

BETWEEN RIGHTS AND RESPONSIBILITIES

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A Fundamental Debate

Edited by

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FOREWORD

It is a pleasure for me to write the foreword to this book on rights and responsibilities.

As the editors note in their introduction, the book was inspired by a conference that took place some ten years ago, in Leuven, in the framework of the Summer Course on Human Rights. The Summer Course was organised annually by the University of Leuven and the Dutch Human Rights Research School. With the late Peter Baehr, Cees Flinterman, Hans Werdmölder, Stephan Parmentier, Wouter Vandenhole and others, I was part of the group that was responsible for the organisation of the event. I have the best memories of the many times that we sat together to prepare the course, of the many discussions with colleagues and students during the course, and of the many pleasant encounters with our loyal friends and lecturers from Northwestern University and the University of Notre Dame, Doug Cassel, Steve Sawyer and Barbara Fick. Writing this foreword brings back all these memories.

Michaël Merrigan later joined Stephan Parmentier and Hans Werdmölder as an editor of the book. A bright researcher, he is finishing his PhD research on fundamental duties and responsibilities. As Michael's promoter, I am closely following that research. It will no doubt bring again new insights to the topic covered by this book.

Fundamental responsibilities, and their relationship to fundamental rights, seem to have become more topical than ever. Where the relevance of fundamental rights is questioned, fundamental responsibilities are often presented as an alternative.

In fact, human rights have always been in a close relationship with fundamental responsibilities. In Article 29(1) of the *Universal Declaration on Human Rights*, it is proclaimed that 'everyone has duties to the community in which alone the free and full development of his personality is possible'. It is true that such references are relatively rare in the subsequent international human rights treaties. But perhaps this can be explained by the simple fact that the stated aim of these treaties is to protect the individual against arbitrary action by the state, and that the drafters did not consider it necessary to repeat, in such a context, that the individual also has responsibilities vis-à-vis the state or others.

One could say that an individual's fundamental rights can only be fully understood against the background of his or her fundamental responsibilities. Rights are guaranteed to individuals, but this does not take away the fact that individuals, as members of a given society, also have certain 'membership'

obligations. The existence of fundamental responsibilities is an essential feature of a democratic society, in which individuals or groups of individuals must be prepared to make concessions, for the benefit of society as a whole.¹

These fundamental responsibilities seem to be based, like fundamental rights, on respect for human dignity.

Human rights can be interpreted in such a way that they become counter-productive. The international human rights treaties are based on the idea of a fair balance between individual rights and the general interest or the rights of others. Most human rights can be limited for good cause. It is for those who have to take decisions that can affect the individual situation of citizens, to search for the proper balance. Similarly, fundamental responsibilities should not be given an overbroad meaning. Putting too much emphasis on fundamental responsibilities, for instance by making the enjoyment of inalienable rights dependent on the fulfilment of certain obligations, could lead to a limitation of human rights to a greater extent than is acceptable in a democratic society.²

Everything is, therefore, a question of measure.

This book tries to steer the reader 'between' rights and responsibilities. Starting from a general perspective, it moves on to concrete situations where both rights and responsibilities may be relevant. In many contributions, the tension between rights and responsibilities is made tangible. The authors take positions, and try to find the right balance. This is not an easy task, as there is not so much 'hard' material to rely on.

The authors thus contribute to a debate that will continue to go on in Europe and elsewhere. Their contributions can and should enlighten the participants in that debate.

May this book lead to a better understanding of the position of individuals within 'their' society.

Paul Lemmens
Judge, European Court of Human Rights
Professor, KU Leuven

¹ See ECtHR [GC], 13 February 2003, *Refah Partisi (Welfare Party) and Others v. Turkey*, § 99, ECHR, 2003-II; ECtHR [GC], 16 March 2006, *Zdanoka v. Latvia*, § 100, ECHR, 2006-IV.

² Compare Article 17 of the European Convention on Human Rights: 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.'

