

Key Note Address at Liberty's 75th Anniversary Conference

On 1 November 1932, when the country and the world were in the throes of the Great Depression, a column of hunger marchers arrived in London. They were protesting against a cut in unemployment benefit and the recent imposition of a means test. They brought with them a petition containing a million signatures. On their arrival, the leader of the march was arrested, the petition confiscated and, it was claimed, the police and *agents provocateurs*, disguised as working men, to incite marchers in Trafalgar Square to violence.

Observing the scene was a remarkable and under-celebrated man, Ronald Kidd. He was appalled at what he saw, as he was by the police response to an anti-Nazi demonstration in Trafalgar Square on 17 December 1933, at the end of the year when Hitler came to power. From his concern, and on the eve of the further rally of the unemployed fixed for 25th February 1934, Liberty – then and for many years the National Council of Civil Liberties – was born. It attracted the support of authors such as Vera Brittain, A.P. Herbert, H.G. Wells, E.M. Forster and J.B. Priestly; academics such as Harold Laski and Ivor Jennings; lawyers such as Geoffrey Bing, D.N. Pitt and W.H. Thomson; journalists such as Claud Cockburn and Kingsley Martin; politicians such as Clement Attlee and Edith Summerskill. Left-leaning, and including communists among its members, Liberty was never, as its enemies proclaimed, a communist front organisation.

When Ronald Kidd died, aged only 53, in 1942, E.M. Forster wrote his epitaph:

'Passionate in his hatred of injustice, wise in judgment, fearless in action, he championed the liberties of the people in the fight that is never done.'

E.M. Forster would not, in 1942, have encountered the notion of a mission statement. But his words eloquently describe what the mission of Liberty has been over the 75 eventful years which we celebrate today.

Some of the causes which Liberty supported in its early days are of little or no relevance today: resistance to the authoritarian behaviour of Oswald Mosley and the British Union of Fascists, for example, or countering discrimination against bodies perceived as left-wing. Some topics of current concern, such as gay and lesbian rights or the treatment of gypsies, did not loom large then. But the history of Liberty

over the past 75 years reveals a striking consistency of aim: to expose and attack abuses of power which restrict the rights and liberties of ordinary people living in this country.

Thus Liberty has, throughout its history, defended the right of public meeting and assembly. It has supported the right of free speech in word, print or visual communication. It has sought to expose and rectify miscarriages of justice. It has campaigned, with notable success, for proper treatment of those who are, or are said to be, mentally ill. It has campaigned for the fair treatment of servicemen and women, particularly boy entrants. It has addressed the situation in Northern Ireland. It has resisted discrimination on grounds of race or colour, winning a famous victory in 1943 when the great West Indian cricketer, Learie Constantine, was denied a room at a London hotel because he was black.

The causes supported by Liberty have not always won the day, in court or out of it. That is to be expected. If Liberty only backed horses which were bound to win, it would not be the progressive, ground-breaking, consensus-challenging organisation it has sought to be. And, inevitably, some of its decisions have provoked controversy even among its members. Its opposition to the release of Mosley from internment, because of his repulsive racist views, angered members who felt it no part of Liberty's mission to seek prolonged imprisonment of those no longer thought to be a danger. Its decision to offer advice to members of the National Front was resisted by those who felt that Liberty should not strive to protect the rights of those who conspicuously ignored the rights of others. During the miners' strike of 1984 there were those who felt that Liberty should address the behaviour of the striking miners as well as that of the police. These are the travails of any principled organisation: members may differ on the application of a principle.

In recent years Liberty's attention has been focused on the vindication of rights protected by the European Convention on Human Rights and the Human Rights Act of 1998. Both have been the subject of much hostility from those who find it less trouble to attack them than to try to understand what they mean. One major party, as I understand, wishes to repeal the 1998 Act. The other wants to revise it. I should like to make ten points, which should in my opinion inform any debate on this subject.

First, the Convention – despite its name – is not some suspect foreign import, to be rejected as in some way alien or un-British. It was drafted in the years after World

War II as a response to the horrors we had witnessed, not least in Europe. Leading British politicians, out of office at the time, made a huge contribution to the drafting of the instrument, which was thought to reflect values which we in this country took for granted and which had, we thought, been vindicated by our military triumph. We wanted these values to be more widely respected. So the UK was the first state to ratify.

