

## Michaël Merrigan

### Education in Responsibility in Order to Secure Human Rights in Times of Crisis

Education in and awareness about human rights is generally seen as one of the less contentious elements of citizenship education. However, it would seem that, for the concept of human rights to have a real impact in today's world, theoretical knowledge of human rights standards should be complemented by an understanding of the ethical concept of individual responsibility. This concept could, moreover, prove to be a valuable tool in conceiving creative answers to some of the consequences of the crisis Europe has been facing. This crisis has affected especially the protection and realisation of socio-economic rights, as many States were left with increasingly less budgetary space to meet increasingly urgent societal demands. Over the last few decades, and already prior to the current crisis, many have called for a greater stress on 'duties and responsibilities', as it was perceived that 'rights-talk' alone did not provide all the answers. From a legal perspective, as well as from the side of human rights advocacy groups, however, these appeals were often met with scepticism and hostility. In answer to the often justified criticism, it is essential to make a distinction between the 'legal', the 'moral' and the 'ethical' realms. While an unnuanced greater focus on moral duties is potentially dangerous, education based on the proposed notion of ethical 'responsibility' would seem, on the contrary, essential for the survival of human rights and, hence, of the democratic society.

#### Keywords:

human rights, duties and responsibilities, law, morality and ethics, citizenship education, crisis

#### 1 Introduction: Europe and human rights in crisis

The financial crisis which has gripped almost the entire world in the past few years has had measurable consequences on the lives of individuals, especially in the field of the protection of socio-economic rights, but also in the field of civil and political rights. Especially the young have been hit hard. In countries such as Greece, Spain and Croatia, youth unemployment rates were close to or even significantly over 50% in early 2014 (Eurostat 2014). The Council of Europe has warned that austerity measures have had 'drastic and lasting' consequences in the field of, *inter alia*, the rights to decent work, to an adequate standard of living, to social security, to housing, to food, to water, to education and to the enjoyment of the highest attainable standard of health (CoE Commissioner for Human Rights 2013). The Parliamentary Assembly of the Council of Europe has called the fact that the young generation is disproportionately hit by the crisis 'nothing less than a tragedy in the making' and warned that "if no tangible improvements are made, Europe risks not only producing a "lost generation" of disillusioned young people, but also undermining its political stability and social cohesion, justice and peace, as well as its long-term competitiveness and development prospects in the global context" (CoE Parliamentary Assembly, Resolution 1885(2012)). If anything, the crisis has shown how hollow rights claims can sound when there is a breakdown on

the 'supply-side' of rights and the corresponding duties and responsibilities to effectuate those rights are not or no longer fulfilled.

Traditionally, the State has been seen as the main guarantor of human rights and, especially, of socio-economic rights. Even if the traditional dichotomy between 'negative obligations', traditionally associated with civil and political (or 'first generation') rights, and 'positive obligations', generally associated with socio-economic (or 'second generation') rights, has been abandoned in recent years, it is clear that positive State action still remains an essential tool for the effective realisation of virtually all rights. However, the financial crisis has placed a heavy financial burden on many States, leading many governments to resort to austerity measures. Sharp reductions in government spending and a lack of economic possibilities, in turn, have gravely affected individuals' opportunities and quality of life. It has become increasingly clear that contemporary democracies do no longer always have ready answers to the consequences of these kinds of structural crises. This in turn has fuelled distrust in the democratic model (see, for example, CoE Parliamentary Assembly, Resolution 1888 (2012)). When human rights demands remain unanswered, the risk exists that the human rights framework itself will eventually be questioned as merely idealistic and, hence, politically irrelevant.

One possible answer to the current threat posed to the human rights framework could perhaps be found in the notion of 'individual duties and responsibilities'. This notion, however, is not uncontested and any discussion on this topic comes together with potential pitfalls which could, in fact, further undermine human rights. Nevertheless, an increasing focus on individual 'duties

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and responsibilities' can apparently be discerned. Its proponents come from different philosophical and political strands, and include a number of leading political and religious figures from around the world. The main rationale underlying this appeal is the belief that such 'duties and responsibilities' are necessary in order to counterbalance a perceived disproportionate stress on individual rights and a corollary atomised conception of the individual. These appeals have, as I shall illustrate below, been met with either scepticism or outright criticism from NGOs and other human rights advocates and scholars, who claim that a stronger focus on individual 'duties and responsibilities' risks putting into jeopardy the last sixty-or-so years of the human rights *acquis*. These criticisms must be taken very seriously. However, while the call for 'duties and responsibilities' certainly predates the current crisis, I believe the challenges faced by many Europeans today also present an opportunity to re-visit this ongoing discussion, and to find a catalyst for change in it.

