

Social Rights Are Human Rights

BUT THE UK SYSTEM IS RIGGED

by Paul Hunt

with a Foreword by Paul Mason



KNOW
YOUR
RIGHTS

EDUCATION IS

A RIGHT,

NOT A

COMMODITY!



Social Rights Are Human Rights

BUT THE UK SYSTEM IS RIGGED

by **Professor Paul Hunt**

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HOUSING
IS A
HUMAN RIGHT!

Foreword by Paul Mason

Only once you understand what the “neo” means in neoliberalism can you understand the importance of defining legal rights in the struggle for social justice.

As early as 1938, those who designed the current economic order understood that the state would become their main tool; that markets do not create and maintain themselves but have to be imposed and re-imposed through law, regulation and, where necessary, coercion.

In the face of this, the concept of workers’ rights - which has guided the activities of the main counter-power within capitalism, the labour movement - has proved insufficient. As the progressive left fightback unfolds in Europe, the idea of social rights has gained traction.

Plataforma de Afectados por la Hipoteca (PAH) is a social movement for the realisation of the right to housing in Spain. During the country’s economic crisis, banks began to evict homeowners, thousands of families lost their homes, and many became homeless. PAH emerged in Barcelona and quickly spread to other parts of Spain. It organised peaceful protests, successfully delaying or halting many evictions. Crucially, PAH used the right to housing to galvanise popular resistance and this contributed to positive changes in law and policy.

It is just one example of the way social justice movements are using the internationally protected and formally stated *social rights* to legitimise resistance, such as the rights to an adequate standard of living, affordable housing, accessible education, an equitable health system, and social security based on respect, not sanctions.

This report explains what social rights are, why they are especially important to disadvantaged individuals and communities, and why they are so little known in the United Kingdom. It gives real-life examples from Leith, Belfast, York and elsewhere demonstrating the roles that social rights can play.

As we resist austerity and prepare for a transformative change in British politics, we need to expand the tools at our disposal.

Social rights are not a panacea, but this report, which outlines both the concept and its application, is a useful starting point if we want to expand our debates about strategy and tactics, learning from successful social movements beyond Britain’s borders.



SUMMARY



A central message of the Labour Party campaign leading up to the June general election was that the system is rigged in favour of the few. The Party's Manifesto – *For the Many not the Few* – explains how the system is rigged and what can be done about it.

This pamphlet brings a complementary dimension to this discussion by demonstrating that the UK human rights system is rigged. It is rigged in the sense that it privileges civil and political rights and neglects social rights. Although social rights are important to everyone, they are especially vital to disadvantaged individuals and communities.

Social rights include the rights to an adequate standard of living, affordable housing, food, education, an equitable health system, and social security based on respect, not sanctions. There is evidence that they improve the lives of individuals and communities. Social rights are emancipatory and position us all as rights holders, not service users.

Across the world, civil society groups are organising around social rights. A huge literature now looks at a wide range of issues through the 'lens' of social rights. Some countries are including social rights in their policy making. In many countries, social rights are routinely argued before the courts. Social rights encounter powerful opposition, but they are gaining momentum.

The UK has accepted legally binding international obligations to promote and protect social rights, and the British government supports these human rights in the United Nations. But the UK does not currently support explicit social rights at home, where they remain largely invisible.

The Labour Party is better placed than ever before to do something about the hypocrisy and injustice of this rigged system. Jeremy Corbyn explicitly affirms social rights. The Labour Party's Manifesto is closely aligned with social rights without explicitly mentioning them.

This pamphlet explains how explicitly referring to social rights would strengthen the manifesto's bold social policies. It provides case studies from Belfast, Leith, York and elsewhere demonstrating the roles that social

rights can play. It also identifies and addresses some of the arguments that are used to privilege civil and political rights and marginalise social rights.

The *Human Rights Act* must be robustly defended. But it is not an either/or situation. It is possible to stoutly support the *Human Rights Act* and favour better protection for social rights. There is evidence that a system encompassing all human rights will attract more public support than one which includes only some human rights.

The conclusion sets out how to advance social rights in the UK. The Labour Party can make a major contribution by explicitly linking the manifesto's progressive social policies with social rights. We must name social rights, talk about them and take them seriously. We need a deliberative process which is bottom-up, inclusive and participatory, which will allow us to chart the best way forward.

Social rights are not the preserve of lawyers and other technocrats. They are not just about going to court. Explicit social rights have the power to dignify and emancipate individuals and communities. They can shape policies and practice. There is evidence of their positive impact. Why not use them?

Introduction



A central message of the Labour Party campaign leading up to the June general election was that the system is rigged in favour of the few.

Falling living standards, shrinking public services, young people held back by the cost of housing, more children in poverty, social care in crisis – and the rich getting richer (D’Arcy and Gardiner, 2017).

The Labour Party Manifesto – *For the Many not the Few* – explains how the system is rigged and what can be done about it (Labour Party, 2017).

This pamphlet adds a new, complementary dimension to this discussion by demonstrating how the UK human rights system is rigged.

It is rigged in the sense that it does not promote and protect social rights, such as the rights to an adequate standard of living, affordable housing, food, education, an equitable health system, and social security based on respect, not sanctions.

These human rights are vital to disadvantaged individuals and communities, and they can be used to reinforce the manifesto’s progressive social policies.

The UK has voluntarily accepted legally binding international obligations to promote and protect social rights, and the British government supports these human rights in the United Nations (UN).

But the UK does not currently support explicit social rights at home. At home, these rights are almost invisible. There are exceptions, some of them highlighted in these pages, but they are very few and far between.

The Labour Party is better placed than ever before to do something about the hypocrisy and injustice of this rigged system.

Jeremy Corbyn explicitly affirms social rights. At a recent rally, he said that “defending the NHS is defending a basic human value, a basic human right”. In his leader’s speech to Annual Conference in 2016, he emphasised that Labour will give “every British family that basic human right – a decent home”. He made ten pledges at the conference, one of which was that “social and employment rights” will be “at the centre of the Brexit negotiations” (National Policy Forum, 2016).

