

WORKSHEET 1 - THE HUMAN RIGHTS ACT

Look at the cases below and consider whether the right decision was reached using the Human Rights Act. You may need to find out a little more about some of the cases to reach your judgment.

1. In 2002 the model Naomi Campbell and the DJ Sara Cox each attempted to use the Human Rights Act to defend their 'Right to Privacy' in the wake of newspaper reports. Campbell had been photographed leaving a rehabilitation meeting despite previously denying that she was a drug addict. Cox was photographed sunbathing in the nude on a remote private beach. Both cases were eventually successful as the court ruled in Campbell's favour and Cox accepted an out of court settlement from the newspaper in question.
2. In 1993 Robert Thompson and Jon Venables, then aged ten, abducted and murdered two year old James Bulger. They were sentenced to be detained in a secure unit until they were 18 years old whereupon, following detailed psychological assessments, they were released and given new identities. When four newspapers sought to publish their new identities and whereabouts using Article 10 (right to freedom of expression), lawyers for the boys successfully blocked these attempts by arguing for the right to privacy. In addition, the appeal judge recognised that publishing the information may cause serious risk to the offenders such as the likelihood of physical harm, perhaps even death. (Article 2)
3. In 1995, Learco Chindamo, an Italian then aged 15, stabbed headteacher Philip Lawrence who was attempting to break up a fight outside his school. He was convicted of the killing and served 12 years of a life sentence before being released on parole. However attempts to deport him to Italy were blocked on the grounds that his family were in Britain and this would breach his right to a family life.
4. In 1995, Kirk Dickson was found guilty of murder after kicking a man to death following an argument over a packet of cigarettes. Whilst in prison he was befriended by a woman through the prison pen pal service. They married within a year. Dickson, 12 years into a minimum sentence of 15 years, and his wife applied for IVF treatment in 2007. The court ruled that he was able to donate sperm to his wife as a failure to do so would be in breach of his human right to become a father. This decision was heavily criticised by Ann Widdecombe, a former prisons minister, who said: 'A child is not a right, a child is a major responsibility.'

WORKSHEET 2 - WHAT ARE RIGHTS?

Philosopher Michael Freedman argues that *'a human right is a conceptual device...that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberate action to ensure such protection.'* (Rights, 7)

On a general note human rights are regarded as something that is owed to you just by the very fact that you are human. You have not earned it, you cannot lose it nor can others claim to have more or less of them than you. It is seen as an entitlement and something that we all have an obligation to recognise and defend.

Different views of rights

1. **The Religious View:** Many religious thinkers see human rights as something that is inherent in human beings because of their special place in God's creation. For instance, in Genesis 1:26 the Bible states that human beings were made in God's image and given a special status as head of creation. For Jews and Christians this suggests that humans have a value and dignity regardless of any other factors.
2. **Kantian view:** The great philosopher Immanuel Kant (1724-1804) argued that the essential feature of human beings was that they were free moral agents that possessed rationality. By this rationality, Kant argued that it is illogical to treat a person in any way that does not show respect for their personhood. We ought not to treat a person as a means to an end. In other words, don't use them like an object! This idea of valuing persons for their own sake has been very influential in modern views of human rights.
3. **A Utilitarian view:** Utilitarians believe that you should do whatever leads to the greatest good of the greatest number. As such, most utilitarians dismiss the idea of human rights as human creations and inventions. Jeremy Bentham famously described rights as 'nonsense on stilts.' However John Stuart Mill (1806-1873) defended the idea of human rights. He argued that a society that recognises human rights will ultimately achieve the greater good. Mill does not think that we possess rights naturally but that it is necessary for us to create rights to ensure that society flourishes. One example of a right might be the right to free thinking and free speech; 'the free development of individuality is one of the leading essentials of well-being' (On Liberty, 120).
4. **Dworkin's view:** Perhaps the most influential modern view in terms of a legal theory of rights comes from the American legal philosopher Ronald Dworkin. (1931-) Dworkin argues that an appeal to rights is similar to playing the trump card in a game of cards. When an issue is discussed the first things that come to mind are very often considerations of consequences or outcomes yet to appeal to someone's human right takes precedence and becomes the most important consideration in the discussion. For example, it may save lots of money and time to imprison someone straightaway if we catch them committing a serious crime yet the right to a fair trial will always take priority.