In this article I will argue that one possible middle ground between both proponents and critics of the 'duties and responsibilities' movement can be found in the need for *education in individual responsibility*, in which 'responsibility' has a deeper, ethical meaning than is generally applied to it. This educational focus on responsibility, as distinguished from a lecturing on or imposition of well-defined 'legal obligations' or 'moral behaviour' will, I believe, provide a valuable tool in bringing together a concept of a universally shared dignity and locally embedded commitments, nurturing (political) participation and aiding the conceptualisation of new answers to the ongoing socio-economic crisis.

While much debate exists (see, for instance, the contributions in Print, Lange 2013) regarding the usefulness or even desirability of including education in 'civic competences' (among which knowledge of and certain skills in human rights and responsibilities are often mentioned) into the school curriculum, I would argue that individual responsibility *in the context of human rights*—regardless of its value for the broader project of citizenship education—is essential for realising human rights and, also in the light of the current crisis, even for guaranteeing the survival and further development of the human rights framework as we know it today. In other words: I will limit myself to arguing that education in individual responsibility is essential for the effective realisation of human rights, although a logical consequence of this position is that I believe it should receive a place within the broader debate on citizenship education.

## 2 Terminological and conceptual clarification

### 2.1 Introducing the distinction

The discussion regarding 'duties and responsibilities' and their relationship to human rights is marred with confusion and the use of vague language. While the notion 'duties and responsibilities' at first glance sounds sufficiently familiar, a closer look reveals that it is often used without much further qualification, referring simply to 'things one is expected to do'. More often than not, the words 'duty' and 'responsibility', together with the term 'obligation', are used interchangeably. Other times these terms are assigned specific meanings, but even then significant conceptual differences can be found depending on the author. This vagueness poses a real threat, not only because misunderstandings inevitably arise, but also because non-legal realms and the legal sphere run the risk of being conflated, potentially leading to a weakening of the human rights legal framework. After all, if we agree that every human being has inalienable and universal rights, which are moreover legally protected, internationally as well as locally, we cannot simply place moral duties at the same level as these legal rights, potentially making the latter dependent on the fulfilment of what one or another authority feels is 'moral' behaviour at any given moment. It is for this reason that the European Court of Human Rights (ECtHR), for example, has always held that the (legal) right of freedom of expression also entails the right to issue opinions which 'offend, shock or disturb' (ECtHR, *Handyside case*, 1976), i.e. opinions which for some or even a majority of people are deemed morally offensive. These opinions can be legally prohibited or sanctioned only when a number of strict conditions, including a clear and foreseeable legal basis and a well-described legal aim, are met and the expression is a direct threat to the democratic society.<sup>1</sup> In other words: legal restrictions can only be imposed when there is a specific kind of pressing societal danger and when certain well-established procedures are followed, not when certain standards of morality have simply not been met.

Exactly because human rights are both a legal concept and a (not uncontested) moral idea, it is of paramount importance to separate legal prohibitions from moral judgments. I would therefore like to start by making a crucial distinction between three separate concepts, and by attaching a specific term to each of these concepts. I will base myself on the terminology as explained by authors such as Ost and Van Drooghenbroeck (2005) and Foqué (2015; forthcoming), which also finds a basis in the insights of Ricoeur (1990). Based on these authors, we can make a distinction between (a) an *obligation*, which is legal; (b) a *duty*, which is moral and (c) *responsibility*, which is ethical.<sup>2</sup>



## 2.2 The moral and the ethical

### Duty

While the concept of a legal obligation can be presumed to be sufficiently clear, the distinction between the moral and the ethical realm begs some further explanation. I follow the aforementioned authors when they make this distinction and subsequently attribute to 'duty' (French: 'devoir') a moral meaning, and regard such a moral duty to have, in reference to the work of German philosopher Immanuel Kant, in essence a deontological character. A 'duty' is the action which is required by a moral law which one chooses and feels compelled to follow (prescribes for oneself). In human rights terms, a 'human duty'<sup>3</sup> could therefore be considered the action one should undertake because it is required by (moral) human rights standards (the requirements of human dignity). In the case of Kant, the universal law which ought to be followed can be discerned by applying the categorical imperative in its three formulations. The first and main formulation is "Act only in accordance with that maxim through which you can at the same time will that it become a universal law". In a second formulation, it is formulated as follows: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means". The third practical principle is "the idea of the will of every rational being as a will giving universal law" (Kant 2008). The similarities between Kant's moral law – conceived long before the contemporary human rights framework was developed – and universal human rights are evident. If we regard (moral) human rights as being grounded in – and serving and protecting – human dignity<sup>4</sup>, then the moral duties each one of us has to respect the (moral) rights of the other can be regarded, in fact, as a subset of these Kantian duties (although in Kantian terms we would certainly not have these duties *because* others have rights). In other words, we have human rights because they protect elements of our human dignity. And because all of us, humans, have this inalienable and shared dignity, we must also respect each other's dignity – and, hence, each other's human rights. We have a *duty* to do so.

