation together', crystallising a common identity out of feelings of Britishness that we draw from our shared institutions, social practices, culture and traditions.

Yet in calling for a clearer definition of the rights and responsibilities that accompany British citizenship, the government's focus is not on the population in general, but on citizenship's boundary categories – 'recent arrivals looking to become British', young people and long-term absentees. And though it asserts an urgent need to attach greater meaning, and 'genuine benefits', to British citizenship, instead of suggesting what these might be, it re-directs the issue to Lord Goldsmith's Citizenship Review (Ministry of Justice, 2007, 55). Although given a general mandate 'to clarify the legal rights and responsibilities associated with British citizenship ... as a basis for defining what it means to be a citizen in Britain's open democratic society', this exercise has in practice likewise been principally oriented to issues relating to migrants (1).

This approach misses the point. Politicians and economists have been keen to point out the benefits to 'the economy' of recent migration flows (e.g. LeGrain, 2007). Less often do they mention, though, that the same changes that have made possible migrants' rapid entry into the labour market have, over the course of the last two decades, also radically altered daily working life and individual and family economic horizons for working people in Britain.

Increased mobility, not just across but also within national boundaries, is of course a key element of globalisation. But so too are changing work patterns – higher job turnover for individuals, off-site working, agency working and self-employment, round-the-clock operations – in line with the demands of globally integrated markets, and facilitated by accelerated transport and communication links. As a result, the benefits that, notwithstanding its constraints, once accompanied the life-long employment relationship (promotion, training, salary and status generally rising over time) have in many sectors almost disappeared (Conaghan et al, 2002; Fudge and Owens, 2006). The knock-on effects of such trends on family life, experiences of neighbourhood living, and attachment to place, now pose challenges to the renewal and strengthening of social solidarity which are just as serious and profound as are, for instance, fears and insecurities provoked by terrorist attacks. At the same time, where once the state accepted some responsibility for insulating workers from the shocks of competition through industrial intervention, in Britain at least, it has almost abandoned that role. Worker protections at individual level and through trade union rights have also been considerably restricted.

In combination, these changes have left many people feeling exposed. The benefits

that may accrue to us, in aggregate, as a result of making Britain an attractive destination for foreign capital, are intangible; the individual risks and costs associated with 'flexibilisation', on the other hand, are not. The often negative consequences of this for feelings of well-being and happiness are rising in profile (Sennett, 2006; Layard, 2006). Less prominently considered is their impact on citizenship. For many, even within settled communities, it is becoming less clear exactly what they get in return from the state – not their home of elective choice – for intensifying work-related responsibilities (e.g. Russell, 2008). No longer do deferential attitudes and class-based identities guarantee respect for the state. To elicit the active citizenship necessary for its 'reproduction as a liberal society' (Pearce, 2007) Britain, as a political proposition, needs to earn 'civic patriotism' and loyalty from existing inhabitants and new arrivals alike. So, along with greater transparency about citizenship's ins and outs for migrants, there must now come a *thickening* of its content for all, extending far beyond the ethics of hospitality and into the core determinants of contemporary economic security.

Needless to say, this does not mean a return to 'jobs for life'. What it should mean, though, is a new constitutional framework that links individuals' commitment to the state, through labour and taxes over a lifespan, to a stronger, clearer offer in the economic, employment and social domains – including mechanisms to replace income during periods without paid work (social insurance reconstructed, in other words, for a twenty-first century setting), proper recognition of the critical social value of care and biological reproduction, and lifelong access to skills upgrading. Such a framework of rights and responsibilities would in addition provide grounding for the new visions of a shared future, and expectations of 'similar life opportunities, access to services and treatment', identified as essential to the reestablishment of trust and solidarity in local communities (Commission on Integration and Cohesion, 2007).

### **Alternative routes to a new settlement**

As seen, the Green Paper sets its face against constitutional recognition of social and economic goals as necessarily removing ultimate control over policy priorities and resource allocation from democratically accountable bodies to the courts.

Certainly there are those who, for different reasons, will press the case that any British Bill of Rights or similar constitutional instrument cannot be other than judicially enforceable in its entirety (e.g. Weir, 2006). But here it is explained why a British Bill of Rights expressing commitments to social and economic aims would not need to create enforceable rights; that if it did, disputes about them would not need to be adjudicated in courts; and that a national 'statement of values' could still effectively constitutionalise social and economic goals without taking legal form at all.

#### *Modes of entrenchment*

For present purposes, we can distinguish three approaches to promoting compliance with a set of principles or goals asserted as constitutive of the state.

- Best known is *judicial entrenchment*: as in the US, a Supreme or Constitutional Court may have final say over the constitutionality of legislation and in evaluating

the consistency of government action with basic rights; accordingly, the court of last resort is also empowered, should it incline, to invalidate statutes and impose sanctions for rights violations.

- Under *parliamentary entrenchment* (of which the 1998 Human Rights Act is one variant), while the courts can rule Executive acts and legislation incompatible with constitutional rights, they lack power actually to strike down Acts of Parliament – which, to that extent, remains sovereign.
- Thirdly, and less often discussed, a set of social goals or values, while elevated to constitutional status, as part of an otherwise legal document, may not be enforceable by litigation at all. We might call this *democratic entrenchment*, or plain ‘constitutional’ entrenchment.