Of course, *all* human rights – civil, political, economic, social, and cultural rights – are vital to disadvantaged individuals and communities. And social rights are important to *everyone*, whether disadvantaged or not.

But it is essential to grasp the immeasurable significance of social rights for disadvantaged individuals and communities.

Patricia Williams, an African American civil rights activist, explains that rights are: “the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power”. Rights, she says, are “the marker ... of our participatoriness, our relation to others” (Williams, 1987).

The same can be said about social rights for disadvantaged individuals and communities.

Social rights are emancipatory, empowering, and transformative. They can help ensure dignity, well-being, and equality. Social rights position us all as rights holders, not clients, service users, or supplicants.

As the residents of Grenfell Tower will testify, respect for social rights can literally make the difference between life and death.

This pamphlet outlines:

- ◆ what social rights are
- ◆ how the UK human rights system is rigged against them
- ◆ how social rights can be used to reinforce the manifesto’s bold social policies
- ◆ how the Labour Party, as well as other organisations committed to social justice, can advance social rights in the UK.

“While the common theme underlying poor people’s experiences is one of powerlessness, human rights can empower individuals and communities. The challenge is to connect the powerless with the empowering potential of human rights. Although human rights are not a panacea, they can help to equalize the distribution and exercise of power within and between societies.”

UN Committee on Economic, Social and Cultural Rights (2001) Statement on Poverty and Human Rights

Social rights are human rights

Social rights are part of the larger human rights ‘family’.

Human rights are the basic rights and freedoms that belong to everyone and which are based on shared values like dignity, fairness, justice, and equality. Human rights matter because they relate to people and issues we all care about, such as people in care, survivors of domestic abuse, decent work, safe homes, and vibrant communities. Human rights are not just abstract principles. They are protected by international and national law.

Individuals and communities can use these principles and laws to develop detailed guidance for policy makers and practitioners. There is evidence that human rights-shaped policies and practices improve people’s lives.

Human rights are usually grouped into five overlapping categories: civil, political, economic, social, and cultural rights. I will refer to economic rights as workers’ rights. The historic role of the trade union movement is to defend workers’ rights. Box 1 provides some examples of each human rights category.

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BOX 1. HUMAN RIGHTS

Civil rights: the right to life; the right to be free from torture and degrading treatment; the rights to personal liberty, privacy, and a fair trial; freedoms of thought, religion, expression, information, and movement within one’s country.

Political rights: freedoms of association and assembly; the rights to vote and participate in public affairs and service.

Economic rights, also known as workers’ rights: the rights to decent work and to form and join a trade union; the rights to equal pay for work of equal value, to safe and healthy working conditions, and to a fair wage; the right to strike.

Social rights: the rights to an adequate standard of living, adequate housing, and food; the right to the highest attainable standard of health; the rights to education and social security.

Cultural rights: the right to enjoy one’s own culture and participate in the cultural life of the community.

The rights to equality and non-discrimination apply to each of these overlapping categories of human rights.

Universal Declaration of Human Rights - At the end of the Second World War, governments grasped that human rights are needed as safeguards – not only against authoritarianism but also against the causes of authoritarianism. Remembering the 1920s and '30s, they understood that financial crisis, poverty, and widening inequality provided fertile ground for the right-wing populism that led to war.

So, governments made the promotion of human rights one of the four key objectives of the new UN. Out of this grew the *Universal Declaration of Human Rights*, which recognises civil, political, economic, social, and cultural rights.

Civil and political rights, such as freedom of speech and the right to a fair trial, are designed as bulwarks against authoritarianism. Economic, social, and cultural rights, such as the rights to decent work and affordable housing, are designed to eliminate the economic and social causes of authoritarianism.

Legally binding international social rights - The *Universal Declaration of Human Rights* is of historic importance, but it is not a legally binding treaty. In the years after its adoption in 1948, the human rights enshrined in the declaration were elaborated in numerous legally binding international treaties. The UK has ratified most of these human rights treaties, several of which include social rights (see Box 2).

A severe attack of amnesia - In the modern era of globalisation and economic neoliberalism, many governments forgot (or ignored) history and their obligation to take all reasonable measures to deliver social rights for everyone. British and other governments failed to ensure a reasonable standard of living, affordable homes, and respectful social security for millions of families. Poverty, inequality, and a sense of injustice deepened. This neglect – a neglect of social rights – contributed to Brexit and Trump's presidential success.

Renewed interest in social rights - Although international social rights were neglected for years, they are now receiving serious and sustained attention. Across the world, civil society groups are organising around these rights (Wills, 2017). A huge social rights literature addresses many issues, including economics, housing, health, education, and social work (Balakrishnan 2016, Hohmann 2013, Yamin 2015, McCowan 2013 and Ife 2012). Some governments are including social rights in their policy making (see page 21). In many countries, social rights are routinely argued before

the courts. Several UN agencies are now trying to advance social rights. Of course, social rights still face powerful opposition from many sides, but they are gaining momentum.

Understanding how social rights ‘work’ - This renewed interest has helped explain how social rights ‘work’ and what they mean. For example, international law requires social rights to be progressively realised, meaning that governments are not expected to realise social rights overnight but rather to purposively work towards their realisation. This is a realistic requirement because it takes time to devise and implement effective and equitable policies on housing, education, health and so on.

But how can a government be held accountable for its obligation to progressively realise social rights? Part of the answer is that we need suitable indicators and benchmarks to measure whether adequate progress is being made (OHCHR, 2012). This explains why the social rights initiatives in Leith and York have established baselines, indicators, and benchmarks (see pages 16 and 19).

Human rights have multiple roles - Human rights are versatile and can play a variety of roles in the struggle for social justice. For example, they can be inspirational, insurrectional (e.g., during apartheid), operational, or judicial. These different roles can lead to misunderstandings – somebody can be talking about one human rights role, while somebody else is imagining another.