CONTENTS

<i>Foreword</i>	v
<i>About the Authors</i>	xiii

Introduction. Towards an Integrated Vision of Rights and Responsibilities Stephan PARMENTIER, Hans WERDMÖLDER and Michaël MERRIGAN	1
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1. From Rights to Responsibilities: Broadening the Paradigm	3
2. From Agenda-Setting to Implementation: Developing an Agenda for Action.	5
3. From Legal and Philosophical Discussions to a Grounded Debate: Socialising the Forum	6
4. Introducing this Volume.....	7

PART I

FUNDAMENTAL RIGHTS AND FUNDAMENTAL RESPONSIBILITIES: SETTING THE SCENE

Human Rights and Human Responsibilities. Setting the Ethical and the Conceptual Scene René FOQUÉ.	13
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1. Introduction	13
2. Setting the Ethical Scene.....	14
2.1. Three Proposals for Charters of Human Responsibilities	14
2.2. Calibrating the Balance: the Ethical Dimension	16
2.3. Responsibility, Autonomy, and the Capacity for Reflection	17
2.4. Responsibility and the Heuristics of Fear	20
2.5. Responsibility-in-Context	22
2.6. Another Cosmopolitanism	24
3. Setting the Conceptual Scene	25
3.1. Responsibility as a Hidden Aspect of Human Rights.....	25
3.2. Kant's Abstract Moral Duty.....	27
3.3. Criticising the Kantian Morality of Duty: Rethinking the Ethical Perspective	28
3.4. Human Rights and Human Responsibilities.....	30
4. Conclusions.....	33

4.1. The Need for Conceptual Clarity	33
4.2. The Ethical and the Conceptual Have to Meet Each Other in a Political Context	33
4.3. Do Not Transform the Ethical Life of a Society in Terms of Legal Obligations	34
Rights, Responsibilities and Duties for the Civil Society. Moral Challenges Put Forward by the Millennium Development Goals	
Willem VAN GENUGTEN	35
1. Introduction	35
2. A Few Historical Remarks	36
3. The Present Way of Looking at Duties	37
4. Moral Duties for Individuals and their Organisations?	41
5. Concluding Remarks	48
Steering Clear of the Twin Shoals of a Rights-Based Morality and a Duty-Based Legality	
Douglass CASSEL	51
1. The Poverty of a Rights-Based Morality	52
2. A Religious Perspective	53
3. Affirmative Duties in International Human Rights Instruments	55
3.1. Universal Declaration of Human Rights	56
3.2. American Declaration of the Rights and Duties of Man	56
3.3. African Charter of Human and Peoples' Rights	58
4. Duties as Restrictions on Rights	59
5. Codifications of Duties	60
6. 'Horizontal' versus 'Vertical' Duties	63
7. Conclusion	64
Human Duties and Responsibilities for the Reinforcement of Human Rights. The Declaration of Human Duties and Responsibilities (1998)	
Patricia MORALES	67
1. The Duties and Responsibilities of the DHDR	69
1.1. The Right to Life and Human Security	70
1.2. Human Security and an Equitable International Order	72
1.3. Meaningful Participation in Public Affairs	74
1.4. Freedom of Opinion, Expression, Assembly, Association and Religion	75
1.5. The Right to Personal and Physical Integrity	75

1.6.	In Search of Equality	76
1.7.	Protection of Minorities and Indigenous Peoples	77
1.8.	Rights of the Child and the Elderly	78
1.9.	Right to Work, Quality of Life and Standard of Living	78
1.10.	Right to Education, Arts and Culture	79
1.11.	Right to a Remedy	80
2.	Solidarity as the Road to Fulfilling the Responsibilities and Duties for Human Rights	80
3.	Final Remarks	81

PART II

RIGHTS AND RESPONSIBILITIES IN SPECIFIC CONTEXTS

Human Rights in a Globalising Economy. Is the Right to Social Protection Qualified by a Duty to Work?