Once aware of this need to strive towards respect for (and, in some cases, perhaps even the protection and effectuation of) this human dignity, it is necessary that the individual acts accordingly. In our behaviour we can surely choose not to fulfil these duties (i.e. not to respect another person's life or privacy), but most of us agree that we should, regardless of whether there is any legal sanctioning forcing us to do so, or whether at the time we feel like it. These moral 'human duties' thus exist – and should be complied with – regardless of our own urges. Just as in Kant's theory on the morality of duty, compliance with such 'human duties' therefore requires a strong concept of personal autonomy. This kind of autonomy consists of more than merely a superficial capacity to decide which step to take next, and has been aptly described by Harry Frankfurt (1971) as the capacity

to formulate 'second order volitions' or by Gerald Dworkin (1988) as "a second-order capacity of persons to reflect critically upon their first-order preferences, desires, wishes, and so forth and the capacity to accept or attempt to change these in light of higher-order preferences and values". In the case of human rights, and assuming human rights as their main task set out to protect human dignity, we can for the sake of argument accept that these higher-order values ought to refer to (at least) the respect for (and protection of) human dignity. In other words: an individual can be aware of his 'human duties' by reasoning which behaviour is required in the light of the requirements of (the human rights theory based on) human dignity. He then has to use his autonomous capacity to act in this way, according to human rights principles, rather than simply allow himself to be driven by his urges, desires and feelings – all of which, perhaps, may well tempt him to behave in quite the opposite way.

We could say that *everyone*, at the very least, has a fundamental duty to *respect* another person's dignity,<sup>5</sup> and this respect translates into further human duties to respect individual rights. In the case of civil and political rights, a number of duties are obvious from the outset: we can (at minimum) find such universal individual human duties as the 'duty to respect another person's life', a 'duty to respect another person's freedom of expression' or a 'duty to respect one's private life'. In the case of socio-economic rights (as well as certain aspects of civil and political rights), the duty-bearers are, however, more difficult to identify. Perhaps people can have a 'duty' to respect one's right to work, housing, food or education, but what really matters is who *provides* this work, housing, food and education (see, in this regard, O'Neill 2005). Here it becomes clear that not everybody can be expected to have the same kind of 'duty' to provide. Legally speaking, States, through human rights conventions, have often taken upon them the obligation to take (progressive) action. However, this is 'merely' the law. If we believe human dignity is a paramount value worth protecting and furthering, we cannot be satisfied with such legal limitations, especially not when, in the face of crisis, many States have lost much of their capacity to undertake meaningful action. At the same time, however, not every individual can be expected to have the same *responsibility* to act, either.

### Responsibility

We have hereby arrived at the third notion of the triad, namely that of 'responsibility'. This notion fills a gap which was left by the aforementioned concept of moral duty. After all, there would seem to be some problems with these rational, abstract and universal higher-order values, *in casu* with human rights as moral principles. First of all, abstract human rights standards do not really say very much about the precise *content* of one's actions. Secondly, the possibilities for individuals everywhere in the world to guarantee human rights are much broader than the ultimately quite restrictive legal obligations laid



down in human rights conventions, which, after all, are focused on States.

First, let us have a look at the problem of the content of required behaviour. It is clear, for example, that I and everyone else have a right not be treated in an inhuman and degrading way (a right which is embodied in article 3 of the European Convention on Human Rights) and therefore I can know that I also have a moral duty (and even a legal obligation) not to treat others this way. But what exactly constitutes degrading treatment and what does not? This can vary from one culture to another and from time to time. For instance, the abuse of religious symbols in interrogations can constitute a profound mental stress on an adherent to the religion in question, while, say, a non-believer may be less than impressed by the same actions. In other words: we know it is not 'right' to treat someone inhumanely, but without a context and a historically embedded understanding we don't necessarily know what constitutes this behaviour and what is 'good' to do (instead). In order to determine the content of our required actions, we need to take into account those sensitivities, cultural, temporal and local elements which give meaning to our existence. They, and not abstract rules, will ultimately determine what is 'good' behaviour in a given situation. This is where a 'deeper' and more ethical (and, one could say, Aristotelian) concept of responsibility could prove its value, a concept aptly and in *extenso* contextualised by Foqué (2015; forthcoming). 'Responsibility' is, in fact, a word of fairly recent vintage, having entered francophone and Anglo-Saxon vocabulary only in the second half of the 18<sup>th</sup> century (Genard 1999). With its etymology in the Latin figure of the '*sponsio*'<sup>6</sup> and its meaning of 'answerability', responsibility can be said to point not only at the human capacity to be aware of and reflect on one's actions, to steer them in the desired direction and to accept the consequences, but also to the capacity to 'answer' the appeals by others, the capacity to be 'called upon' and answer those calls by others (see Foqué, 2015). With regard, specifically, to human rights, this 'human' or 'fundamental' responsibility then refers to the capacity to be held accountable for both one's active violations and for the neglect to protect or effectuate human dignity where required. The 'answerability' points to the capacity to be sensitive to and open towards - and subsequently ready to answer - the human dignity needs (often translated somewhat simplistically as 'rights') of those whom one encounters in life. Responsibility therefore, unlike a specific legal 'obligation' or moral 'duty', refers not so much to a concrete action to be taken, but to an attitude of concern for the needs of others (and oneself). One could therefore say that, unlike a legal obligation or a moral duty, responsibility refers not so much to an outcome as to a *process*, a reflective attitude. The scope of this individual responsibility depends on both the capacity of the individual and the situation he finds himself in (i.e. the actual '*response-ability*' he or she has). This ability can change over time (for instance, because of old age or