The *operational approach* ensures that human rights shape laws, regulations, policies, programmes, practices, and grassroots initiatives. If this ‘shaping’ is participatory and bottom-up, it can be transformative and emancipatory. This approach is all about making human rights ‘real’ in workplaces, clinics, hospitals, care homes, schools, universities, courts, prisons, homes, and neighbourhoods.

Eleanor Roosevelt, one of the architects of the *Universal Declaration of Human Rights*, once asked, “Where, after all, do universal human rights begin?” And she replied, “In small places, close to home – so close and so small that they cannot be seen on any maps of the world.”

Lawyers tend to favour the judicial approach – in other words, via courts and tribunals (King, 2012). This approach plays an important role and may lead to favourable judicial decisions and progressive change.

Some of the roles are complementary – for example, the operational and judicial approaches can reinforce each other.

BOX 2. INTERNATIONAL TREATIES RATIFIED BY THE UK THAT RECOGNISE SOCIAL RIGHTS

The UK has ratified several treaties that include social rights. This means the treaty provisions are binding on the UK in international law. Here are some of the key treaties ratified by the UK, with a selection of their social rights provisions:

The International Covenant on Economic, Social and Cultural Rights (1976) includes the social rights to an adequate standard of living, adequate housing, and food; the right to the highest attainable standard of health; and the rights to education and social security.

The Convention on the Rights of the Child (1991) protects children's social rights to the highest attainable standard of health, social security, an adequate standard of living, and education.

The International Convention on the Elimination of All Forms of Racial Discrimination (1966) requires the prohibition and elimination of racial discrimination in relation to the social rights to housing, health and medical care, social security and social services, education and training, and equal participation in cultural activities.

The Convention on the Elimination of All Forms of Discrimination against Women (1981) requires effective measures to achieve equality between men and women in relation to the social rights to social security, protection of health, and contraceptive information and services.

The Convention on the Rights of Persons with Disabilities (2007) protects the social rights of persons with disabilities to education, the highest attainable standard of health, an adequate standard of living, social protection, and to live independently and be included in the community.

The European Social Charter (1962) includes the social rights to health protection and medical assistance, social security, and welfare services.

The EU Charter of Fundamental Rights (2009) recognises the social rights to education, social security, access to preventive health care, and medical treatment.

The seven case studies on the following pages provide real-life examples of the different roles that social rights can play. The illustrations come from Northern Ireland, Scotland, England, Italy, Spain, Finland, and Germany.

Some of these case studies provide evidence that social rights have made positive contributions to the lives of individuals and communities.

Social Rights in Action

Seven Case Studies



1. The right to adequate housing: challenging poor housing in Leith, Scotland

Since 2015, the Scottish Human Rights Commission and Edinburgh Tenants' Federation have been helping residents in Leith use the right to adequate housing as a way to challenge poor housing conditions.

Residents worked alongside researchers to design and deliver a survey to more than 180 households. The survey confirmed that people had been experiencing a range of housing problems over several years, including dampness, mould, and vermin infestation. It also revealed that tenants felt the local council's responses to maintenance requests were slow or incomplete. There were council regeneration plans, but tenants had been given limited opportunities to give their views. For the first time, residents characterised these problems as failures in human rights.

Residents identified which problems they wanted prioritised, and they developed a set of human rights-based indicators to establish the current situation (i.e., the baseline) and monitor improvements. Using these indicators, residents presented their baseline findings to councillors and council officers at a public meeting in June 2016.

Since then, residents and the local council have met regularly and developed an action plan for improvements. These improvements include new kitchens, bathrooms, heating, and windows; improved ventilation; and asbestos removal. Some of this work has been completed, and some of it is planned for later in 2017 and 2018. The Scottish Human Rights Commission has provided human rights training to council officers.

Residents will undertake a new survey in 2017, using their human rights-based indicators and baseline, which will enable them to measure progress and hold the local council accountable for its obligations arising from the right to adequate housing.

As a result of their housing rights campaign, residents are reporting increased skills and confidence. In the words of Heather Ford, treasurer of the residents' association, "Human rights pulls you together as a community and gives you the same goal. The fact that I know that I have a right to a wind-tight, water-tight, mould free house means that I don't have to be scared."

Sources: Participation and the Practice of Rights, Scottish Human Rights Commission, and Edinburgh Tenants' Federation (2016); West Cromwell, Persevere and Citadel Courts Residents' Association (2016)

Human rights in practice: Housing



2015: People living in mainly council-owned housing in Leith, Edinburgh, feel that their homes have become severely run down.

Problems with: Infestation of mice, rats and pigeons. Poor heating and windows, damp, mould and neglected maintenance.



You report it and report it and nothing happens

This house has been classed as uninhabitable. We had to be moved as the mould was making my daughter's sickness worse.

We feel like we've been forgotten about

People says to me, "You live in a slum"



Empowering people to know their rights

Summer 2015: Residents start working with Edinburgh Tenants Federation and the Scottish Human Rights Commission, who provide support to take a human rights based approach.



Since we found out about this, it's given us the knowledge we need to challenge things. We all just thought this was normal.

International Covenant on Economic, Social and Cultural Rights

Article 11: Everyone has the right to an adequate standard of living, including adequate housing.

Article 12: Everyone has the right to enjoy the highest attainable standard of physical and mental health.

Human Rights Act 1998

Article 2: Everyone has the right to life.

Article 3: No one shall be treated in an inhuman or degrading way.

Article 8: Everyone has the right to home and family life.

Human Rights Law



Putting rights into practice

Residents design and undertake a survey of all flats to find out what kind of conditions people are facing. Residents present the evidence they have gathered alongside human rights standards to the Council.

How do we take a human rights based approach?



Listen to us

Respect our rights.



Let's tackle this together!

Make us part of the decision

Are things improving?

Not enough, let's keep working together.