The second point is fundamental. On acceding to the Convention the UK undertook to secure to everyone within its jurisdiction – effectively, within its borders – the rights and freedoms set out in the Convention. That was, and is, a solemn obligation binding on this country in international law. It was an obligation binding on this country before the Human Rights Act was passed. It is an obligation which would continue to bind this country even if the Human Rights Act were repealed. It is an obligation which would cease to bind the UK only if, inconceivably, it were to renounce the Convention, and that is a course which, so far as I know, no political party and no responsible commentator has advocated. It is misleading to suggest that by repealing the Act Jack would at a bound be free.

Thus the 1998 Act did not – this is the third point – give us the rights and freedoms to which we had not been entitled to before. What the Act set out to do, and did, was enable us to enforce those rights and freedoms here in Britain, in our own courts, before our own judges, magistrates and juries. The Government's White Paper heralding this Human Rights Bill was entitled 'Bringing Rights Home', and this was an apt description of the Bill's objective. Before the Act, British courts were obliged to close their eyes to the Convention for a very technical but practically important reason: that although the Convention was binding on the UK in international law, it formed no part of our domestic law. So if you or I complained in our local court that a public authority had breached one or other of our Convention rights, the judge would very probably decline to investigate the complaint and would in any event be unable to help, even if he or she thought we were probably right. The Convention was not part of the law to which the judge was paid to administer. So you or I, having litigated unsuccessfully (and perhaps expensively) here, would have to pack our bags and our papers and take our case to the European Court of Human Rights at Strasbourg – incurring further cost, much delay, and imposing on that court a burden of work which it is nowadays scarcely able to handle. What the 1998 Act did, I repeat, was enable us to vindicate our Convention rights in our own courts here in Britain in the first

instance: if we succeed, much time and expense is saved; if we fail, we can still pursue our claim in Strasbourg.

My fourth point follows from the third. The Act does not, as is sometimes suggested, effect a massive transfer of power from politicians and administrators to judges. No decision is now made by a judge under the Act which could not have been made by a judge before. The difference is in the judge making the first decision. Before, it was the judges sitting in Strasbourg who, however, expert in the Convention, would mostly be unfamiliar with the peculiarities of British life; now it is British judges, with insight into the way things are done here, paying close attention of course to what the Strasbourg judges say the Convention means.

Point five. It is sometimes said that the Act is undemocratic. This is hard to understand. In 1951, the government of the day ratified the Convention. In 1966 another government permitted those who thought their Convention rights had been violated here to complain to Strasbourg. In 1998 Parliament, in the Human Rights Act, required public bodies and officials to observe everyone's Convention Rights and required – not invited, not permitted – required the courts to ensure that those rights were protected. It is hard to imagine a more explicit democratic mandate. But then, it is said, the Act enables the courts to infringe the sovereignty of Parliament and usurp supreme legislative authority. This is a travesty of the truth. As very clearly explained in the White Paper I have already mentioned, the Act is deliberately and skilfully drafted to ensure that the sovereignty of Parliament is preserved and supreme legislative authority is reserved to it. Thus, the courts here cannot, like the courts of most other countries, annul, supersede or strike down any Act of Parliament as inconsistent with the Convention. The most they can do is declare an Act to be incompatible with the Convention. Such a declaration has no practical effect whatsoever. But it presents ministers with an option: to seek Parliament's consent to rectification of the incompatibility; or to make no change, and seek to persuade the Strasbourg court, when complaint is made, that the provision is not incompatible. Should the government fail at Strasbourg, it is bound by treaty to rectify the incompatibility, but an Act of Parliament can be repealed or altered by Parliament and no one else.

The Act is sometimes criticised – this is point six – as elevating the rights of the individual above the rights of the community. There are, it is true, some rights which the Convention treats as absolute: the right not to be enslaved, the right not to be

punished retrospectively for something which was not criminal when you did it. These articles admit of no exceptions – rightly, as I shall suggest. But generally, as emphasised time and again by the court in Strasbourg and by our own courts here, the Convention seeks to balance the rights of the individual and the rights of the community. Legitimate communal interests are, and have to be, taken into account in deciding where the rights of the individual begin and end. It is perhaps significant that those who wish to disparage the Convention misrepresent its effect.

