Rights and Responsibilities: Reclaiming Human Rights in Political Discourse
Lucy Fiske and Linda Briskman

Introduction
Discussion regarding the balance and inherent worth of both rights and responsibilities is long-standing and exists outside the political domain. In recent times neo-conservative political agendas, including in Australia, have diminished the currency of rights with policy swings towards responsibilities and obligations, targeted at the most marginalised groups. At the same time rights are recognised and selectively applied to dominant and privileged groups in society. This paper explores some of the philosophical and political concepts of rights and responsibilities, grounding this discussion in Australian case examples of policies of responsibility directed at two groups ‘othered’ in the dominant policy domain – Indigenous Australians and migrants and refugees. Analysing these examples through the framework of horizontal and vertical axes of political obligation, we propose that both rights and responsibilities can provide a useful schema for critiquing and understanding Australian policies. They also provide leads for vigilance for policy activists and policy practitioners to ensure a critical engagement with ongoing policy trends.

A new binary
The question of human rights and human responsibilities has become controversial and adversarial in political discourse, taking on divisive positions that do not reflect the depth of either concept. It is our contention that both rights and responsibilities need to be understood as interrelated concepts, and that taking either out of this relationship leads to dichotomous thinking that can be manipulated to serve ideological agendas. The federal government uses a language of rights when discussing issues such as the right of corporations to freely trade or to have ‘flexible’ employment policies (ignoring the corresponding responsibilities of corporations to fairly trade or to ensure workers’ rights are protected). In its dealings with Indigenous Australians however, the federal government favours a language of responsibilities, emphasising Indigenous peoples’ responsibilities to the state and eroding Indigenous peoples’ rights to self-determination or substantive equality. Proposed policy directions for ‘new citizens’ are following a similar course and we posit that the pendulum has swung to the right, creating conflict rather than a dynamic balance between rights and responsibilities.

A dynamic relationship between human rights and human responsibilities?
Human rights are rights which we hold simply because we are human; they arise from an understanding of what it means to be human. Different theories of rights have at their base different understandings of what makes us human - what is essential and universal about humanity or ‘human nature’ (Donnelly 1998:18 – 20). Whilst not all rights are enjoyed equally by everyone around the world, they are held equally by all humans. Wherever a right exists, so too does a corresponding responsibility. Human rights only make sense if there are also responsibilities upon others to protect, secure or realise those rights; similarly responsibilities make no sense unless they are linked to rights (Ife and Fiske 2006:297).

In a formal political or legal structure responsibilities are often understood as lying with the state and its agencies. The right to freedom from arbitrary arrest and detention places a responsibility on the state to enact laws, policies and procedures which protect this right. The right to vote entails a responsibility of the state to hold regular elections and to maintain an independent electoral commission. Responsibilities may also be understood as lying with our fellow citizens, families, corporations, trade unions and other private bodies (Human Rights and Equal Opportunity Commission 2001). The human right to work and to fair reward for that work requires a collective response engaging government, trade unions, corporations and individuals. To speak of rights without also discussing responsibilities leaves rights in a theoretical arena of lofty language and sentiment, with little meaning in the lived experiences of people. Similarly, to speak of responsibilities outside a framework of rights, can be exploitative and ignores the mutuality of relationship which forms the foundation of civic society.

In Australia today, particularly at a federal level, the question of rights is increasingly discounted with the government formulating a new concept of responsibilities that shifts it from its original meaning and application. The language of responsibilities in an ideal sense draws upon notions of obligation to community, and an ethic of care.

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mutual obligation however, has hijacked the language of relationship into a neo-conservative policy agenda, one which is predicated on the failure of the welfare state, individual capacity to overcome structural disadvantage and, all too often, a 'blame the victim' approach to structural social problems.

and justice for all. The federal government, in using a language of responsibilities, misleads the public as it invokes the innate sense of fairness that this language carries to introduce policies which entail accountability upwards, an accountability with no bearing to the ideals of human responsibility upon which it stands. Instead the concept of responsibilities has become conflated with the concept of 'obligations' (Flynn 2005:247). This ideological manoeuvre is becoming increasingly discernible in the public domain. The pervasive neo-conservative discourse is gradually eroding a series of hard fought for rights at a number of levels.

The co-option of a language of responsibilities removes it both from a discourse of human rights and from notions of moral obligation, communitarianism and the mutual support that are inherent in most cultures and societies. These collective and mutual relationships are perhaps more easily recognised in non-western societies, and valid critique has been levelled at western, individualistic understandings of human rights which tend to institutionalise responsibilities within state and formal structures, potentially eroding the relationships embedded in more collectivist approaches (Flynn 2005:245). Broadly understood, human rights are essentially a set of moral and ethical codes that guide relationships between groups and individuals and the linking together of rights and responsibilities emphasises the relational component of human rights (Ife and Fiske 2006, pp. 300 - 301).