Of the last model, the Irish Constitution of 1937 provides an example (2). This obliges the Irish State ‘to direct its policy towards securing’ a set of ‘principles of social policy’ which include, for instance, that ‘all citizens ... have the right to an adequate means of livelihood’; that ownership and control of the community’s material resources be distributed to serve the common good; that free competition not be allowed to operate to the common detriment; and that the public be protected from exploitation by private enterprise. The state is additionally pledged ‘to safeguard with especial care’ the economic interests of the weaker in the community, to prevent people from being forced into work unsuited to their ‘sex, age, or strength’ through economic necessity, and to endeavour to ensure the health of workers. Separately the Irish Constitution lists a number of constitutional rights, which *are* judicially enforceable. The ‘principles of social policy’, by contrast, are stated categorically as ‘intended for the general guidance of the *Oireachtas* [Parliament]’, so that their application ‘in the making of laws shall be the care of the *Oireachtas* exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution’.

In similar fashion, India’s Constitution identifies a set of ‘Directive Principles’ as ‘non-justiciable’, that is, not susceptible to enforcement via the courts – once again, in contradistinction to a set of ‘Fundamental Rights’, which are. According to Article 37, the Directive Principles ‘shall not be enforceable by any court, but ... are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws’ (3).

Exactly what led to the adoption by these two post-colonial states of this particular approach to constitutionalising social and economic aims is an interesting question. What are the virtues and weaknesses of democratic entrenchment, relative to the other two approaches, when it comes to realising a vision of the state going further than an Enlightenment-era guarantee of formal political and property rights, is an important one. Critically, however (and contrary to a view sometimes encouraged by constitutional lawyers), it is also one about which different opinions can legitimately be sustained. It is true that litigable social and economic rights are now in general advocated by UN human rights bodies and, worldwide, there seems to be a trend slowly emerging in that direction. But to date no conclusion favouring the superiority, in terms of effectiveness in promoting social and economic aims, of any one of the three models can be drawn. The dynamics of interaction between a state’s constitution, political institutions, social practices, and economic development are far too complex, contingent and path-dependent for that.

It is therefore right that we now have a serious discussion about the manner in which the British polity should be committed to equal consideration, and core entitlements, for all its citizens, across the social and economic domains, as well as with respect to civil liberties, instead of trying to foreclose that debate, as does the Green Paper, on spurious grounds.

### *The role of the courts*

Even where constitutions do allow litigation of constitutional rights, they do not always appoint courts to the task of adjudicating the ensuing disputes.

France's *Conseil Constitutionnel*, for example, is the guardian of the French Constitution and *Declaration of the Rights of Man and of the Citizen*. But its members are not judges. By background, they are a mix of former politicians, public administrators and academics of various disciplines; in addition former Presidents are entitled to a seat. Members of the *Conseil* are appointed by the French President and the Presidents respectively of the Senate and National Assembly in equal numbers, on a rolling basis.

The specifics of this model are not recommended for adoption here: partisan interventions by members of the *Conseil* have attracted controversy in recent decades, indicating a need for stronger measures on conflicts of interest; and the acceptability, in twenty-first century Britain, of a supreme constitutional body manned exclusively by members of a technocratic elite would seem at best uncertain. Rather, the *Conseil's* importance lies in highlighting the possibility of a non-judicial, democratically-appointed body as constitutional marshal. The next step, this realised, is to start reflecting on various options for composition and appointment. Places could be reserved in various numbers, for instance, for directly-elected members, MPs, life peers, regional representatives, or even judges.

### *A statement or 'Proclamation' of values*

A British 'statement of values', developed through public consultation, the Green Paper suggests, would 'set out the ideals and principles that bind us together as a nation', and ensure these are 'reflected in the Constitution and fabric of British politics and society' (Ministry of Justice, 2007). But if it does not empower people to contest rights via litigation, what concrete benefits could a 'statement of values' possibility yield in practice? What, ultimately, would be the point?

There are good reasons to think that even a merely declaratory 'statement of values' would be of more than symbolic significance, and could have real instrumental value as a tool for change.

First, 'soft law' has its own ways of driving revision and reform. Authoritatively-expressed statements can, without being legal, nonetheless have effects on conduct and outcomes, by shaping individuals' and institutional roles, values, self- and other-understanding – an influence they exercise via communicative practice. Recent studies in international relations, for example, have shown the 'compliance-pull' of non-legal environmental and human rights standards on public, private and non-governmental bodies alike.

