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The WDA – HSG Letters

on Demographic Issues

Human Rights Across the Generations in Ageing Societies

by Baroness Sally Greengross

No. 2008/1



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Human Rights Across the Generations in Ageing Societies¹

Baroness Sally Greengross²

INTRODUCTION

The 1948 Universal Declaration of Human Rights was a direct response to the atrocities of World War II. Appropriately, it was Europe that took an early lead by creating the first human rights treaty in the world; the European Convention on Human Rights and Fundamental Freedoms (ECHR)³, which came into force in 1953 and established the first mechanisms for bringing complaints on an international basis.

Nevertheless, despite being the source throughout the 1980s of more cases brought under the ECHR than any other country bar Turkey, the UK was late in adopting the ECHR, incorporating it into UK law only in 1999 with the Human Rights Act. Obviously, the adoption of the convention was long overdue. Today, the Human Rights Act is still in its infancy, and much work needs to be done to embed the culture of "rights for real" in public policy; in the words of former Secretary of State for Constitutional Affairs, Lord Falconer, "all human beings should be treated with respect, equality and fairness. These principles, I believe, are the foundation of an equal, fair and civil society". Who could dispute this viewpoint?

We have fought for a long time, and against the odds, for a better deal for older people in terms of pension provision and thus financial security, equality of opportunity, equality of access to health and social care, and the right to be treated at the same standard as other age groups. However, within society, a perception persists that older people are a separate and distinct group, so that related issues are still presented in terms of the 'crisis' of an ageing population and a 'burden' whose 'costs' devolve onto the younger employed.

1 This paper was presented at the Third World Ageing & Generations Congress in St.Gallen, Switzerland, hosted by the World Demographic Association

2 Executive Chair of the International Longevity Centre

3 Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Rome, 4.XI.1950

In the UK, the implications of ageing across the generations are only now starting to have a serious impact on the political agenda. Nevertheless, there are encouraging signs that policy makers are beginning to accept the need for strategic investment to assist people to contribute productively at all levels in society for as long as possible. For example, as part of his first Cabinet, Prime Minister Gordon Brown created a Minister for Equality and announced that one priority of the Government Equalities Office will be to provide support for families giving care to older members. In health care, for example, the NHS programme Tackling Health Inequalities focuses on spearheading areas of the greatest health and social deprivation, which involve about 44 percent of the Black and Minority Ethnic (BME) population of England (and 28 percent of the total population).

Thus, 2007 was a pivotal moment in the evolution of human rights and equalities policy in the UK, especially with the advent, in October 2007, of the new Commission for Equality and Human Rights. This commission will bring together in one organisation all the previously separate strands – gender, race, disability, and for the first time, age and faith. Indeed, one could speak of a 'hierarchy of equality' that has evolved in the past 30 years, with some groups more successful than others at challenging discrimination – often because the discrimination has happened within the workplace and thus received a very different public response. For example, in highlighting the multiple inequalities experienced by women from ethnic minorities, the 2007 Equalities Review showed that for this population, the picture is now one of multiple and complex inequality.

Our aspirations for a society at ease with diversity, and at ease with its ageing, will present us with new and pressing challenges. It may not always be possible to deliver equality alongside human rights. In the UK, as in other European countries, debate on faith issues, particularly at the militant extreme, suggest fundamental schisms about the very concept of equality and adherence to human rights. Yet faith comes under the category of qualified rights, which can be restricted in order to protect the rights of others or the interests of the wider community so long as any restriction is proportionate and has a legitimate aim. Therefore, it will be interesting to see how this dichotomy plays out in practice.

Additionally, as the EU Commission's Green Paper "Confronting demographic change and a new solidarity between the generations" recognises, the changing relative sizes

and evolving roles of the different generations are challenging the current intergenerational balance, while the arrangements that have delivered social cohesion for many years are being brought into question. Nevertheless, certain trends are common across the EU: a declining number of marriages, with people marrying at a later age; rising divorce numbers; fewer children being born and those to older parents; more single-parent households, with a third of them encountering poverty and social deprivation; and more than 12 percent of the EU population living alone.