Holding authorities to account

Residents continue to use evidence from surveys together with international human rights laws and standards to call for improvements. They also have recourse to monitoring and regulation bodies and UN treaty bodies.

To find out more about the work of Scotland's National Action Plan for Human Rights, visit www.scp.org.uk

2. The right to social security in Northern Ireland

A Belfast-based non-governmental organisation, Participation and the Practice of Rights (PPR), works in communities on social and workers' rights. It supports groups that wish to use human rights to change government policies and practices which are contributing to poor service delivery, inequality, and ineffective use of public resources.

For the last five years, PPR has supported the 'Right to Work, Right to Welfare' campaign, which is led by a group of unemployed, disabled, and the sick. Using the rights to social security and work, the group campaigns for fairer welfare and jobs for the long-term unemployed. This case study focuses on the right to welfare component of the campaign, although the right to work element also enjoys notable success.



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In 2014–15, the group discussed the issue of social security with many people, agreed on key indicators, monitored the increasing incidence of sanctions and benefit denials, and gathered evidence on the harmful impact of welfare policy and practice on the lives of individuals and families. Based on this research, group members devised *The people's proposal: realising the right to social security*, which sets out safeguards for due process and minimum essential levels of benefits. *The people's proposal* explicitly draws from, and is inspired by, the right to social security and other human rights, such as the right to information. The group uses *The people's proposal* to enable individuals to challenge the reduction or withdrawal of social security payments. In meetings and correspondence with the authorities, there is detailed, explicit reference to the government's human rights obligations, especially the right to social security.

PPR advises, "Do not get angry or aggressive with staff – they are only messengers doing a job under instructions", and adds, "remember the people you are dealing with are paid to deliver a public service which it is your right to access."

PPR reports that the 'Right to Work, Right to Welfare' campaign has provided many people with tools which enabled them to secure thousands of pounds previously withdrawn from their social security entitlements. The campaign has the support of the trade union movement, social security staff, the children's commissioner, thousands of unemployed individuals, and all of Northern Ireland's major political parties, except the Democratic Unionist Party.

Source: Participation and the Practice of Rights, Right to Work, Right to Welfare campaign <https://www.pprproject.org/right-to-work-right-to-welfare>

3. York: human rights city

With roots in the global South, there's a movement to establish 'human rights cities'.

In April 2017, after several years of discussion across the community, the mayor of York signed a declaration making York the UK's first human rights city. The declaration has the support of all the main political parties within the York City Council. More than 120 members of the public attended the launch. Rachel Maskell, York Central MP (Labour), was among the speakers.

The declaration says, "York, in becoming a Human Rights City, embraces a vision of a vibrant, diverse, fair and safe community built on the foundations of universal human rights. This vision is shared by citizens and institutions in our city, including the City Council, North Yorkshire Police, voluntary organisations and faith communities ... As the UK's first Human Rights City we are committed to making our vision real, putting fundamental rights at the heart of our policies, hopes and dreams for the future."

In short, the declaration entails a commitment to use human rights to address local, everyday priorities.

After extensive surveys and discussion, York residents selected five human rights priorities: the rights to education, housing, health and social care, a decent standard of living, and equality and non-discrimination.

Notably, the first four priorities are social rights, while the fifth – equality and non-discrimination – is an integral part of all human rights, including social rights.

The organisers have identified a few indicators for each of these rights and have published an indicator baseline report entitled *Human rights: reclaiming the positive*. In this report, the organisers commit to "publishing a report and holding a public meeting each year to discuss progress against the indicators". This is a new type of local accountability for social rights.

It is too early to assess the declaration's impact, but it is instructive that York residents chose to prioritise social rights, reinforced by an innovative form of local accountability.

Source: York: Human Rights City <http://www.yorkhumanrights.org>

4. The right to adequate housing: reforms and resistance to widespread evictions in Spain

Plataforma de Afectados por la Hipoteca (PAH) is a social movement for the realisation of the right to housing as set out in the Spanish Constitution.

During the country's recent economic crisis, banks began to evict homeowners, thousands of families lost their homes, and many became homeless. As a result, PAH emerged in Barcelona and quickly spread to other parts of Spain. It organised peaceful protests, successfully delaying or halting many evictions.

PAH has also used the right to housing to press for legislative and policy reforms. For example, many bank-owned properties remain empty. In line with PAH's advocacy, some regional authorities took measures for the temporary possession of empty homes, with compensation to the banks, so the properties could be used for social rental purposes. The central government is challenging these measures before the courts. Also, as advocated by PAH, the right to housing is now justiciable in the Basque Country and Region of Valencia.

In summary, the right to housing has helped galvanise PAH's popular resistance to widespread evictions and has led to changes in law and policy.

In 2013, the European Parliament awarded PAH the European Citizen's Prize in recognition of activities that reflect the values enshrined in the *EU Charter of Fundamental Rights*.

Source: Observatori DESC and PAH (2014)

5. The right to health: shaping Italy's health system

Italy's Constitution protects the right to health: "The Republic safeguards health as a fundamental right of the individual and as a collective interest".

The courts have decided a handful of important right-to-health cases, for example, on improving access to contraception. Crucially, this human right has explicitly shaped Italy's national health service, national health plans, and community health schemes, such as the initiative that delivers women's health information and services.

The right has also explicitly shaped health interventions, including cancer screening programmes. The guidelines for cancer screening remind health professionals that "access to screening is an application of a right". A recent World Health Organization study on Italy concludes that applying human rights to women's and children's health policies, programmes, and other interventions has not only helped the Italian government comply with its binding national and international obligations but has also contributed to improving the health of women and children.

Source: Bustreo F et al. (2013)

6. The protection of social rights in Finland

Different countries promote and protect explicit social rights in different ways.