Whilst human rights have been criticised as a western construct, to understand them as a product of western thought is a somewhat limited view. Cultural and religious traditions worldwide seek in their own ways to speak of the issue of human responsibility to others (Wiredu 2001; Dalai Lama 2001). In formal religions this is evident in revelations, poetry, edicts, commandments and parables that deal with moral responsibility, principles of justice, compassion and the common humanity of all (Lauren 1998:5). All religions and cultures contain within them codes and rules which guide how we should interact with one another. If we see a person struggling to go up a set of stairs with a pram, we offer to help lift the pram not because we have some formally codified responsibility to do so, but because we feel a moral or ethical responsibility to help another. We may draw this sense of responsibility from a humanist, religious or cultural framework, but it would be rare to find a person that would argue we have no responsibilities to one another beyond the sparsest of legal prohibitions. It is just this sense of inter-personal, super-political responsibility, one which we are rarely called upon to articulate, and therefore one which is generally experienced on an emotional or sentimental and therefore less critical level, which the federal government is deliberately and cynically tapping into to further its ideological agenda in regard to Indigenous Australians and recent arrivals who are not seen to assimilate with Australian lifeways. This paper will turn its attention to two examples to illustrate how the current responsibilities discourse is divisive, discriminatory and antithetical to the interdependence of human rights and human responsibilities. The rights and responsibilities analysis outlined here has relevance beyond the examples given, similar trends can be observed in a range of policy areas such as the controversial 'Welfare to Work' legislation, industrial relations changes, and the area of disability rights to name a few. The co-option of both language and sentiment of a responsibilities discourse is ideological at heart and underpins much social policy of the current neo-conservative government.

Indigenous communities and shared responsibility agreements (SRAs)

Philosophically, the idea of 'mutual obligation' draws our attention to the labyrinth of responsibilities which we all owe to one another; it emphasises the collectivity and mutuality present in all human relationships. The policy of mutual obligation however, has hijacked the language of relationship into a neo-conservative policy agenda, one which is predicated on the failure of the welfare state, individual capacity to overcome structural disadvantage and, all too often, a 'blame the victim' approach to structural social problems. In this context, mutual obligation is repugnant to many as its ideological underpinnings place the onus for behavioural changes on the most marginalised and disadvantaged in society as a pre-requisite for people to be afforded basic rights. Goods, services and entitlements previously conceived of as rights are now presented in government policies as privileges and rewards. The hallmark of the new policies is the Shared Responsibility Agreements (SRAs) targeted solely at Indigenous communities. These agreements formed part of a new approach to service provision in Indigenous communities announced in 2004. According to the federal government they are agreements in which 'both governments and Indigenous people have rights and obligations and all must share responsibility' (Office of Indigenous Policy Coordination 2004).

These agreements take away from communities their own capacity to set priorities, in sharp contrast to community development principles or the human right to self-determination (ICCPR Art. 1). They are punitively driven contracts in which only lip service is paid to community control (Bean 2006).

The 'agreements' include the Western Australian community of Yalata where a 'no school, no scouts' rule has been imposed, where only those who attend classes for 85% of the school year will be allowed to attend the National Scout Jamboree. Another, in the Northern Territory, is that in return for the provision of a health food shop, the community of Bona has had to agree to plough all profits back
into the community and not seek loans or credits (Gordon 2005:3).
In Wadeye, there is a ‘no school, no pool’ agreement. Murdi Paiki
communities in remote New South Wales have undertaken to reduce
the rate of domestic violence in exchange for 200 air conditioners
in community housing. Members of the remote Western Australian
community of Mulan have agreed to wash their children’s faces in
order to reduce trachoma, in exchange for a petrol bowser (Radio
National 2006).

