



THE GOVERNANCE OF BRITAIN
Lord Goldsmith QC's Citizenship Review

Report of a Working Group of the Bar Council

Summary

1. The Bar Council, representing over 15,000 barristers in England and Wales, welcomes the debate on Citizenship that has been provoked by the Government's Green Paper. The Bar Council believes that, whilst strengthening community cohesion, respect for the individual and for the rule of law and a proper understanding of the values of our democratic society are all fundamental keys to addressing the problems identified in the Green Paper, more legally enforceable rights and obligations are not necessarily the answer, at least on their own.
2. Part of the answer includes effective enforcement of the powerful legislation already in place - the Human Rights Act, anti discrimination and race hatred laws. Another part of the answer – and a fundamental part - is Education. Education that is also directed towards spreading the message that respect for others, free speech, freedom of conscience and free association are among the characteristics of our democratic society. That education must help every person to see the law as there for them, as something they share in common and equally with every other person, and as something that helps make a community without divisions.
3. Change must come from within our society and the driver for this must be education, not law. Yet education about the law could have a fundamental part to play. Discussion of the law, and increased understanding of the law – at homes, in schools, at the workplace, in social fora – has the potential to engage interest and thought from all involved, and on equal terms.
4. The Bar of England and Wales is ready, willing and able to play its part in citizenship education - but in all fairness, this must be available equally to all young people whether born here, staying here or arriving here, and to all residents new and existing, and to all intending immigrants.
5. The Bar is already committed to playing its part in promoting a more widespread understanding of our legal system, and the role of the law, throughout the community. An ambitious programme to ensure wider consideration in schools and universities of the law as a career has recently been set by the report of Lord Neuberger. We feel that these efforts will be complementary to wider education for citizenship.
6. We recognise that there are differing views on whether a new or written constitution or Bill of Rights is needed. Some within our group were of the view that it would exceed our remit to express a conclusion on that question, and we do not do so. We do however understand the arguments in favour and against, and we understand the point that argues that it might risk becoming a substitute for the Human Rights Act, so recently enacted.

7. It is however within our remit to express the view that more law-making in the area of citizenship is not necessarily the answer, at least not alone.

The Bar of England and Wales

8. The Bar Council is the representative body for barristers in England and Wales. It has about 15,000 practising members in practice, of which a majority are in self-employed practice and a minority are in employed practice. Other barristers subscribe to the separate Bars of Scotland and Northern Ireland.
9. Approximately 6,000 barristers do some publicly funded “legal-aid” work. Nearly 2000 more are employed in the Crown Prosecution Service, the Government Legal Service or the Courts Service. Almost 1400 work in house for companies and organisations. Many academic lawyers are also barristers.
10. All are closely involved in different ways with citizens from diverse backgrounds. Those practising in publicly funded work, or undertaking pro bono work, often have daily exposure to the vulnerable, the disadvantaged and the disaffected in society, and are thus in a position to make some observation of the practical application of notions of rights and duties of citizenship.
11. A further substantial number of barristers are listed as working overseas. The majority of these are foreign nationals, who came to England and Wales to attend University and be called by the Inns of Court to join the Bar of England and Wales before returning to their home nation to practise law. This is one important way in which the British notion of the rule of law and our principles of human rights are exported throughout the world. It is fair to say that British-trained lawyers of both branches of the legal profession have had a positive influence on the development of a variety of newer nations and this is demonstrated by the contribution of individual Commonwealth lawyers and judges to our shared jurisprudence and to upholding human rights wherever they are threatened.
12. The Bar is a diverse profession that is growing more diverse (and in its understanding of diversity) every year. In 2006, of the 1640 people called to the Bar 48.4% were male, 51.6% were female and 15.3% were from a Black and Minority Ethnic (BME) background. The latter figure compares favourably with the make up of the British population as a whole, where it is estimated that only 8% of the population is from a BME background. In November 2007, a working party of barristers, led by Lord Neuberger of Abbotsbury, made recommendations for improving access to the Bar. The

significance of the report is huge. The recommendations provide a blueprint to encourage young people from all over British society, with a particular focus on those from disadvantaged backgrounds or hitherto with lesser opportunity, to understand the law and in turn to consider a career in the legal professions. The report recognised that very important work has already been done in this respect, but proposed a full framework of existing and new initiatives. The Bar Council has already started work on implementation of the report. The Bar Council suggests that understanding of the law is key to encouraging the shared values that engender a sense of community amongst all our citizens, be they young, old, resident or immigrant.