Closely allied with this criticism – point seven – is the complaint that the Charter is all about rights and mentions duties and responsibilities only in passing. True, these critics say, we have rights which should be protected. But what about our duties and responsibilities? If society is to recognise our rights, surely there should be recognition of our duties and responsibilities to the society of which we are members. There are two answers to this. The first is that this is an instrument to protect human rights, some of which were inadequately protected before. To some extent the Human Rights Act duplicated existing law, but in important respects it gave additional protection. Hence the UK's unhappy record of failure in Strasbourg before the Act came into effect in October 2000. The Act and the Convention filled a gap. The second answer is that our duties and responsibilities as members of society were already fully prescribed. We have to pay our taxes. We have to obey the Highway Code. We must apply for planning permission before we extend our houses. We must send our children to school. We must obtain a passport to go abroad. We must recycle our rubbish in the right bags. We must obey the criminal law. And so on. And so on. In a gallant but, in my view, unpersuasive attempt to give substance to this point, the Government says in its recent Green paper:

'Although not necessarily suitable for expression as a series of new legally enforceable duties, it may be desirable to express succinctly, in one place, the key responsibilities we all owe as members of UK society, ensuring a clearer understanding of them in a new, accessible constitutional document and reinforcing the imperative to observe them. Such responsibilities could include treating National Health Service and other public sector staff with respect; safeguarding and promoting the well-being of children in our care; living within our environmental limits; participating in civic society through voting and jury service; assisting the police in reporting crimes and co-operating with the prosecution agencies; as well as general duties such as paying taxes and obeying the law'.

Now I am myself in favour of treating everyone with respect – even politicians. Of course we should safeguard the well-being of children, respect the environment and do our duty as citizens. But a statute, or a constitutional document, should lay down clear, enforceable rules. It is not a place for making gestures, however well-intentioned. I am not for my part clear what new duties or responsibilities are thought to require legal enforcement.

My eighth point is refreshingly brief. The Convention provides a minimum standard of protection, a floor not a ceiling. Any member state which wants to give better protection than the Convention affords is free to do so. The Convention imposes no restriction on states which want to do more.

Point nine. It is sometimes said that the Convention has given rise to much foolish decision-making. Now I do not myself agree with all the decisions made at Strasbourg, nor (for that matter) with all the decisions made here in Britain, but few judicial decisions anywhere, ever, command universal acceptance. I do not think the standard of decision-making on the Convention is generally defective. Indeed, I suggest that on whole it is rather high. To those who disagree, I would say: bring out your examples.

In the manner of a bad advocate, I save my strongest point for my tenth and last. The rights protected by the Convention and the Act deserve to be protected because they are, as I would suggest, the basic and fundamental rights which everyone in this country ought to enjoy simply by virtue of their existence as a human being. Let me briefly remind you of the protected rights, some of which I have already mentioned. The right to life. The right not to be tortured or subjected to inhuman or degrading treatment or punishment. The right not to be enslaved. The right to liberty and security of the person. The right to a fair trial. The right not to be retrospectively penalised. The right to respect for private and family life. Freedom of thought, conscience and religion. Freedom of expression. Freedom of assembly and association. The right to marry. The right not to be discriminated against in the enjoyment of those rights. The right not to have our property taken away except in the public interest and with compensation. The right of fair access to the country's educational system. The right to free elections.

Which of these rights, I ask, would we wish to discard? Are any of them trivial, superfluous, unnecessary? Are any them un-British? There may be those who would like to live in a country where these rights are not protected, but I am not of their number. Human rights are not, however, protected for the likes of people like me – or most of you. They are protected for the benefit above all of society's outcasts, those who need legal protection because they have no other voice – the prisoners, the mentally ill, the gipsies, the homosexuals, the immigrants, the asylum-seekers, those who are at any time the subject of public obloquy.

These are, and have been, those whom Liberty has striven to serve, the well-to-do can generally look after themselves. The truly vulnerable cannot. In the 1930s, Liberty represented a man charged under the *Public Order Act 1936* for his behaviour at an anti-fascist rally. His alleged offence was to have blown his nose in an offensive manner. In our time we have seen a man arrested under anti-terrorism powers for telling the Home Secretary he was talking rubbish. We have seen students charged for reading out the names of British servicemen killed in Iraq. Times change. Issues change. But the mission of Liberty – to expose and attack abuses of power which restrict the rights and liberties of ordinary people living in this country – is as important now as it was 75 years ago, and will continue to be so.

Lord Bingham

6 June 2009