To face these realities, we must work towards a new inter-generational balance that invests in the young and provides more support to families while encouraging older generations to remain active. To this end, the EHRC should provide the ideal mechanism for establishing, and advancing, the idea that we must maximise, and protect, the potential of every individual, and it could, in time, drive a gradual shift in perceptions about ageing and inter-generational relationships. Only in this way can we achieve social cohesion and deliver lasting human rights at all levels of society. However, doing so means paying particular attention to certain key areas of success and failure.

PENSIONS AND WELFARE

It has been recognised for many years that the state retirement pension (SRP) system, long one of the cornerstones of the post-war welfare state, is unsustainable in its current form. Accordingly, the 2007 Pensions Act marks a welcome recognition that time spent caring should qualify towards the state retirement pension (SRP); this and the reduction of the qualifying period to 30 years are reforms of particular benefit to women. However, there is still concern about the level of pension savings generally, in particular among younger workers, and the disproportionate dependence on housing as an asset for later life. Indeed, the £1.3 trn in personal debt clearly indicates that spending is quite simply going too far in the wrong directions.

Yet income is a key determinant of life expectancy, and under our human rights provisions, there is an absolute right to life. Is there, therefore, a human right to as long a lifespan as possible? For example, in the UK, socio-economic factors underpin a ten-year difference between the life expectancy of a middle-class man in England's South East region and a manual worker in Scotland. Yet, as is often remarked, rights do not

exist without responsibilities, so whose responsibility is it to ensure that we reach our maximum potential lifespan? By what mechanisms do we remove such disparities? Given that the government has raised the qualifying age for the state pension, these issues bite in a very real way.

Our system of funding long-term care is equally acknowledged to be unsustainable and creates artificial distinctions between health care and social care. In a human rights-based approach, the distinction is irrelevant for someone in need of a bed, a bath, or help with eating. Thus, recent government initiatives like the Dignity in Care Campaign are very welcome, but as yet there has been no injection of money into social care equivalent to that received by the NHS in recent years. Moreover, according to a recent report by the UK Parliament's Joint Committee for Human Rights, "Older people and healthcare", over a fifth of care facilities failed to meet even minimum standards. Thus, it concluded, an entire 'culture change' is needed.

Indeed, a test case on social care highlighted a critical example of the Human Rights Act in practice. Private care homes were judged to be exempt from the Act because, despite receiving most of their funding through public channels, they were deemed not to be public authorities. This decision leaves the majority of older people receiving care unprotected by the Act. Obviously, the government should have passed legislation to deal with this problem at the outset but has preferred to leave it to the courts to determine an outcome, a decision that has now rumbled on for over two years. This legal chess game may in the long term be the best way of producing a durable result, but in the meantime vulnerable people are left in a wholly unacceptable limbo.

Partnership between an enabling government, strong public services, and meaningful private choice is not, in the end, a progressive situation if one's sole asset, the home, must be sold to pay for care costs. Thus, the role of local authorities – i.e., through Public Service Agreements – should be to actively and responsibly promote and create equalities, move away from the negative, and avoid discrimination.

HEALTH AND CARE

The National Service Framework 2001 has set standards across health services and is tackling age discrimination and provision of services on the basis of need as the sole

criterion. However, despite charges that policies should be "demonstrably fair", without force of law, such a touchstone is difficult to gage and enforce. We must also recognize that it signals the end of the separation between old age services and adult services by local authorities.

Not only do some already obvious key pressure points, like cost effectiveness as a criterion for drug funding by NHS, condemn patients to deterioration before the drug is even prescribed, but costs ignore the wider social cost of caregivers lost to the labour market (and the impact on *their* health). Likewise, budgetary limitations on care home funding leads to couples being separated or having to move from somewhere they have become settled.