WORKSHEET 3 - THE SHIP OF FOOLS & THE BIG BEAST - THE CASE AGAINST DEMOCRACY

The ancient philosopher Plato offers two analogies in his case against democratic society.

EXTRACT 1: THE ANALOGY OF THE SHIP

"Imagine then a fleet or a ship in which there is a captain who is taller and stronger than any of the crew, but he is a little deaf and has a similar infirmity in sight, and his knowledge of navigation is not much better. The sailors are quarrelling with one another about the steering—everyone is of opinion that he has a right to steer, though he has never learned the art of navigation and cannot tell who taught him or when he learned, and will further assert that it cannot be taught, and they are ready to cut in pieces anyone who says the contrary. They throng about the captain, begging and praying him to commit the helm to them; and if at any time they do not prevail, but others are preferred to them, they kill the others or throw them overboard, and having first chained up the noble captain's senses with drink or some narcotic drug, they mutiny and take possession of the ship and make free with the stores; thus, eating and drinking, they proceed on their voyage in such manner as might be expected of them. Him who is their partisan and cleverly aids them in their plot for getting the ship out of the captain's hands into their own whether by force or persuasion, they compliment with the name of sailor, pilot, able seaman, and abuse the other sort of man, whom they call a good-for-nothing; but that the true pilot must pay attention to the year and seasons and sky and stars and winds, and whatever else belongs to his art, if he intends to be really qualified for the command of a ship, and that he must and will be the steerer, whether other people like or not—the possibility of this union of authority with the steerer's art has never seriously entered into their thoughts or been made part of their calling. Now in vessels which are in a state of mutiny and by sailors who are mutineers, how will the true pilot be regarded? Will he not be called by them a prater, a star-gazer, a good-for-nothing?" (From 'The Republic' by Plato, translated by Desmond Lee)

THE POINT OF THE ANALOGY.

Plato argues that in the ship (democratic society) the captain (the people) is theoretically in charge. Yet clearly the captain lacks the skills to do a good job. The rest of the crew (politicians) attempt to persuade the captain to let them steer, they resort to all sorts of tricks to get their way. However they have little more expertise than the captain and merely want power. Everyone ignores the navigator or as Plato puts it the 'true pilot.'

TASKS

1. How valid is the analogy? Can running the country be compared to sailing a ship? What are the similarities and differences?
2. Plato's criticisms are applied to the more direct democracy of Athens. Do his objections still apply in a modern representative democracy such as in the US or the UK?
3. 'The key problem with democracy is that it empowers all voters regardless of their level of knowledge.' How far do you agree with this claim?
4. If democracy doesn't work what are the alternatives? Find out what Plato would recommend. How realistic are his views?

EXTRACT 2: THE ANALOGY OF THE BEAST

"I might compare them* to a man who should study the tempers and desires of a mighty strong beast who is fed by him—he would learn how to approach and handle him, also at what times and from what causes he is dangerous or the reverse, and what is the meaning of his several cries, and by what sounds, when another utters them, he is soothed or infuriated; and you may suppose further, that when, by continually attending upon him, he has become perfect in all this, he calls his knowledge wisdom, and makes of it a system or art, which he proceeds to teach, although he has no real notion of what he means by the principles or passions of which he is speaking, but calls this honourable and that dishonourable, or good or evil, or just or unjust, all in accordance with the tastes and tempers of the great brute. Good he pronounces to be that in which the beast delights and evil to be that which he dislikes."

* Plato is referring to a group of people called the Sophists who taught and trained people to be successful in debating and arguing. They represent the politicians in a democracy.

THE POINT OF THE ANALOGY

Plato argues that the beast is a little like the electorate. They are large and powerful in that there are many of them. They can be quite dangerous when angered. Politicians learn how to read the mood of the people. They are able to soothe and pacify the people. They know when this beast can be approached and when it cannot. Plato's main objection is that these politicians are addressing the wrong question. They are concerned with how to keep the people happy. Surely the real question is what is good for society.

TASKS

1. 'What people want and what is good for them are often two separate things.' Explain how this might relate to a democratic society. Your answer will need examples.
2. Consider the view that democracy has the effect of turning politics into little more than a popularity contest.