The new Finnish Constitution includes a range of social rights. Finland does not have a Constitutional Court, but its Parliament has a Constitutional Law Committee made up of members of Parliament, who are assisted by constitutional lawyers. The committee's mandate includes human rights, and it regularly hears evidence on human rights. It is the main monitoring body scrutinising the constitutionality of bills before they are enacted, as well as their bearing on Finland's international human rights obligations. The committee's opinions are generally understood to be binding.

The committee has given definition to some social rights. For example, it has interpreted the right to obtain subsistence and care, if one does not have the means to live a dignified life, to include a core which cannot be limited (section 19(1)). The core consists of the fundamental aspects and preconditions necessary to live a dignified life. The committee has also found that certain restrictions on property rights, which were designed to support social housing, are legitimate and proportionate given the duty of public authorities to promote the right to housing (section 19(4)).

Finland has other mechanisms to protect its constitutional social rights provisions. For example, Martin Scheinin, a highly respected Finnish human rights scholar-activist, reports that the courts have "an important role in developing the understanding of the legal nature and content of various economic, social and cultural rights" (Scheinin, 2003). The parliamentary ombudsman also plays a significant role in relation to social rights.

In summary, the Finnish model presents a web of accountability for explicit social rights, encompassing different branches of government and mechanisms. The Constitutional Law Committee is a distinctive element, giving a strong role to parliamentarians, while reserving a role for the courts and others.

Source: Amnesty International Ireland (2014)

7. German Constitutional Court protects “the right to a dignified existence”

The German Constitution requires the government to respect and protect human dignity (article 1). It also establishes what is known as the ‘social state principle’ (article 20). This principle has several features – for example, it mandates the protection of individuals who are economically weak.

The German Constitutional Court has interpreted these two provisions to include the right to a dignified minimum existence. The court has said that this right places an obligation on the government to provide the minimum level of subsistence required to ensure the material conditions necessary for physical existence, as well as the opportunity for a certain level of participation in political, cultural, and social life.

Effectively, the court has affirmed elements of the human right to social security.

In a specific case, the court decided that a certain level of social security was insufficient, particularly considering that the amount had not changed for more than 15 years, and therefore it was unconstitutional. The court left Parliament to determine what amount was sufficient, and it emphasised that the legislature had some discretion or leeway, provided the process was fair, the benefits were sufficient, and human dignity was not compromised.

In reaching its decision, the court drew from several sources, including the *International Covenant on Economic, Social and Cultural Rights* (especially the right to social security) and the *Convention on the Rights of the Child*.

Following the Constitutional Court’s decisions, new legislation has been enacted, although there is some doubt whether it has done enough to comply with the right to a dignified minimum existence.

Source: Winkler I and Mahler C (2013)



The UK human rights system is rigged against social rights

I once gave a talk in Ireland on the right to health and explained that both Ireland and the UK have signed up to legally binding international treaties that include the right to health. An astonished participant exclaimed, “That must be the best kept secret in Ireland!”

In the UK, most people have never heard of social rights.

They do not know that social rights are in the *Universal Declaration of Human Rights*.

They do not understand that their government is legally obliged to protect social rights.

Despite its legally binding international obligations, the UK has done little to bring home explicit social rights.

The UK has put in place a variety of ways to promote and protect human rights. The *Human Rights Act* is the centre of these arrangements. The Act is extremely important and must be robustly defended. But it does not include explicit social rights, except a limited form of the right to education.

This would not matter if the UK had put in place alternative, suitable, and effective ways of promoting and protecting explicit social rights – but it has not, which is why social rights are almost invisible.

The UK is out of step. At least some social or workers' rights appear in more than 95% of national constitutions; a majority of constitutions includes a wide range of these human rights (Jung, 2014). Also, 81% of all constitutions include the right to education, 71% protect the right to healthcare, 63% protect the right to social security, and 39% provide a right to housing (Chilton and Versteeg, 2016).

In the European context, the UK is even more of a social rights outlier.

Different countries promote and protect explicit social rights in different ways.

Finland provides an instructive example (see page 22).

The cloak of invisibility - How is it that so few people in the UK have even heard of social rights? The reasons are numerous, and most have an ideological complexion.

One explanation is language. Just as language can reflect and reinforce the invisibility of groups of people, it can also reflect and reinforce the invisibility of groups of rights.

We must support the *Human Rights Act*, but also recognise its limitations. The Act is not a code of human rights; it is essentially a code of civil and political rights (or 'civil liberties'). It would be better understood as the Civil and Political Rights Act.

Calling it the *Human Rights Act* implies that all rights falling outside the legislation, like workers' and social rights, are not 'real' human rights.

The same sleight of hand occurs in the UN. Despite its name, the UN Human Rights Committee looks at civil and political rights, with very limited exceptions.

The smoke and mirrors in the Council of Europe is even more deceptive. The *European Convention on Human Rights* is primarily a catalogue of civil and political rights. The Convention has a sister treaty which focuses on workers' and social rights. Although this treaty protects workers' and social rights, it is called the *European Social Charter*. In other words, the treaty's title is not even dignified with the words 'human rights'.

These and similar slights are cumulatively significant. They mask social rights and are one of the reasons why so few people in the UK have heard of them.

These 'secrets' and slights debase social rights, diminish people and communities, and rig the system against the disadvantaged.

Which arguments are used to privilege civil and political rights and marginalise social rights?

Here I briefly respond to two arguments that are sometimes used in this country to justify giving more attention to civil and political rights than to social rights.

Argument #1: Don't rock the boat

According to this argument, we should not rock the civil and political rights boat by calling for the better protection of other human rights. The top priority is to defend the *Human Rights Act*.

My reply - The *Human Rights Act* must be robustly defended. But it is not an either/or situation. It is possible to stoutly defend the *Human Rights Act* and favour better protection for social rights.

Also, a central principle of international human rights law is to treat civil, political, economic, social, and cultural rights “in a fair and equal manner, on the same footing, and with the same emphasis.” This principle was confirmed at the World Conference on Human Rights in 1993 and has been reaffirmed on innumerable occasions. The UK has supported this position in the UN.