Overall, the UK is confronting a major cultural shift in the funding of essential services in health and social care. However, because universal state provision is unaffordable, such services are becoming rationed. Moreover, the National Institute for Health and Clinical Excellence (NIHCE), created to bypass postcode prescribing, has only created new ethical dilemmas about the allocation of scarce resources. For example, co-payments constitute a politically difficult concept for the UK in terms of the imbalance between rights (the duty of the state to provide) and responsibilities (of the adult towards society). Yet the current situation is unsustainable.

A stark contrast also exists between the priority given by social services departments to child protection and that accorded to older people's services. Therefore, we must shift focus from the standards that can be delivered within a certain budget to the standards that meet human rights. If we continue to see failures through under-funding, the more fundamental issues will continue to be ignored.

It is also difficult to prove ageism in health; most particularly, because of the problem of co-morbidity. That is, doctors do and should advise against treatment that is futile or may harm the patient. Yet it is essential that decisions be based on the assessment of the individual rather than on generalisations about age or likely outcomes. For example, older people are currently much less likely to be treated as immediately, or urgently, for cardiovascular disease (CVD) as younger patients because quality adjusted life years (QALYs), based on the core criterion of how long the patient will live, militate against older people. Instead, this crude assessment favours the young

because of assumed years of productive life. As a result, a football hooligan gets another forty years, while a Schweitzer is denied another four.

At the same time, topics related to end-of-life issues, such as assisted dying, are much debated in the UK, raising the question of whether we value the end of life as a stage like any other. Yet denial of death's organic nature has led to the very difficulties we now encounter in regard to the terminally ill. We know that the incidence of dementia is set to rise sharply in the final phase of life – perversely, as a result of our greatly improved lifespan – but as yet have no clear strategy on how to confront this rise. Other European countries – for example, Switzerland – have a far more developed and rational approach.

The main users of health care and help in daily living activities are those who have reached the end of their life span. Thus, it can be expected that the future needs for health and social care will not depend primarily on the number of people above a certain age (this will rise as a result of rising life expectancy which postpones the moment of death) but on the number of people entering the final phase of life.

AGE DISCRIMINATION IN GOODS AND SERVICES

Human rights can be breached either by direct or indirect action or by direct or indirect discrimination. For example, age barriers are more often implicit than explicit. That is, they exist through deeply entrenched behaviours and attitudes towards older people, often based on generalised assumptions about individual ability to benefit (e.g., from a given medical treatment) or capabilities to perform a given task (e.g., in employment). Undoing these behaviours and practices requires much more than removing references to age, it requires a fundamental shift in attitudes and beliefs about age, ageing, and older people and a genuine belief that people of all ages are valuable contributors to society.

Therefore, even though the EU Directive on Age Discrimination has now been implemented in the UK, we have yet to tackle discrimination in goods and services, such as driving and travel insurance, which should be based on capacity not age.

In terms of gender, women have long been fighting for equal treatment, but longer life spans mean more expensive annuities. Therefore, because the UK rejected the EU

Commission's proposal to equalise the treatment of men and women, and even accepting that decisions should be based on capacity, women will now be able to buy cheaper car insurance but will pay more for their annuities.

ASSETS AND THE LABOUR MARKET

Despite the enactment of the EU directive on age discrimination, as well as welcome legislation in recent years (e.g., the Work and Families Act, which gives people the right to request flexible work schedules to fit in with care responsibilities), there are still too many barriers to workforce participation. Arguably, a society serious about respecting the capacities of each age group to contribute would have made it a right to *receive* flexible working hours not simply request them.

Moreover, if our aim is to maintain a cohesive society in which the rights of all generations are protected, a legitimate inter-generational contract is vital; therefore, policymakers must monitor and evaluate when the challenge to this legitimacy becomes so severe as to warrant a response. In the UK particularly, where people of working age bear most of the costs of both the National Health Service (NHS) and the pension system, any inter-generational contract must address asset shifts, fertility, care issues, and extended and complex family structures.