According to Australians for Native Title and Reconciliation
(ANTaR). SRAs amount to placing coercive conditions on the
provision of Indigenous funding, including basic services. They are
racially discriminatory in that they are only directed at Indigenous
communities, making funding conditional on behavioural change
and other commitments which are not required from non-Indigenous
communities’ (ANTaR 2006). Although mutual obligation is part of
the reciprocity of Indigenous society, the way it has been enacted is
paternalistic and contrary to the Indigenous concept which implies
that those who have resources share them with those who do not
(Collard 2005). Shared responsibility implies both a degree of
equality in the relationship and a sense of collaboration, we help
each other in life. The shared responsibility of the federal government
however, ignores the fundamental inequality of the relationship
between the two parties. It radically reconfigures the relationship
between government and Indigenous people and has not yet been
subject to serious scrutiny in the public sphere (Land and Vincent
2005:1). Moreover, the government holds direct political, economic
and social power over the Indigenous communities; this is not the
relationship from which notions such as sharing or mutuality come.
Shared Responsibility Agreements also need to be understood within
the broader context of Indigenous rights in Australia at the present
time, and of a government approach which focuses on Indigenous
dysfunction (Briskman 2003:187) and denies community strengths.
This combines with paradoxical emphasis on both ‘mainstreaming’
and selective ‘special provision’ such as the SRAs to emphasise an
obligation to governments that is exclusionary and denies rights.

Citizenship case study
The federal government has launched a discussion paper on proposed
changes to the requirements for taking up Australian citizenship.
Included in these changes are an extension of the qualifying period
of living in Australia from two years to four years, introduction of
an English language test, a further test of the applicant’s knowledge
of Australian history, and the introduction of an ‘Australian values’
test. Framing these changes is a notable shift in language away from
one of rights and responsibilities and towards one of (individual)
responsibilities and privileges. Whilst the Citizenship Act 1948 (Cth)
retains the language of ‘rights and obligations’, the discussion paper
states clearly that ‘Australian citizenship is a privilege, not a right’
(DIMA 2006:8) and that ‘along with privileges, Australian citizens
have certain legal responsibilities’ (DIMA 2006:8).

The international human rights system is delegated to nation states for
implementation and protection, as such many human rights are realised
and codified as citizenship rights (Fiske 2006:222). Rights such as the
right to vote are afforded only to citizens in most nation states of the
world. Other rights such as the right to freedom from arbitrary arrest,
freedom of thought, belief and opinion, or the right to a fair trial tend
to be universally applied to all peoples regardless of citizenship within
the jurisdiction of a nation state. Other rights such as the right to
health, education or housing are much less clearly defined and form
a confusing area of policy and human service practice. Some states,
such as the United Kingdom accord anyone living in the jurisdiction
who meets a habitual residency test access to the National Health
Service, education and other basic services. Australia does not: its
policies towards refugees living on Temporary Protection Visas are a
good example of people with residency permission who are excluded
from federally funded services, including those which are codified
as human rights. Citizenship in Australia is an important feature in
determining the level of both protection and provision of human rights
that a person will enjoy.

The government has failed to make any argument linking English
language proficiency with good citizenship; nor has it demonstrated
how the additional two years will enhance a person’s capacity to
be a good citizen. Many migrants arriving after World War II were
given little or no assistance with learning the new language. Many
still have limited proficiency in English, yet have made significant
contributions to Australia’s development over the decades and are an
integral part of Australia’s demographic landscape (Jupp 2002). The
authors here wonder whether a random sample of Australian-born
citizens will be administered the Australian history and lifestyle test
to set the benchmark for passing the test. The idea of ‘Australian
values’ is particularly subjective and open to considerable manipulation
and political skulduggery. The federal government paper identifies
Australian values as:
- our respect for the freedom and dignity of the individual
- our support for democracy
- our commitment to the rule of law
- the equality of men and women
- the spirit of a fair go, and
- mutual respect and compassion for those in need

Apart from the obvious questions about how ‘compassion for those in
need’ is demonstrated through the policy of mandatory detention of
asylum seekers who arrive by boat including women, children and
those with serious medical conditions, what is it that makes these
human values uniquely Australian? The shift away from a language
of rights to one of privileges together with defining these values as
uniquely or exclusively Australian heralds in a new era of assimilation,
one based upon a preference for English speaking Anglo culture. This
approach attacks the universalism at the root of human rights, using a
simplistic cultural relativism rather than a more informed international
cosmopolitanism which would enable a more inclusive construction
of citizenship (McLeod 2001:246).

Running parallel to this public discussion on changing the grounds
for citizenship is the targeting of Muslim communities in Australia,
with the Prime Minister recently saying on talkback radio ‘There’s a
small section of the Islamic population which is unwilling to integrate’
(News Australia, 2006). This sentiment was echoed by Parliamentary
SECRETARY ANDREW ROBB who called for all Imams to preach sermons in English, while making no comments about Christian, Jewish or Buddhist sermons delivered in Russian, Latin, Greek, Hebrew or Burmese every week (Jupp 2006). There are unanswered questions regarding why these changes to citizenship are being introduced.