13. A strong sense of community responsibility is evident amongst all members of the Bar. Both by inclination and training, barristers are particularly committed to upholding the rights of all citizens and maintaining a just society. The Bar Council, its committees and specialist Bar Associations have contributed over the years to public debate and lobbying and activities addressed to all aspects, theoretical and practical, of human rights, the rule of law, and issues relating to citizenship in its widest sense.

The Bar's pro bono, voluntary, public legal education, and related activity

14. The Bar has a history of pro bono and related activity. It is constantly striving to raise awareness of the importance of law in society, or undertaking work that has that effect. This is evident in a number of Bar Council initiatives. Some examples include:

- a) Initiative in conjunction with the Social Mobility Foundation

In July 2007, the Bar Council placed 26 central London state school children from disadvantaged socio-economic groups as interns in barristers' chambers in London; providing them with an opportunity to see how the Bar works and to gain experience in a working environment. Next year it is envisaged that the scheme will be repeated and extended nationally.

- b) The "speakers for schools" scheme and the "mock trials" competition

In June 2007, 940 schools had registered for the speakers' programme, which involves barristers speaking to school children about the importance of the legal system (and about the range of careers at the Bar). 682 schools have to date been twinned with barristers and the scheme will be extended in 2008 to cover a further

258 schools. The Bar also plays a lead role each year in the annual “mock trials” competition for schools and universities, run in conjunction with the Citizenship Foundation and sponsored by the General Council of the Bar in an amount of £78,000 a year. The Inns of Court have material outreach programmes too.

c) The Bar Pro Bono Unit, the Free Representation Unit and other pro bono initiatives

The Unit matches volunteer barristers with deserving cases referred by solicitors and advice agencies. The pro bono panel contains around 2000 pre-volunteered barristers, including 250 QCs who provide free legal advice and representation across England & Wales to those who need it but cannot afford to pay and cannot get “legal aid”. FRU operates a similar “clearing house” scheme, using those in the process of qualifying for the Bar to undertake the less complex employment and social security tribunal cases. Some of the Bar’s Circuits have free representation schemes concentrating on tribunal cases. Barristers are involved in a range of other pro bono initiatives. The Bar Council is a lead participant, alongside the Law Society and ILEX, in National Pro Bono Week each year, which includes public events in various parts of England & Wales, bringing home how relevant law is and how important it is that access to it is available to all, regardless of means or circumstance.

d) “Streetlaw”, Public Legal Education, and other work to explain and introduce the law

An open weekend organised by the Inns of Court in January 2008 attracted over 24,000 members of the public interested to see the legal working environment. National Pro Bono Week every year highlights the “streetlaw” initiatives of various law schools and others, supported by the professions, by which seminars are delivered in schools and community centres on legal subjects of interest and relevance. These might range from rights in employment, or of housing association tenants, the legal rights and responsibilities of young people, or the laws relating to search and detention. The Bar was represented on the PLEAS Taskforce. A member of the Bar serves as a trustee of the National Council for Citizenship and the Law, associated with the flagship “Galleries of Justice” project at Nottingham.

e) The Bar Human Rights Committee

Drawing on the voluntary services of hundreds of individual barristers,

the committee is dedicated to the promotion of the rule of law and human rights throughout the world. Projects include capacity building, post conflict legal reconstruction and advocacy training in Africa, the Caribbean, Asia, the former Soviet Union and the Middle East. The Committee supports persecuted judges, lawyers and human rights organisations with practical assistance, lobbying and publicity.

- f) Participation in the Attorney General's (National) Pro Bono Co-ordinating Committee and International Pro Bono Committee.

These Committees bring together (variously) the professional bodies, the voluntary sector agencies, the main pro bono volunteer organisations of solicitors, barristers and legal executives, Government lawyers, the Judiciary and academics. On the International Committee representatives of the Department for International Development and the Foreign and Commonwealth Office are involved, with the Committee undertaking a co-ordinating role for pro bono legal training, legal assistance, and Justice assistance work overseas. Training is provided locally or during visits to the UK. Most recently the Bar participated in the first meeting of the "Law in Schools" sub-group of the Attorney General's Pro Bono Co-ordinating Committee, alongside representatives of Government departments, voluntary sector agencies, the education sector, and other representatives of the profession and its main pro bono organisations.