illness) and can be influenced by external circumstances. It can logically never be deemed so burdensome that it can no longer be borne by an individual.

### ***Towards a shared responsibility***

Secondly, then, there is the question of *who* is responsible to whom and for what. As individuals can only be expected to act in accordance with their actual abilities, there is a somewhat 'fluid' situation on the 'supply' side of human rights. As a consequence, in general, the responsibility to respect, protect and effectuate human dignity should be considered as a *shared* responsibility between individuals, corporations, institutions, and the State. Moreover, in different societies and different cultures the precise division of labour between these actors can vary. A stronger responsibility can exist, for example, in the case of specific relationships, such as those between parents and children (and vice versa) or even between other family members, or within specific communities. It is an important role for public debate to identify which distribution of responsibility, on a societal level, fits best in any given time and place. When a State, for example, is strong enough to guarantee basic human rights in the form of care for the elderly, social housing or food distribution for the poor, this will inevitably diminish the need for other individuals to step in and 'take responsibility' (although, of course, these individuals will then indirectly take responsibility through the payment of taxes to the State in order to finance these services). However, whenever such strong institutions are lacking, as is often the case in times of crisis, other relationships and ways of taking responsibility should be conceived, unless human rights claims are to become no more than hollow and ultimately unanswerable calls for help.

### **3 Advantages of (re-)introducing responsibility**

Let us now briefly (and in a non-exhaustive way) look at a few advantages of (re-) introducing the notion of 'responsibility'.<sup>7</sup>

A first very important advantage about focusing more on responsibility is that it moves the human rights debate away from abstract moral principles of 'what we want to protect' and in the direction of questions of (practical) implementation, asking such questions as 'what do we need to do in order to protect' and 'who needs to do what'. Nickel gives the example of the right to education in the case of Brazil. If rich people, he explains, send their children to (expensive) public schools, and the State does not have the money to invest in decent public education, this leaves the question how the right to education can be implemented if nobody considers to be bearing the corresponding duty or responsibility towards it (Nickel, 1993). The same, as a matter of principle, would seem to apply to any human rights question.

Secondly, questions regarding the priority of rights will come into the spotlight (Nickel, 1993). Most rights are not absolute (save, e.g., the prohibition of torture or slavery), which means conflicts of rights can arise and





must be solved by a balancing of individual and societal interests. Especially in the case of positive obligations by both the State and private actors, this means the outcome of this balancing act will depend also on the available resources and the allocation of these scarce resources. When framed merely in terms of 'rights', everyone whose human rights claim is not fully met can feel as if he or she has had to make a 'concession' or has had to face a (however slight) 'violation' of rights. However, when a debate is framed in terms of responsibility, focus is placed on the question of *who* is responsible – i.e. who has the ability to react - and *with which (scarce) resources*.

Third, as responsibility is by definition 'decentralized' (i.e. the precise action which follows from it depends from person to person, from institution to institution, state to state, and from place to place and time to time) it allows for tailor-made and locally-embedded solutions to be conceived. People 'trained' in responsibility have learned to be sensitive to the world they see around them and which (only) they know best. Nurturing responsibility therefore is nurturing the capacity for people to effectuate change in their own environment. Together with a policy of empowering them to realize their ideas, human rights needs can be more easily detected and answered.

Fourth, this bridge between universal moral values (the concept of dignity, and abstract rights) and locally-embedded answers would also seem to ease the task of establishing a balance between a national (or regional, local) identity on the one hand and the idea of European space of shared values. European cooperation since World War II, after all, has been based, especially within the Council of Europe, on the more or less abstract principles of human rights, rule of law and political democracy. However, especially in recent years, we have seen a rise in discourse which can be linked to a search for a national identity, which has come to the forefront again in the form of several nationalist parties across Europe. The ethical concept of responsibility, shared between different actors, can therefore function as a bridge between these European shared moral values and their locally, community-based implementations.