The idea that we should prioritise the *Human Rights Act* – and put explicit social rights on the backburner – is inconsistent with this foundational principle of international human rights law.

Argument #2: Social rights can be adequately protected using civil and political rights

As this argument goes, social rights can be adequately protected by the *Human Rights Act*, such as through the rights to private life and non-discrimination.

My reply - This argument is unsupported by the facts. During years of austerity, the *Human Rights Act* has been powerless to stop many serious violations of social rights. Claims based on civil and political rights have successfully challenged a few austerity measures, and this is very welcome

(Equality and Human Rights Commission and Bott, 2016). But the *Human Rights Act* has failed to protect the social rights of many extremely vulnerable people. It has failed to slow the onward march of austerity.

Merris Amos confirms that while a variety of claims with a social rights complexion have been made under the *Human Rights Act*, few have been successful (Amos, 2015). She also points out that when the courts consider such a claim, “in most instances it receives less favourable treatment when compared to the adjudication in other types of [*Human Rights Act*] claims.”

In other words, when the courts are considering a claim under the rights to private life and non-discrimination, if the claim has a social rights complexion, the courts apply different and less favourable rules than if the claim lacked such a complexion. As Amos puts it, the courts have created “a second division” for claims based on the *Human Rights Act* which are associated with social rights.

In summary, complainants who wish to use the *Human Right Act* to protect social rights face two major hurdles. First, they must shoehorn their case into a civil and political right. Second, if they manage to do this, they then find that the courts usually treat their case less favourably than other claims.

On both counts, the system is rigged against social rights.

“Don’t worry, we *implicitly* deliver social rights”

When I worked on social rights within the UN and discussed these rights with country representatives, I was often told, “Don’t worry, our laws and policies may not explicitly mention social rights, but they *implicitly* shape all that we do.”

This argument usually came from authoritarian regimes which were hostile to all human rights, or countries with neoliberal economic policies, which are antithetical to social rights.

The argument is commonly heard in the UK. I recently sat on a statutory human rights inquiry into emergency health care, organized by the Northern Ireland Human Rights Commission (NIHRC, 2015). When taking evidence, we were often told by those in authority that while their policies do not explicitly mention the right to health, they implicitly include this human right in their work.

This self-serving argument masks social rights and drains power away from rights holders to those in authority. It means that only those in authority know whether and when the social right is being taken into account and, if it is, how it is interpreted and applied. Such arbitrariness is inconsistent with the essence of human rights.

Framing something as a human right matters: without the status of a human right, it is shorn of transformative and emancipatory promise.

Public officials would never dare to argue that they do not explicitly recognize the prohibition against torture but that detainees have nothing to worry about because interrogators implicitly take the torture prohibition into account.

In short, the commonly heard argument that those in authority *implicitly* take social rights into account is another example of how those in positions of power rig the system against disadvantaged individuals and communities.

For the Many not the Few, Labour Party Manifesto, 2017

The manifesto is impressive, substantive, and popular. One of its key themes is human rights and equality.

The Labour Party has become the party of human rights and equality, including workers' rights, women's rights, the rights of ethnic and religious minorities, the rights of persons with disabilities, and LGBTI rights.

For many years, the party has pioneered legislation on human rights and equality. For example, its policies led to the *Human Rights Act*, the Equality and Human Rights Commission, and the *Equality Act*.

This commitment to human rights and equality is consolidated and deepened in *For the Many not the Few*, which promises to introduce a 20-point plan for workers' rights; abide by International Labour Organization conventions; bring into UK law both the *Convention on the Rights of Persons with Disabilities* and the *Convention on the Rights of the Child*; enhance the powers and functions of the Equality and Human Rights Commission; reinstate public sector equality duties and seek to extend them to the private sector; put human rights at the heart of foreign policy; and robustly defend "our *Human Rights Act*" against Conservatives' threats to repeal and replace it. (The manifesto refers to the *European* - not UN - *Convention on the Rights of the Child*, but this appears to be a slip.)

Progressive social policies - The manifesto's progressive social policies on education, social security, housing, health and social care are among its strongest features.

In effect, these policies explain how a Labour Party government aims to deliver the UK's legally binding international social rights obligations, such as the rights to education, social security, housing, health, and an adequate standard of living.

Social rights demand that priority be given to the most disadvantaged individuals and communities – and this is what the manifesto does.

They also require that a government urgently put in place effective, equitable, inclusive, fair, decent, participatory, and accountable policies that progressively reduce inequality and poverty, and enhance the dignity and well-being of all. Again, this is what the manifesto's social policies aim to do.

Social rights require more than a few laudable initiatives scattered across social policy. They require a deliberate, concrete, targeted, evidence-based, wide-ranging social justice strategy for all. The manifesto provides the contours of such a strategy.

Some dimensions of social rights are not costly – they demand a change in culture by placing the dignity and well-being of individuals and communities at the centre of policies and practice. If this had been done in Kensington and Chelsea Borough Council, the residents of Grenfell Tower would have been heard. If dignity were at the centre of social security, the government's punitive sanctions would be unthinkable.

The manifesto makes this point. On the workplace pension system, it aims to “put people rather than profit at its centre” and to “change the culture of the social security system”.

Explicit social rights? - Although the manifesto's content on human rights and social policy is impressive, there is no explicit mention of social rights, except one reference to the right to education.

Jeremy Corbyn's ten pledges to Annual Conference in 2016 said that “social and employment rights” will be “at the centre of the Brexit negotiations”. In its chapter on Brexit, the manifesto says that a “Labour government will never accept the weakening of workers' rights, consumer rights or environmental protections.” Social rights are not mentioned, and they appear to have been replaced by consumer rights. Elsewhere, the manifesto commits to giving tenants more “consumer rights”.

Consumer rights are important. They arise when we buy a kettle or garage services. But social rights have a different quality and status. They derive from our dignity and well-being and are not dependent on a commercial contract.