- g) Bar in the Community

Bar in the Community sees members of the Bar supporting the voluntary and charity sector by agreeing to be trustees, management committee members, or to undertake review work, for the charitable organisations that can be so central to a community. This initiative does not involve a contribution of legal skills but it does provide a further means by which the profession engages with all areas of society.

The Green Paper

15. The Bar Council welcomes the Governance of Britain Green Paper. It believes that its goal, of forging a new relationship between government and citizens that enhances the rights and responsibilities of the citizen, will contribute to the strength of the United Kingdom as a democracy and to the maintenance of the rule of law. However, it is by no means persuaded that the answer is more law, or new legally enforceable norms. It is also important to recognise that one aspect of what makes successful citizenship is essentially the social contract between citizens and citizens,

and not simply the engagement between citizens and the state.

16. It is recognised worldwide that for the rule of law to be maintained and for citizens of any state to enjoy the basic human rights, the support of a strong democracy and a democratic process is essential. The British notion of democracy has developed over centuries, but the version of democracy that we now recognise as the cornerstone of our national identity was probably settled only during the last century. It is likely to be subject to further change, unless its fluidity is arrested by a fixed form of covenant between the state and its citizens which does not permit change. As Winston Churchill commented: "No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those others that have been tried from time to time."
17. It is commonly suggested that our national identity is under sustained attack and that our national pride, pluralism, respect for others, fairness, freedoms of thought and speech and other commonly understood concepts of "Britishness" have been undermined. The Bar Council does not share this pessimistic view, though it would urge that all these values are in need of planned and targeted support and reinforcement, but in a modern context and in a way that recognises and celebrates the increased diversity that the country is now so fortunate to enjoy.
18. British citizenship is a package of values that cannot be defined with precision. The importance of each value and what is included in the package may also vary from citizen to citizen. Accordingly, the Bar Council suggests that the essential values governing the conduct of citizens in their relations with each other cannot all be articulated in or enforced by law, though they can be encouraged by the existence of laws that define the parameters between the acceptable and the unacceptable, between legal rights and obligations and between citizens and the state.
19. Laws we have in plenty. We have laws that regulate all the principal forms of relationship between citizens and the state, and between citizens and citizens. They need to be enforced and from time to time they may need to be changed. We enjoy a mature democracy and Parliament has in recent years legislated to enforce social behaviour well beyond the traditional and historic needs of the criminal and civil law. There remains the sub-text of values, beliefs and social habits, some of which are apt to be affected by the law and some of which are not.
20. Britain is certainly in the grip of evolutionary changes – including for the worse - in attitudes and in values. The factors to which these changes are attributed vary with the commentator; but have been suggested to include, among other things, 4th generation unemployment in some areas, family

breakdown, foreign and domestic criminal gangs, youth crime and disaffection, lack of respect and tolerance, the effects of the welfare state, perhaps a culture of selfishness and a general diminution of community spirit. In addition, our society faces increased threats from terrorism and the country is involved in military activity in Iraq and Afghanistan. These have, for example and in ways that are profoundly regrettable and so often avoidable given more understanding, provoked some hostile attitudes towards citizens and immigrants from the Middle East with predictable reactions from those ethnic communities that feel themselves persecuted, and misunderstood.

21. What is less often mentioned is the effect education has had, and can have, on the interpretation and development of traditional "British values" and the development of our society generally. Universal secondary education has produced both economic advancement and social confidence, engendering political scepticism and encouraging challenges to authority; but it is important to ask whether it has also manifestly failed to provide balancing moral and ethical teaching. The Government has attempted to address the need for mutual respect and understanding by emphasising the diverse nature of our society, but arguably without, at least to date, making inroads into prejudice of the order of magnitude that is required. The Justice Secretary has rightly pointed out that in our new "consumer society", people are more independent and more empowered; but the result of this is that rights "become commoditised, yet more items to be 'claimed'."
22. The Green Paper suggests that nations such as the United States, Canada, Australia and South Africa (to name but a few) have a better sense of citizenship because the citizens of those nations have had to develop that identity in order to establish themselves as nations. The United States is singled out, and the war of independence and the American civil war are cited as two key factors, that forced Americans to develop and adhere to a concept of America and American values. Those values are highly prized and have been defended with great gusto on many occasions. It is suggested that out of war and uncertainty have come certainty and stability, simply because these were essential for survival as a nation.
23. The United Kingdom for many generations suffered no serious internal threats to its stability; but during the Second World War it certainly experienced forceful external threats, the effects of which were manifest in our society for many years afterwards. In recent years, international terrorism has replaced the threat of foreign invasion. Our decline as a colonial power, which had supported a lengthy period of prosperity and national confidence, further contributed to post war social uncertainty. This has been increased over the past decade by high levels of immigration,

both from the expanded European Union and from many countries elsewhere in the world including those that have had no traditional links with Britain; and thus (it is argued) no knowledge or understanding of our "values".