Fifth, a focus on responsibility inevitably also brings into sight the inadequacies of the current international political and economic order (Nickel 1993). Focusing on rights would seem insufficient without also focusing on structural ways how to respect, protect and fulfil them. Focusing on responsibility may reveal domains where actors are employing rights language and are nominally committing to human rights standards, without effectively contributing to the protection of those same rights at the same time. Certainly in light of the current crisis, the question can be raised whether governments as well as powerful individuals and other non-state actors are living up to their own rhetoric.

Sixth, talking about responsibility focuses on a concept of citizenship which actively engages citizens, rather than make them merely the receivers of government actions.

It provides a language through which citizens can be made aware of their role in society, provided, of course, that the balance with individual rights is at all times preserved and the individual citizen's capacity is not (legally) overburdened.

Seventh, balancing rights and responsibility can help overcome the antagonistic divide between State and individual. Legal rights were originally conceived to provide security against arbitrary state interference. While this is still an important function of rights today, the question can be raised whether in a democratic society where the government ought to be representing the people this antagonistic division between citizen and authorities should at all times maintain the same character. Of course, even in a democratic society, rights will always have a function in protecting individuals against (in the worst case) arbitrary state action and (in the best case) well-intended but nevertheless intrusive majority rule. Moreover, rights also fulfil a very important role by allowing the individual the individual to 'rebel' against prevailing moral norms, i.e. "*the freedom to oppose and challenge the values of society and its institutions*" (Martelli 1998). But by focusing solely on rights as providing the citizen with a space separated from the government, without also talking about the participation which the individual can and should enjoy in that government (and society at large), it would seem that the antagonism which once protected the individual is now potentially harmful to both the community and the individual.

#### 4 Integrating the legal, the moral and the ethical

##### 4.1 Responsibility in human rights texts

The traditional human rights texts provide no clear reference to 'responsibility' in the ethical sense described above. Nevertheless, some references to 'duties' and/or 'responsibilities' which reveal a similar concern can be found. Article 29 of the Universal Declaration of Human Rights, for example, states that "*Everyone has duties to the community in which alone the free and full development of his personality is possible.*" However, the extent of these duties is not fully clear. The next paragraph, after all, states very clearly that individual rights can only be limited in very specific cases.<sup>8</sup> A reference to 'duties' can also be found in the pre-ambles of the two UN Covenants on human rights and in paragraph 2 of article 10 (freedom of expression) of the European Convention on Human Rights, which speaks of 'duties and responsibilities'. Outside of Europe, notable examples in which duties and responsibilities did receive attention include the American Declaration on the Rights and Duties of Man and the African Charter on Human and Peoples' Rights. However, these references seem insufficient to restore the balance between rights and responsibility envisaged.

##### 4.2 Special declarations

In the past few decades, there have also been a number of initiatives to draft 'declarations' explicitly



focused on 'duties and responsibilities'. However, while the ethical focus is clearly present, most initiatives suffer from a vagueness and conceptual blurring of the legal, moral and ethical domain, rendering the initiatives vulnerable to (often justified) criticism (see further below). A notable initiative in the first half of the '90 was the 'Declaration toward a global ethic' by the Parliament of the World's religions (1993), a project headed by Swiss theologian Hans Küng. It was followed by an initiative by the InterAction Council which is made up of former heads of state and government. The InterAction Council presented the 'Universal Declaration of Human Responsibilities' (1997) at the occasion of the 50<sup>th</sup> birthday of the Universal Declaration of Human Rights. Another significant initiative was the 'Valencia Declaration of Human Duties and Responsibilities' (2002), which was drafted around the same time by a high-level group set up by the Valencia Third Millennium Foundation and chaired by Richard J. Goldstone. Further initiatives include the 'Trieste Declaration of Human Duties' (1993), drafted by the International Council of Human Duties, and the 'Declaration of the Responsibilities of the Present Generations towards Future Generations' (1997). A final document worth noting is the rather controversial UN Report on Human Rights and Responsibilities, with attached to it the 'Pre-draft Declaration on Human Social Responsibilities' (2003).