This leads to a second point. The goals of non-legal standards can more readily be directed simultaneously at all levels and forms of government, and governance, than can legal ones. This acquires importance in light of the 'hollowing out of the state': a basic

contention of globalisation theory (albeit subject to various qualifications and refinements) is the shifting upwards – to international and transnational bodies, both inter-governmental and ‘private’; downwards, via devolution to regional and local levels; and sideways, both to the private sector and, increasingly, the third sector (NGOs, charities, associations and non-profit enterprises) too. Within legal theory, this insight has provoked fresh interest in ideas of legal, and constitutional, pluralism (Walker, 2002). These identify patterns of public ordering beyond the framework provided by national law – across entities as diverse as federal states, the European Union, specialist transnational functional regimes (such as ICANN, the Web’s private domain name regulator) and worldwide, in situations where local and national orders interact – for instance, in emerging forms of urban governance (Sassen, 2006). In addition, they emphasise the relations and interactions between different legal orders as now less hierarchical, with the state as the apex of authority, and more ‘heterarchical’: while the national level is one (still important) site of governance capacity and source of normativity, increasingly there are others.

Accordingly, if expressed in an appropriately authoritative manner (such as a referendum) as being constitutive, for the time being, of Britain’s identity and ethos as a polity, a ‘statement of values’ could potentially be as influential in practice as a legal Bill of Rights, or more so. As a non-legal document, it could permeate communication at multiple levels inside, outside and across the state boundary, its content interpreted by the various actors participating at each according to their horizons and needs. As regards follow-up, progress might be reviewed by a standing commission, citizens’ panel, or a national network of them – responding to issues raised by the public, hearing evidence, reporting, and periodically revising values in line with beliefs, social expectations, economic conditions and resources over time. A follow-up body might coordinate benchmarking of local performance on goals connected with values, directing attention to the ceiling of achievement, in contrast to courts’ concern, because they are setting binding precedents, with the floor.

Two final caveats. A Bill of Rights and ‘statement of values’ are not mutually exclusive: as *The Governance of Britain* appears to accept, we could have both. Second, a big initial push – much greater than that which greeted the Human Rights Act 1998 – as well as sustained promotion, would be essential to the success of either.

## Conclusion: a progressive constitutionalism

Gordon Brown’s government has lately been criticised for lack of vision. While I have argued that there is a dangerous blind spot in its constitutional reform agenda, for the moment I would nevertheless reject this larger claim. In 1997, Gordon Brown identified Labour’s enduring goal as ‘democratic equality’:

Democratic equality means we tackle unjustifiable inequalities, but it also, of course, pre-supposes a guaranteed minimum below which no one should fall. Our minimum standards must include a minimum wage, a tax and benefit system that helps people into work, the best possible level of health and social services for all and the assurance of dignity and security for those who are retired or unable to work through infirmity. (Brown, 1997)

Brown has also called for the entrenchment in Britain of

a sustained progressive consensus under which policies of social justice as well as economic progress are seen not only by the political parties as essential, but seen by the public of our own country as ... policies they would never allow a right wing government to undo. (Brown in Snyder, 2006)

Here in a nutshell are the rudiments of a progressive constitutional vision along with the key rationales for it: the need, always recognised by the left, to look beyond formal civil and political rights to find the sources of social disempowerment and division, as well as obstructions to the exercise of individual autonomy; and the risk of emasculation by the right of key progressive principles and the unravelling of the real changes for the better to people's lives that they have so far supported.

The 1997 vision needs updating, expansion and refinement, to be sure. The government's recent *ad hoc* 'rights and responsibilities' interventions across the disparate policy sectors of health, post-16 education, adult training and skills, and migration must be knit together, as this article has outlined, into a coherent, transparent and holistic vision of twenty-first century British citizenship that encompasses the factors of autonomy and equality for all. (Though not discussed here, in addition, this means that instead of more 'red lines', there must be a more courageous stance must be taken on EU social and employment rights which, appropriately dealt with, promise to strengthen, not undermine British competitiveness, as the Government lately suggested.)

But most of all, however, the vision needs to be acted on, now, and with conviction – entailing, as a first step, altered terms for the consultation on a Bill of Rights and 'statement of values', and next, pressing with passion for a new settlement deserving of loyalty and with a capacity truly to inspire. Failing to do so, will cost the cause not just of Labour but of British democracy dear.

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## Notes

1. The three papers published by the Goldsmith Review to date have concerned citizenship ceremonies, mentoring of new migrants, and 'becoming a British citizen'.
2. Constitution of Ireland, (1937), Chapter XIII, Article 45, Directive principles of social policy of the Irish Constitution (available at <http://www.taoiseach.gov.ie/index.asp?docID=243>).
3. Fundamental rights are set out in Part III, and Directive Principles, in Part IV, of the Indian Constitution (1949), (available at <http://indiacode.nic.in/coiweb/welcome.html>). It should be noted that, in spite of the terms of the Indian Constitution, the Indian Supreme Court has in practice sought to make the directive principles of social policy justiciable by expanding the content of the Constitution's fundamental rights (for example, by interpreting the right to life as implying rights also to adequate food, clean water, etc). Judging by the courts' reception of the Human Rights Act 1998, the risk of similar judicial 'activism' in Britain would not at present seem significant.
4. France's Charter for the Environment, now part of its Constitution, for example, refers to 'rights' and 'duties', but provides under Art. 10 only that, 'This Charter shall inspire France's actions at both European and international levels. Charter for the Environment (available at <http://www.assemblee-nationale.fr/english/8ab.asp#TITRE%20XVII%20-%20Environment>).