24. English law has developed to reflect and respond to this uncertainty in dramatic ways. Since 1950, Parliament has enacted a vast raft of criminal laws of ever increasing complexity, a series of legal measures designed to outlaw gender, race, age, disability and other discrimination, laws affecting a wide range of personal practices, land and property ownership and family relations; and finally passed a Human Rights Act to govern the interpretation of all of them. In addition, membership of the European Union has opened our legal and social system to the direct and indirect influence of our partners in Europe.
25. It is thus perhaps not surprising that our citizens are confused as to the status of, or even lose track of or overlook the importance of, purely social norms of behaviour and attitudes. If a right or obligation is NOT enforced by a law, is it therefore devalued; is it remembered; is it practised? Is the law the be all and end all of all "rules" governing our living communally in society and our social intercourse?

Would a written constitution provide a solution?

26. It is axiomatic in law that every right has a corresponding obligation. However, not all of the latter are expressed in law. We are obliged by law to tolerate (and not to discriminate against) individuals for their personal beliefs or sexual preferences; yet the corresponding obligations of the individuals and groups concerned to act in public with modesty and show respect for those with different views and beliefs is nowhere expressed in law. Many children are aware that they cannot by law be found guilty of criminal offences; but the notion that this protection reflects the obligation of their parents to control their behaviour has only recently been reflected in law. The concept of a corresponding, though not necessarily direct obligation for every right is a vital cement for a free society - it is the payment we each make to the community and the State for our individual and communal rights being recognised and upheld.
27. The 1689 Bill of Rights was enacted against the background of a society experiencing deep uncertainty. The restoration of the monarchy, after a civil war and a period of religious repression, released tensions and raised expectations in a society which had tasted a form of democracy and feared a wholesale reversion. But crucially, the 1689 Bill was designed to guarantee citizen's rights and provide for their protection *vis a vis* the State. The Bill of Rights and Obligations now under discussion is of

another nature altogether. Whatever the arguments for or against the articulation and codification that such a Bill would involve – which is a subject addressed by others – our point is that for successful modern citizenship a Bill is not essential and would not be enough. It is not about more individual rights, or more enforceable obligations, than the law already provides. It is the many moral and social rights and obligations that lie outside the framework of the law that must first be recognised before they can be observed. The degree to which they are observed will mirror the degree to which they are recognised – and universal recognition is what they lack at present.

28. Parliament has identified our “fundamental” individual rights and provided for their protection above all others in the Human Rights Act. The Act, and the European Convention on which it is based and which is incorporated in it, and the related UN Conventions, reflect a virtually universal understanding and acceptance throughout the world. We see force in the points that (a) citizens are still in the process of learning about this existing framework and (b) replacing it with another might signal that what we have now is insufficient – a potentially damaging message to send to other countries with a shared foundation derived from the existing Conventions. But the shorter point, within our remit, is the need to guard against the notion that, to replace this relatively recent Act with similar terms in an enforceable written Constitution, would do enough for citizenship or (in that context) allow sufficient room for growth, development or change in the future.

Access to law

- 29 Law – even in a constitution - itself offers nothing unless it can be accessed. We have made brief mention of the Bar’s commitment to practical methods of striving to ensure access to justice for all. It is essential that Government realise that proper public funding to allow access legal services for those who cannot afford to pay is an essential part of any present or proposed framework of laws. The Bar is proud to play its part in providing pro bono services to the most vulnerable, but pro bono services can only exist as an adjunct to and never as a substitute for a proper system of publicly funded legal services.

Education about the law, and about more than the law

- 30 The Bar Council also suggests that the additional key to modern citizenship lies in education, not only about the law, but also about the social and ethical framework that sits outside, but side-by-side of, the law.