#### 4.3 Critique: redundancy and threat

The aforementioned initiatives have been met with a great deal of hostility and scepticism. Some sceptics simply do not see the need for an explicit reference to 'duties and responsibilities', arguing that such a concept is already gaining terrain without too much specific attention being devoted to it. Sunstein, for example, argued in the mid-nineties already that in several areas 'social and legal responsibilities' had in fact gained terrain. The areas he refers to would, moreover, seem to have only been more regulated since: "cigarette smoking; corporate misconduct; air and water pollution; sexual harassment; and racist and sexist speech". Sunstein noted that

*"In all of these areas, people who were formerly autonomous, and free to act in accordance with their own claims of right, are now subject to socially and sometimes legally enforced responsibilities. We have seen, in the last few decades, a redefinition of responsibility. I do not intend to celebrate these definitions, but only to suggest that purely as a matter of description, there has been no general shift from responsibility to rights."* (Sunstein, 1995)

Most of the criticism, however, has focused on the way in which 'duties and responsibilities' have been introduced. When the InterAction Council presented its 'Draft Universal Declaration of Human Responsibilities',

Amnesty International reacted with sharp criticism, stating that the initiative

*"introduces vague and ill-defined notions which can only create confusion and uncertainty. Moreover, the draft declaration undermines the UDHR by describing some rights in a weaker and less precise language than the 1948 Declaration. The draft declaration fails to build on the historical, practical and symbolic importance of the UDHR and contributes little, if anything, to the provisions of existing declarations, world conference documents and international treaties. In short, the draft declaration makes no meaningful contribution to the important discussions that must take place in the UN during 1998"* (Amnesty International, 1998).

The main problem with such initiatives, according to Amnesty International, is therefore not that these duties and responsibilities would not exist, or their existence is not useful or not necessary, but that they can and should be treated at the same fundamental (and legally enforceable) level as rights. The fear exists that, by putting certain conceptions of 'decent behaviour' at the same level as legal rights, the protection of individual rights could be made contingent upon the fulfilment of certain duties. This would effectively be the end of human rights protection, as governments could impose duties and deny citizens their rights whenever it seems fit. This fear was shared by Valentino Martelli, who, as a rapporteur for the Parliamentary Assembly of the Council of Europe, wrote that

*"If a state were to dictate rules for all human behaviour, this would represent a negation of freedom and of human rights, since everyone should be responsible for his or her own moral and ethical behaviour. The result would be a totalitarian state, incompatible with the principles and values of the Council of Europe. Moral attitudes should remain in the realm of an individual's free choice."*

Martelli continued by holding that

*"This is why human rights and moral and ethical obligations should not be juxtaposed, since they belong to two different areas, the legal domain and the moral and ethical domain. Placing rights and moral obligations on the same level entails the risk of reducing the effectiveness of these rights, by ignoring their legal force, which is stronger than a question of morality."* (Martelli, 1998)

In other words, moral and ethical considerations have no place in (quasi-)legal texts. Whenever such lists of 'duties and responsibilities' are drafted, and certainly when they are subsequently submitted to an official forum such as, for instance, the United Nations, they run



the risk of being abused, even if the original intention underpinning them was merely to focus on the (often widely shared) moral and ethical dimensions of life. As for declarations of legal obligations, these would seem to be redundant, as States already have sufficient tools to make them binding upon citizens through legislation and State enforcement mechanisms. Therefore, in short, a declaration consisting of moral and ethical guidelines is dangerous, and a declaration consisting of legal obligations superfluous. Such a declaration invariably runs the risk of being juxtaposed to the traditional human rights instruments in the course of which the protection or effectuation of certain rights may be arbitrarily made dependent on compliance with moral or ethical principles.

#### 4.4 The legally elusive character of the ethical

In the triad 'obligation' (legal), 'duty' (moral) and 'responsibility' (ethical), the ethical level of individual responsibility is clearly the most comprehensive one. It could also be thought of as the 'glue' necessary for keeping a society together. The problem is, however, that, aside from the aforementioned dangers involved in codifying certain ideas into (binding) texts, the essence of individual responsibility cannot be translated into legal obligations or even into clear moral duties. As ethical responsibility is in essence an attitude which requires that a person look for adequate answers in concrete situations (a process, rather than an outcome), determining in advance exactly which behaviour is necessary in each situation is impossible. And whenever such an attempt were to be made, it would surely (and justifiably so) be met with criticism. 'Declarations' therefore do not seem like the appropriate way to stimulate this individual 'responsibility'. However, if this ethical responsibility is in the first place about an attitude, an attitude of care and concern which places human dignity at the forefront of one's decisions, then it is clear that awareness about it should be stimulated as much as possible, and from an early age onwards. How can this 'hidden face'<sup>9</sup> of human rights be uncovered?