Conclusion - Completed in just a few weeks, the manifesto is a remarkable achievement. It struck a chord with Labour Party members and the wider public. In the next section, I outline how the manifesto's compelling prescriptions could be further strengthened by explicitly referring to social rights.

“Social and economic demands with a progressive character – the right to work, pensions, basic income, minimum wages, shorter working week, universal healthcare etc. – can sometimes be advanced using the language of rights, even if over the past twenty years the ‘hrd’ [human rights discourse] has more often been tethered to the liberal-imperial masthead. Conditions could change, and efforts to bring out the anti-militarist and socially egalitarian potential of respect for human rights, without quote marks or abbreviation, deserve support.”

Blackburn R (2011) Reclaiming Human Rights. New Left Review

Benefits of including social rights in the manifesto

What difference would it make if the manifesto explicitly placed its progressive social policies within the framework of social rights?

Underpinned by international law - It would mean that the manifesto's social policies would be underpinned by binding international law. When implemented, the policies would help deliver the UK's international human rights obligations. They would demonstrate that the Labour Party is putting an end to the hypocrisy of affirming social rights in the UN and forgetting about them at home. They would show that the Labour Party takes seriously the international rule of law.

Dignity and well-being - The manifesto and social rights share the common goal of placing the dignity and well-being of individuals and communities at the centre of social policy. They reinforce each other.

Empower and transform - Social rights empower individuals and communities. They position us all as rights holders, not service users. These left-behind rights are especially vital to left-behind people. The manifesto's social policies are also empowering, transformative, and emancipatory. The manifesto and social rights buttress each other.

Guidance for policy and practice - Earlier, I explained how renewed interest in social rights is generating answers to important questions about how these rights 'work' and what they mean. There is now an enormous literature and experience from many countries on how social rights can be implemented. Today, social rights not only embody values such as fairness, dignity, equality, and freedom but also provide detailed guidance for policy and practice. In this way, social rights can contribute positively to the formulation and implementation of the manifesto's social policies.

Accountability - Social rights establish a culture of accountability for social policies. Accountability comes in many forms, including via the ballot box, national and local assemblies, parliamentary select committees, national human rights institutions (like the Equality and Human Rights Commission), civil society, the media, and the courts (Potts, 2008).

In the UK, accountability for social rights is very weak, which is one reason why our governments have been able to get away with an especially pernicious form of austerity. We urgently need to establish accessible and effective forms of accountability for social rights. Improved accountability for social rights would help identify what is reducing inequality and poverty, so it can be continued, and what is not, so it can be revised. In this way, accountability for social rights would help ensure that the manifesto's social policies are delivering for disadvantaged individuals and communities. Placing the manifesto's policies within the framework of social rights would help hold the powerful accountable.

A narrative - The explicit recognition of social rights would give added legitimacy to the manifesto and provide its social policies with a narrative. Underpinned by international law, explicit social rights would grant visibility, inclusion, dignity, and power in a way that being a client or service user never can.

In summary, social rights can reinforce and deepen the manifesto's progressive social policies.

The way forward

The system as a whole – and the UK’s human rights system in particular – is rigged by scores of laws, policies, programmes, and practices. Some of these curtail the social rights of individuals and communities. British governments have gone to the UN, where they have supported explicit social rights, but they have not supported explicit social rights at home. Governments talk about ‘human rights’ when they really mean civil and political rights. Courts have some opportunities to advance social rights but seldom take advantage of them. As Amos shows, when judges consider complaints with a social rights complexion, they often treat these claims less favourably.

Some of the UK media misrepresents the *Human Rights Act* as an un-British piece of legislation that benefits terrorists, criminals, prisoners, and foreigners. This characterisation is absurd. However, a human rights system that privileges civil and political rights and marginalises social rights is more vulnerable to such grotesque misrepresentation than a system which attaches equal importance to all human rights.

There is evidence that a system encompassing all human rights will attract more public support than one which includes only some human rights.

Although few members of the public have heard of social rights, successive polls show considerable public support for the **idea** of social rights (Kellner, 2016).

The York City case study confirms that people attach particular importance to social rights (see page 19).

A recent study, *Building Bridges*, shows how emphasising values and principles, such as fairness, dignity, and equality, can help reframe and build support for human rights (Public Interest Research Centre, 2016). It finds broad support across the population for the values and principles of human rights and reports that “people become even more positive when they see the relevance of human rights to their everyday lives.”

This is important because social rights are demonstrably relevant to the “everyday lives” of millions of people. So, one way of enhancing support

for all human rights is by emphasising values such as fairness, dignity, and equality, and another is by giving due attention to social rights.

What can be done to advance social rights in the UK?

The Labour Party can make a major contribution by explicitly linking the manifesto's progressive social policies with social rights. In this way, the manifesto would place social rights on the national political agenda. This would be a huge advance.

Building Bridges found that “having the space to think about and debate human rights made people more engaged with and positive about them.” So, we must name social rights, talk about them, and take them seriously. We need a deliberative process which is bottom-up, inclusive, and participatory, which will allow us to chart the best way forward.

For example, what is the best way of developing the content of social rights, within the boundaries of the UK's existing international social rights commitments?

How can individuals and communities hold accountable those who are responsible for the implementation of social rights? Is it through our national human rights institutions, such as the Equality and Human Rights Commission?

Or via the courts?

Or do we need to imagine new social rights accountability arrangements? For example, should our country's legislatures establish new select committees with a social rights mandate? Should local authorities establish nimble independent bodies that report to them on social rights? Should we encourage local communities to hold those in power accountable through residents' and other grassroots associations (see the Case Studies on pages 16 to 23)?

Trade unions already campaign for workers' rights and related social rights issues. Do they have the capacity to give more attention to the explicit social rights of their members? Or of their members **and** disadvantaged individuals and communities?

These are among the questions we need to discuss if we are to advance social rights in the UK.