WORKSHEET 4 - RAWLS AND NOZICK

RAWLS: JUSTICE AS FAIRNESS

John Rawls (1921-2001) has a social contract theory of justice. He defines justice as 'fairness' the principles that we would agree to from the 'original position.' By this Rawls means that justice and fairness are those things that we would agree to before embarking upon life and knowing nothing about how our lives would turn out. For example we would all agree to a principle of racial equality if we did not know whether we were going to be born black or white.

For Rawls this notion of justice or fairness requires that we adopt 2 principles

1. The principle of equality: Each person is to have equal right to a system of equal basic liberties. There will be some form of constitution or bill of rights that protect essential liberties and enable all to live.
2. The difference principle: There will inevitably be socio-economic inequalities (after all this is not a communist society) Social and economic inequalities are to be arranged so that they are both:
 - a) to the greatest benefit of the least advantaged,
 - b) attached to offices and positions open to all under conditions of fair equality of opportunity.

Rawls sees these points as essential to helping to even out the 'hand' that life has dealt us. For example, I may not have been born to wealthy parents or privately educated but this should not mean that I cannot aspire to be prime minister or a top brain surgeon. The only criteria that should govern whether I reach these goals is the amount of talent that I possess. Hence 2a) suggests that in taxation and public spending, it is legitimate and right that governments favour those who are less well off.

In order to consider whether something satisfies these criteria, Rawls introduces the notion of 'the veil of ignorance,' he asks us to imagine that we are about to be born but have no knowledge of our impending situation.

"Among the essential features of this situation is that no-one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence strength, and the like. I shall even assume that the parties do not know their conception of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no-one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no-one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain."

NOZICK: JUSTICE AS ENTITLEMENT/RIGHTS

Robert Nozick, (1938-2001) in his most famous work 'Anarchy, state and utopia,' argued for a libertarian view of justice. The libertarian view of political justice sees the state as a policeman or referee upholding our individual rights but otherwise not meddling in our lives. Nozick refers to this as the minimal state.

Nozick's concept of justice is based on the idea of rights or entitlement. If you have earned money through your labour, it is yours. You are entitled to keep it and the state is not entitled to take it away from you in taxation. (Apart from the absolute minimum required!) As far as Nozick is concerned it is unfair that people's taxes should be used to support families where people refuse to work.

Nozick argues that seeing justice as entitlement is ultimately fairer than the arrangement favoured by Rawls. It is one of our natural rights to retain goods (money or possessions) that we have honestly gained and we are entitled to do with those goods whatever we choose so long as we do not affect the rights of others.

Nozick uses the example of Wilt Chamberlain, a basketball player. If Chamberlain can earn millions because of his talent, he is entitled to that money. It is unjust to tax him highly to support other people who lack that talent. Indeed he can only earn that money because thousands of people each week choose to spend a little of their money in exchange for the pleasure of watching him play.

WORKSHEET 5 - THE NON-HARM PRINCIPLE

The Non-harm principle is most famously associated with the philosopher John Stuart Mill. (1806-1873) Mill argued that

***'The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.'* (On Liberty p68)**

'As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it' (p141).

The role of government for Mill is a limited one. This is because he believed that individual liberty and freedom is essential for human beings. We are all different and want very different things out of life. Mill calls this the liberty of tastes and pursuits. For example if I, along with the vast majority of the population, believe that dominoes is a great sport but chess is a waste of time, it would be wrong to use government powers to make dominoes compulsory in school and make playing chess a criminal offence. This type of thinking is known as the 'tyranny of the majority' and is one of the dangers of a democratic society.

We should also have freedom over the 'inward domain of consciousness.' We should be allowed to think what we wish and to express our thoughts in whatever may we like. However, this freedom is subject to the overall rule that the government can intervene to prevent others being harmed.

It is worth noting that Mill does not give a clear definition of harm. This principle may be applied to both physical and psychological harm but there are difficulties with issues such as 'offence'. For example, is someone with strict religious views against homosexuality harmed by the gay couple who move in next door? The thought of it may cause distress but it is debatable whether this really counts as harm. It is worth noting that Mill does not consider that it is the government's place to legislate against actions that only harm the self. If someone chooses to gradually drink themselves to death, that is their choice provided no one else is harmed.

TASK

In the light of the information above, imagine that you are the government's health minister. Based purely on the non-harm principle, what should the law be about smoking be?

Consider: Freedom of expression, cost to the NHS, passive smoking, money raised via taxation.