#### 5 Education in responsibility

It would seem that, as the ethical dimension of human rights cannot be 'captured' in legal rights or declarations, we have to look at a fundamentally different avenue. Education then seems, without doubt, to hold the most promising prospects. While this ethical attitude of care and concern as such has rarely been explicitly identified in the human rights framework, the 'duties and responsibilities' discourse of the last decades does contain a number of elements which intuitively make an attempt at integrating this notion of 'responsibility' into the education system and the school curricula across Europe. Especially within the Council of Europe, stress has been placed on an education in responsibility which is broader than just conveying which 'civic competences' a person must possess, or which behavioural codes individuals must comply with. Already in 1981, the

Committee of Ministers of the Council of Europe decided "to promote an awareness of the requirements of human rights and the ensuing responsibilities in a democratic society, and to this end, in addition to human rights education, to encourage the creation in schools, from the primary level upwards, of a climate of active understanding of and respect for the qualities and culture of others" (CoE Committee of Ministers 1981). Other initiatives include the 'Resolution on Education for Democracy, Human rights and Tolerance' by the Standing Conference of European Ministers of Education (1994), 'Recommendation 1401' of the Parliamentary Assembly of the Council of Europe (1998), the 'Declaration and Programme on Education for Democratic Citizenship based on the rights and responsibilities of citizens' by the Committee of Ministers of the Council of Europe (1999), the 'Resolution on Responsible Citizenship and Participation in Public Life' by the Congress of Local and Regional Authorities (2000) and the 'Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education' (2010).

As Cernilogar and Coertjens argue, in the framework of the Council of Europe's 'draft European Charter on shared social responsibility', and regarding a conception of a shared responsibility which, although not fully the same, is certainly relevant to the one defended in this article, such a shared responsibility will not be established automatically, but rather requires "a structural effort to spread this concept throughout society and to ensure that everyone can participate in it" (Cernilogar, Coertjens 2011). It is important that 'everyone' is indeed everyone, and not some 'democratic elite'. For this reason, the authors argue that therefore "[e]veryone needs to be empowered and enabled to understand and take part in these new deliberative processes; therefore, they need to also become an intrinsic part of the educational system" (Cernilogar, Coertjens 2011). The authors also stress the need for intergenerational responsibility, as today's decisions will have long-lasting consequences for the young and also future generations. They note that education has the added advantage of already integrating this intergenerational element. This process of empowerment should start as early as elementary school so that, from a young age onwards, "they too can be recognised as actors" (Cernilogar, Coertjens 2011). Actors, who are autonomous and confident in their capacity (following the insights of Frankfurt and Dworkin) to formulate 'higher-order preferences' which take into account the need to bring about the realisation of human rights (human dignity); actors, moreover, who have learned to be sensitive to the needs of the people they encounter in life, both within a close circle of influence and beyond.

Which techniques can be employed to train this reflexive process in (young) individuals? This question would seem open to further research and different approaches can likely be conceived, depending on the cultural context. As stated at the outset, the argument advanced in this article is that of the necessity of



education in individual responsibility as a necessary complement to knowledge and skills *regarding the human rights framework*. Naturally, however, such education would be closely connected to what is often referred to as the not uncontested (and much broader) notions of ‘citizenship education’ and ‘civic competences’. How this individual responsibility described in this article relates to the broader question of such citizenship education, is a matter for further analysis. It would not seem illogical that, as Cernilogar and Coertjens hold, elements such as ‘active participation’, ‘dialogue’, ‘distribution of responsibility’, ‘the ability to take on a different perspective’ and ‘the ability to argue one’s own standpoint’ would be very relevant in such an educational project. Both authors would also *prima facie* seem to have a point that ‘shared social responsibility’ must be learned “*through examples, games and stories, and can progressively take on more complex forms, in line with a child’s age*” However, they also note that “*the real change of mindset comes through practice and for this reason starting with engaging children is crucial*” (Cernilogar & Coertjens, 2011). The authors rightly stress the importance of both formal and informal education in acquiring this practice, noting that the idea of shared social responsibility in the first place should be a practice experienced by the students, not a theoretical concept.

As responsibility as described in this article is in the first place an attitude of care towards the others and society which must be actively created and maintained, it must become a reflex based on a person’s own experience. Education should therefore not in its turn and in its own way duplicate the mistakes made by the ‘declarations movement’, where often well-intentioned initiatives collided with stark rejection by trying to ‘tell people what to do’, and where legal, moral and ethical requirements were simply brought together. Undoubtedly, part of a good education does involve telling children and youngsters about certain well-defined duties and obligations they have in life and within society, but it is not here that the focus of the education in the concept of responsibility as a necessary complement to the human rights framework must lie.

## 6 Conclusion

Education in individual responsibility (in the ethical sense set out in this article) is not the same as informing individuals about their and other people’s human rights but it is also very different from telling people exactly ‘what to do’. It involves the creation and nurturing of reflexes which put sensitivity and concern for the (human dignity and human rights) needs of other people and the community at large, first. As such, education in individual responsibility is also the missing factor or the ‘hidden face’ in the contemporary human rights framework, and pivotal to this framework’s survival in the (near) future.