In this pamphlet, my focus is the Labour Party because it is in a unique position to make a historic contribution to social rights. But many social

justice organisations – too many to list here – should take social rights more seriously.


These organisations must grasp that human rights are not the preserve of lawyers and other technocrats. They are not just about going to court. Explicit social rights have the power to dignify and emancipate individuals and communities. They can shape policies and practice. There is evidence of their positive impact. Why not use them?

We live in a world of the ‘gig’ economy, accelerating automation, and what Paul Mason calls “networked humanity” (Mason, 2015). Human rights, and the values they embody, can help us navigate this new era. But human rights need refreshing for these modern times. Although the explicit recognition of social rights is a vital part of this renewal, it is not enough.

The conventional view that human rights place obligations on governments alone needs challenging. Human rights should also be understood as placing obligations on other bodies wielding enormous public power in our globalised world, such as corporations. Human rights must become more participatory and popular. They must strike a fairer, healthier balance between individualism and the public good, without ever permitting the individual to become a victim of any group.

The crucial first step is simply to name and talk about social rights.

They are vital for our “everyday lives”, and a selective – or rigged – approach diminishes all people, communities, and human rights.

A man with dark hair and a beard, wearing a blue denim jacket with a tan fur collar over a plaid shirt, is holding a white sign. He is looking off to the side with a serious expression. The background is blurred, showing a street scene with a person in a blue suit in the distance.

**People go to food banks
BECAUSE
they can't afford
to eat.**

COMPLEX? REALLY?

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Additional useful resources

If you are interested in learning more about social rights, you might look at some of the sources already mentioned. Additionally, here are a few organisations working (to one degree or another) on explicit social rights:

Just Fair: <http://www.just-fair.co.uk/>

Participation and the Practice of Rights: <https://www.pprproject.org/>

Equality and Human Rights Commission: <https://www.equalityhumanrights.com/en>

Scottish Human Rights Commission: <http://www.scottishhumanrights.com/>

Northern Ireland Human Rights Commission: <http://www.nihrc.org/>

Human Rights Centre, Essex University: <https://www1.essex.ac.uk/hrc/practice/un-mandate.aspx>

British Institute of Human Rights: <https://www.bihhr.org.uk/>

Labour Campaign for Human Rights: <https://lchr.org.uk/home/>

European Committee of Social Rights: <http://www.coe.int/en/web/turin-european-social-charter/european-committee-of-social-rights>

UN Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/Issues/ESCR/Pages/ESCRIndex.aspx>

Amnesty International: <https://www.amnesty.org/en/what-we-do/living-in-dignity/>

The Center for Economic and Social Rights: <http://www.cesr.org/>

The International Network for Economic, Social and Cultural Rights: <https://www.escr-net.org/>

Academic Network on European Social Charter and Social Rights: <https://racseanesc.org/>

Economic and Social Rights Academic Network: UK & Ireland: <https://esranuki.wordpress.com/about/>



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Centre for Welfare Reform

The Centre for Welfare Reform is an independent research and development network. Its aim is to transform the current welfare state so that it supports citizenship, family and community. It works by developing and sharing social innovations and influencing government and society to achieve necessary reforms.

To find out more go to: www.centreforwelfarereform.org

We produce a monthly email newsletter, if you would like to subscribe to the list please visit: bit.ly/subscribe-cfwr

You might like to follow us on twitter: [@CforWR](https://twitter.com/CforWR)

Or find us on Facebook here: [centreforwelfarereform](https://www.facebook.com/centreforwelfarereform)

Citizen Network

Citizen Network is an international movement to advance citizenship for all by tackling prejudice, poverty and powerlessness.

Individuals and groups who believe in human equality and the value of diversity are free to join at: www.citizen-network.org

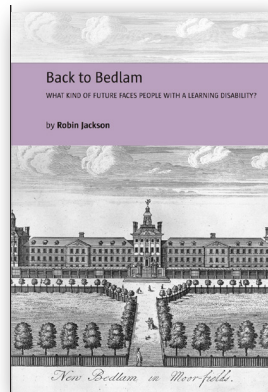
Relevant publications



A FAIR SOCIETY?

How and why the austerity programme inevitably targeted disabled people for the most severe cuts.

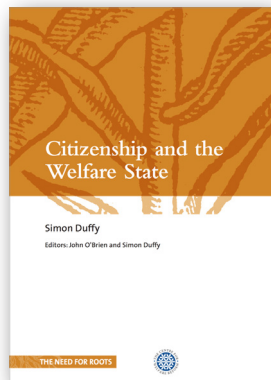
<http://bit.ly/afscuts>



BACK TO BEDLAM

How decades of slow progress for people with learning disabilities is now going into reverse.

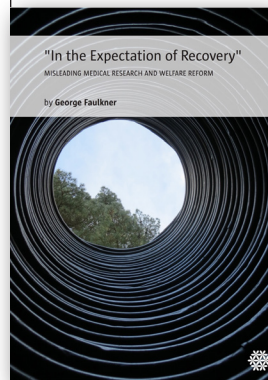
<http://bit.ly/back-to-bedlam>



CITIZENSHIP AND THE WELFARE STATE

Defending and redesigning the welfare state must begin by understanding the requirements of equal citizenship.

<http://bit.ly/citizen-roots>



IN THE EXPECTATION OF RECOVERY

An analysis of the flawed medical research used to justify large parts of the Government's welfare reforms.

<http://bit.ly/expect-recovery>

A person wearing a black hooded raincoat and a dark hood is seated in a wheelchair. They are holding a large white sign with the words "RIGHTS NOT CHARITY" written in bold, black, hand-painted capital letters. The person has a small red and white circular sticker on their left chest. They are outdoors on a dark asphalt surface. To the left, the lower legs and white sneakers of a person in a yellow raincoat are visible. To the right, the dark clothing of another person is partially seen.

RIGHTS
NOT
CHARITY



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THE CENTRE FOR WELFARE REFORM