- 31 There are already a number of educational initiatives designed to inform and enthuse young people. The Jewish Association for Business Ethics (JABE), for example, through its “Money and Morals” programme, provides a comprehensive curriculum and runs roadshows, setting out a range of ethical issues in the workplace for discussion by 15 – 18 year olds in over 600 state and independent schools throughout the UK. JABE’s experience is that there is a lack of an ethical framework to the curriculum which hits those under 25 the hardest. JABE has found that teenagers are bombarded with mixed messages leaving little room for clear direction on basic values. JABE is just one example. Similar instances may be found organised by other groups – religious (including Muslim) as well as non-religious.
- 32 We have referred above to several of the related activities supported by the Bar Council. Further voluntary groups work with immigrants, mentoring and providing information and practical help. We commend full attention being given to the recommendations of the PLEAS Taskforce. We note, and welcome, that the Attorney General’s Pro Bono Coordinating Committee Law Schools Sub-Group is now addressing “Law in Schools”. This is an example, but it is in exactly the right direction. The conclusions of the first meeting of the “Law in Schools” initiative included (a) a consensus that “legal education”, including discussion of the legal system and what the law is or should be, for those of school age could help develop a wider understanding and sense of citizenship and (b) that increased coordination of initiatives in this area was to be welcomed and encouraged.
- 33 Our legal profession, and those training for it, represent a huge and key resource in this necessary endeavour to deliver education, and with it, understanding. Importantly, most of the initiatives in this area are those that do not involve “teaching at” anyone; they involve issues that people (especially, but not only, the young) have views on and find interesting to discuss. That is certainly the Bar’s repeated experience – whether the medium is a mock trial, a streetlaw presentation, or a “speaker in school” session.
- 34 These initiatives need to be celebrated, publicised and encouraged a great deal more than they are. They illustrate not only the great groundswell of kindness and sympathy that ordinary British citizens extend to those who make this country their home or take refuge in this country, but also the real extent of the mutual respect and understanding that characterises our “good citizens”. The press and media have their part to play here, but we do not feel that they always play it – or are encouraged to play it. They could be a vital conduit of understanding, where misunderstanding is currently so rife. Anecdotally, we note how much more local, as opposed to national, newspapers take the time to celebrate the positive images of public spirited citizens.

Citizenship ceremonies and tests

- 35 Citizenship Ceremonies can evidently help the successful immigrant or young person to feel a sense of community and belonging. We applaud the efforts that have already been made by some local authorities to celebrate the achievement of citizenship and to welcome new immigrants publicly into the community. However, the ceremony alone cannot cause an attendee to absorb or ascribe to any shared “British” values or community spirit. Such a ceremony is the culmination of a lengthy process (as described by Dr Kiwan in her paper “Becoming a British Citizen: a learning journey”) that confirms British nationality; but it is the education that precedes such ceremonies that will have the wider effect. And the education can reach all participants, whether they would or would not be successful in achieving what was required to take part in a ceremony. The recommendations that Mark Rimmer makes for engaging local schools, government and the community will do far more to inculcate a feeling of citizenship. Education and the provision of clear and simple information to explain – and encourage discussion of - a British citizen’s rights and obligations – crucially, in terms of the rights and expectations of others - will promote understanding and acceptance of our common values.
- 36 Education for citizenship should be provided equally to foreign nationals (whether new residents or intending immigrants) and those – especially young people – who have lived in this country throughout. But far more important than tests, to immigrants and new residents from EU and other countries as well as to disadvantaged youth who have lived here throughout, is the acquisition of English language skills and the support of existing citizens, as exemplified by the findings of TimeBank and the other organisations already working to provide mentors for those new to this country. Language brings understanding of our culture, history, literature and law. This is surely more fundamental to accepting our “common values” than anything else.
- 37 It is conceivable that a simple statement or charter of rights and responsibilities, that can be easily recalled and remembered and can be provided to all citizens, could form part of this education. But it should be something that all are taught and invited to subscribe to; and above all to discuss, for it is dialogue and the understanding and respect that can come with it that can make society.

Conclusions

We believe, with Dr Kiwan, that education is the key to forging a new relationship between Government and citizens, and between citizens and citizens, in this country. We have strong, modern laws already in place to penalise infringements of all forms of human rights and to enforce citizens' duties towards each other and the State. Clearly, we need to remain vigilant to ensure that illegal behaviours do not go undetected and unpunished. But the Law alone will not change human nature or build strong community ties, where it is left as something to enforce rather than to understand, or worse still where access to it cannot be had by some in society. Only proper access to the law when it is needed, and continuing education, and dialogue, about the law, and about more than law, will do this.

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