The need for education in individual responsibility does not detract from the important responsibility of the State to respect, protect and fulfil human rights. Ultimately,

States are in many ways still the most powerful actors, and their share of the ‘shared responsibility’ is therefore substantial. Moreover, through various conventions virtually all States to a greater or lesser extent have committed themselves to – often legally enforceable – human rights standards. These State obligations remain untouched and human rights institutions, such as the European Court of Human Rights, will continue to monitor compliance and can sanction where necessary. However, the top-down approach of the State, as necessary as it is, cannot guarantee human dignity for all, everywhere and at all times. To make even an attempt at this, all individuals and actors within society need to be mobilized, so that the gaps inevitably left by the top-down approach are filled.

One question which remains is how education in individual responsibility relates to freedom of thought and conscience, and freedom of education. The fact that education in individual responsibility focuses on reflective processes rather than on well-defined ‘things to do’ or ‘norms to comply with’ also means that it is not only radically different from indoctrination, but also should protect people against exactly this. Education in individual responsibility focuses on making people reflect on themselves and their own environment and situation, and on challenging them to formulate answers according to their own beliefs and convictions. It is not about telling people what to do, but about teaching them to identify the situations they are faced with, and subsequently asking them what they believe is the necessary and appropriate response in those situations. In as far as certain values inherent to the democratic society, such as, for instance, ‘tolerance’, ‘pluralism’ and ‘broadmindedness’ (ECtHR, *Handyside* case, 1976) are actively promoted through such reflective processes, this would seem to be a *conditio sine qua non* for the survival of the democratic society. In as far as education can never be completely value-free, it is therefore not illogical for it to promote the basic attitudes underpinning a democratic society which allow all individuals within society to form their opinions and cherish their own beliefs. Whereas this framework can sustain a certain degree of indifference (or even rejection) of the democratic values on the individual level, on a structural level these values must be defended. If not, the democratic society runs the risk of destroying itself. This principle can also be found clearly in, for instance, the German Basic Law and the principle of the ‘*streitbare Demokratie*’, or in article 17 of the European Convention on Human Rights, which prohibits reliance on the Convention with the aim of destroying the rights and freedoms listed therein. Education in individual responsibility thus does not aim at supplanting individual convictions and imposing values; the societal values it pre-supposes merely form the glue between the myriad of individual and collective convictions already present and developing within society.

With the consequences of the financial crisis still looming large over the European continent, individual





responsibility can also be the key in the search for new answers and creative distributions of labour in a society which strives, in the first place, for the respect and protection of the human dignity of all. The impotence of the State to guarantee in several cases even the most basic of rights of its citizens, especially the young and the vulnerable, can easily lead to disillusionment with the democratic society as a project, and even lead to the questioning of the relevance of the human rights framework all together. Merely teaching young people about which rights they have, and how a democratic society should ideally function, would seem to be insufficient when claims for respect for basic aspects of human dignity remain unanswered. Rather, as a complement to State obligations, abstract human rights standards and related duties, individuals, from an early age onwards, need to learn to discern the human dignity needs of the people around them and to formulate new and creative answers based on their own experience. To this end, education in individual responsibility would seem to be indispensable.

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## Endnotes

<sup>1</sup> According to art. 10 §2 ECHR, any restriction or limitation requires a legal basis and one of several given legitimate aims, and must also be necessary in a democratic society.

<sup>2</sup> As I choose to follow the aforementioned authors in assigning a different term to the legal, moral and ethical realm respectively, the references to 'legal obligation', 'moral duty' and 'ethical responsibility' are in fact pleonasm. However, for the clarity of the article and for readers who are not familiar with this distinction, I choose to retain these indications.

<sup>3</sup> I speak of 'human duty' to make clear that I see this kind of duty as the logical corollary of a human right, and both of them as tools to, ultimately, protect human dignity.

<sup>4</sup> The ultimate philosophical foundations of human rights have deliberately always been left more or less vague in the most important international texts, exactly with a view to bridging cultural and philosophical differences. However, 'human dignity' (with all the conceptual lack of clarity it entails) is generally accepted as the central value which is protected by human rights.

<sup>5</sup> In some cases (but this is beyond the scope of this paper) we may also have a duty to protect another person's dignity where this person does not necessarily have a corollary right (as is, for example, the case when I am faced with a duty to save someone's life with little or no cost to myself).

<sup>6</sup> In this figure, a debtor or *sponsor* would commit to a certain action. A *re-sponsor* would guarantee, in his own name and with his own fortune, towards the primary beneficiary, in case the sponsor would be unable to fulfil his obligation.

<sup>7</sup> The sources I refer to speak of 'duties (and responsibilities)', however, I believe the notion of responsibility as set out above would aptly describe also what was intended by the respective authors.

<sup>8</sup> "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

<sup>9</sup> This term (in French: 'face cachée') was coined at a conference organized in 2004 in Brussels on the topic of responsibility in human rights law (Dumont et al, 2005).