Such an inter-generational contract is particularly crucial at a time when, according to research by the UK's International Longevity Centre (ILC), the increasing use of property as a means of asset building is leading to much higher borrowing and thus less money in pensions, savings, and other financial products intended to meet the needs of older life. Because of such ease of borrowing and its relatively low cost, younger groups feel comfortable with high levels of debt, which not only drives asset accumulation but also distorts career choices. That is, living with debt is built in to their calculations about career and family formation. At same time, because of house price inflation, middle aged groups have been realising large capital sums from property, so there has been a significant transfer of illiquid wealth from younger to older people. As one EU report⁴ puts it, "older cohorts pre- and post-state pension age have on average

⁴ The Social Situation in the European Union 2005–2006. Overview: Intergenerational Balances and the Demographic Challenge.

benefited significantly from inflation in the value of their property assets, and this has been matched by growth in the value of mortgage debt held by younger cohorts”.

In contrast, younger people across southern Europe tend to stay longer in the parental home than did previous generations. For example, as many as 56 percent of young Italians aged 25–29 years – and more men than women – are still living with their parents. Similar trends are observed in Spain and to a lesser extent in Greece and Portugal. However, in countries like the UK, Finland, and Denmark, the percentages for this age group are much smaller, ranging from 18 percent in the UK to almost 0% in Denmark. This overall trend towards later departure from the parental home could be due to more years spent in education and/or to poorer opportunities for younger people in the labour and housing markets making it more difficult for them to set up their own households.

Whichever the case, over the past 25 years, all of Europe has seen enormous economic change coupled with demographic change. Most particularly, the greater workforce participation by women in developed countries has created inward migration into domestic service, care services, and food production. Unquestionably, there is an impact on the source countries, in many of which basic human rights were already precarious and the mechanisms to defend them scant or non-existent. At the same time, traditional social and family structures are being undermined by the labour migration of the principal wage earners, which often places a heavy burden on older generations. Therefore, we in the rich north must be sensitive to the unintended consequences of the migration flow northwards: it is not, as often portrayed, a simple win/win economic equation if two-thirds of the women in South America work outside their country of domicile.

CLOSING REMARKS

We increasingly recognise that we live in an inter-dependent world. As the history of the twentieth century shows – particularly that of Europe – nothing endangers the most fundamental human rights more drastically than rapid economic and social destabilisation.

Yet, despite the advent of the Human Rights Act and the creation of the EHRC, we are a long way from achieving a pro-human rights culture in the UK. Rather, there remains

public scepticism about the Act, perhaps because of some headline-grabbing test cases and the distorting effect of judgements on immigration, security, and terrorism wherein convicted criminals and others whose presence in the UK is certainly not, in the traditional phrase ‘conducive to the public good’, have nevertheless been rewarded, in effect, with continued residency, after successfully raising HR challenges to their removal (and detention). It is early days, but I doubt very much whether we can convince the public that we are serious about defending their ‘rights for real’ unless this paradox can be resolved.

Appendix: Reproduced from *Rights for Real* by Frances Butler, Age Concern.

The European Convention on Human Rights: relevance to older people using public services		
Convention Article		Application to older people
Article 2	Right to life	<ul style="list-style-type: none"> ■ Decisions about life-saving health care treatment ■ End of life issues ■ Deaths through negligence in hospitals and care homes
Article 3	Prohibition of inhuman and degrading treatment	<ul style="list-style-type: none"> ■ Elder abuse
Article 5	Right to liberty	<ul style="list-style-type: none"> ■ Restrictions on older people's movements in care homes
Article 6	Right to a fair hearing	<ul style="list-style-type: none"> ■ Decision-making processes affecting services for older people
Article 8 (1)	Right to respect for private and family life, home and	<ul style="list-style-type: none"> ■ Decisions about care in old age (whether it is provided in the home, in a care home correspondence) ■ Remaining with partner at home or in same care home ■ Effects of care home closure ■ Poor quality care falling short of degrading treatment ■ Consent to medical treatment ■ Adoption of grandchildren ■ Use of personal information

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