The proposed changes to Australian citizenship will also have significant and disproportionate impact on those already marginalised in society in particular, women, refugees, people from a non-English speaking background, people living in rural areas, people with disabilities and people from a low socio-economic background, potentially creating a sub-class of residents excluded from citizenship, and subsequently from a number of theoretically universal human rights. The impact for refugees will be additional as, without an original nationality to fall back on, refugees will be effectively unable to travel and may remain separated from families for several years.

The language of the federal government’s discussion paper skates over the important human rights attached to citizenship, re-casting it as a privilege and thereby emphasising the rights of the state and the responsibilities of the individual, instead of the human rights of the individual and the responsibilities of the state. Citizenship is more properly understood as the formal membership of individuals in a nation state with that membership entailing certain rights and responsibilities (Janoski 1998. Article 15(1) of the Universal Declaration of Human Rights outlines that every person has the right to a nationality. It is paradoxical that Australia would deny citizenship to a person who does not enjoy the nationality of another country and a person who Australia has found to be a refugee and subsequently offered protection.

Horizontal and vertical political obligation: Reclaiming responsibility

This co-option of a language of responsibilities can usefully be explored using a political theory of obligation which conceives of obligations along both vertical and horizontal axes.

The federal government uses the term ‘responsibility’ when discussing political obligations of citizens and the state. The terms can be presented to the public as entirely reasonable and as a ‘complete’ picture. Arguments are made about the level and type of responsibility of the citizen to the state and the state to the citizen, with many analysts and commentators on the left arguing for greater emphasis on the responsibilities of governments to the people living within their borders. However, even these important criticisms of the one-way nature of the federal government’s use of the term responsibility remain within a one-dimensional understanding of obligation. When constructed in this way political obligation is a vertical structure guiding the relationships between citizens and the government; it does little to guide our thoughts or actions in our relationships to fellow citizens or to broaden the argument further, to fellow humans. In addition to ignoring the horizontal aspect of political obligations, the SRAs maintain a focus on citizen obligation upwards to the state. By removing the language of human rights, the government has silenced the many unasked questions concerning its responsibility downwards, to the people. What are governments’ responsibilities to citizens? How can a government better assist the most marginalised and powerless to participate on a more equal footing? What is a government responsibility for reducing trachoma in Aboriginal communities?

Political obligation or responsibility also needs to be understood on a horizontal axis – that is, to question and consider our responsibilities to one another. When one begins to conceptualise political obligation as having both horizontal and vertical aspects, questions are raised that go well beyond a responsibility to obey to the law or comply with policy guidelines of the government, and enter a realm of positive political obligation. What should a ‘good citizen’ do in order to contribute to a just society and a robust democracy? What is a good citizen’s involvement in political society? (Johnson 1974, pp. 530 – 533)

Human rights can also be understood using this model. As stated earlier, the very notion of human rights implies responsibilities. The United Nations system of human rights, whilst emphasising the universality of human rights, delegates responsibility for their protection and realisation to member states. In policy and legal frameworks, it is human beings who hold human rights, and states that primarily hold responsibilities for those human rights (Donnelly 1998). This model has many strengths. It impels states to provide health and education services, it indirectly encourages a redistributive function, it insists that states provide legal protection for fundamental freedom rights, and so on. But foregrounding of this model can give primacy to the legal and institutional approach to human rights – a necessarily bureaucratic and atomistic understanding of rights and responsibilities, at the expense of the human element. This approach emphasises the importance of the vertical axis of human rights obligations. The horizontal axis of the human rights and responsibilities model encourages us to think about human to human responsibility.

When governments use the language of responsibility, we should be alert to the agenda which may be underpinning the policy initiative, and consciously look for the corresponding rights discourse which ought to be present. Cultural, customary or moral understandings of human responsibilities have been used effectively by governments to use policy to erode human rights of groups and individuals. The warm fuzzy feeling of the responsibility and mutuality language should now, rather than providing comfort, encourage policy analysts and observers to critique the policy, to ask questions not only of what is presented, but also what is absent – human rights.

Endnote

1 Australia’s Human Rights and Equal Opportunity Commission has expressed concern that SRAs may breach the Racial Discrimination Act (1975) as they apply only to Indigenous Australians and not to members of other racial groups. There are a number of tests which must be met before an SRA can be declared to be formally in breach of the RDA. An SRA may not breach the RDA if it is entered into entirely voluntarily with no coercion whatsoever, if the rewards offered for compliance with the behavioural changes required under the SRA are not essential services guaranteed to all Australians as a human right (such as water, housing, education or health); and, if there has been a high degree of participation and consensus by the people who will be covered by the agreement. For further information on the relationship between the RDA and SRAs see HREOC’s Social Justice Report 2005.
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