	Wouter VANDENHOLE	85
1.	Introduction	85
2.	Cultural Relativism and Human Responsibilities	87
3.	The Neo-Liberal Challenge: Balancing the Right to Social Protection and the Duty to Work	91
3.1.	International Covenant on Economic, Social and Cultural Rights	94
3.2.	ILO Convention No. 168 on Employment Promotion and Protection against Unemployment (1988) and the European Code of Social Security	96
3.3.	(Revised) European Social Charter	100
4.	Conclusions	112

Human Rights in a Globalising Economy. Rights and Responsibilities of Trade Unions

	Barbara J. FICK	113
1.	Introduction	113
2.	Unions as Beneficiaries of Human Rights Protection	114
3.	The ‘Traditional’ Role of Trade Unions	115
4.	The Importance for Unions to Perform a Broader Role	117
5.	Are Trade Unions Fulfilling their Responsibility?	120
6.	The Way Ahead	122

Fundamental Rights and Responsibilities within a Multicultural Society	
Marlies GALENKAMP	125
1. Introduction	125
2. Rights and Responsibilities.	126
3. The Absolutism of Fundamental Rights in Dutch Discourse	128
4. Lessons from Ownership: No Abuse of Rights	131
5. Fundamental Rights: Freedoms and Responsibilities	133
6. Back to Practice	134
7. The Dark Sides of Responsibility.	136
8. Freedom of Expression and Freedom of Religion within a Multicultural Society	138
 From <i>Lawless</i> to a Human Rights Approach in the Fight Against Terrorism. The Council of Europe Standards	
Martin KUIJER	141
1. Introduction	141
2. The Gibraltar Case	142
3. Terrorism as a ‘New’ Threat	145
4. The Striking of a Balance.	146
5. Making Anti-Terrorism Measures Human Rights-Proof.	148
6. (Un)Accountability of Information from Intelligence Agencies in Judicial Proceedings	149
7. The Creation of a Separate Legal Space for Terrorism.	154
8. Lawlessness?	155
 Children’s Rights at a Dignitarian Horizon of Responsible Parenthood	
Jan C.M. WILLEMS	157
1. Introduction	157
2. A Helicopter View.	158
2.1. Libertarian and Dignitarian Traditions	158
2.1.1. Dignitarian Developments	159
2.1.2. Dignitarian Individualism	161
2.2. Dignitarian versus Libertarian Attitudes and Views	163
2.2.1. Definitions.	164
2.2.2. Some Examples	166
3. Responsible Parenthood	168
3.1. Dignitarian Language and Reproductive Rights	168
3.2. The Best Interests of the Child	170
3.3. Parental Responsibilities and State Obligations	176
3.3.1. Fifty-Plus-One Parental Duties	177

3.3.2. Empowerment Obligations.....	182
4. Conclusion	184

Individuals' Duties in the African Human Rights Protection System.

Challenges and Prospects

Mumba MALILA	187
1. The Historical Background to the Establishment of the African Human Rights System	188
2. The Banjul Charter	191
2.1. An Innovative Legal Instrument	191
2.2. African Values	195
2.3. Three Generations of Rights in One Charter	197
2.4. Weaknesses.....	199
2.4.1. Unmentioned Rights	199
2.4.2. Vague Formulation of Rights	199
2.4.3. No Derogation Clauses	200
2.4.4. Clawback Clauses	201
3. Duties Provisions in the African Charter.....	202
3.1. Duties Normally Belong to States.....	202
3.2. Antecedents in International Documents	203
3.3. Duties as a Reflection of African Culture	204
3.4. Charter Articles Relating to Duties.....	207
3.4.1. Article 27: Duties to the Family, the International Community and other Legally Recognised Communities	208
3.4.2. Article 28: Duties of Respect, Non-Discrimination, Mutual Respect and Tolerance.....	211
3.4.3. Article 29(1): Duties to Preserve the Harmonious Development, Cohesion and Respect for the Family, etc ..	212
3.4.4. Article 29(2): Duty to Serve National Community and Deploying Physical and Intellectual Abilities	214
3.4.5. Article 29(3): Duty not to Compromise National Security	215
3.4.6. Article 29(4): Duty to Preserve and Strengthen Social and National Solidarity	216
3.4.7. Article 29(5): Duty to Preserve and Strengthen National Independence and Territorial Integrity and to Contribute to its Defence	217
3.4.8. Article 29(6): Duty to Work to the Best of One's Ability and Competence, and to Pay Taxes	217
3.4.9. Article 29(7): Duty to Preserve and Strengthen Positive African Cultural Values.....	218

3.4.10. Article 29(8): Duty to Contribute to the Promotion and Achievement of African Unity.....	219
3.5. Evaluation.....	220
4. Conclusion	225
<i>Declaration of Human Duties and Responsibilities</i>	<i>229</i>

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