

Fundamental British Values and the Virtues of Civic Loyalty¹

Julian Rivers

This paper reflects the rise of 'fundamental British values' as a core part of the Government's counter-extremism strategy. It identifies several problems with the idea of FBVs, and suggests that we need to recover the concept of civic loyalty instead. It is appropriate to promote this through education, which should in part seek to form pupils and students into virtuous citizens.

The rise and relevance of 'fundamental British values'

The language of 'fundamental British values' was introduced by the Coalition Government in 2011 as a result of Lord Carlisle's review of counter-terrorism policy. Concerns had been expressed that in seeking to address violent extremism the previous administration had inadvertently funded non-violent extremists, who were also complicit in promoting the ideological basis for terrorism. In response, the Government sought to extend the 'Prevent' strand of its counter-terrorism strategy to address non-violent extremism. This was defined as 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs'.

The 2011 version of Prevent was clear that no new legal powers were needed to address non-violent extremism as such. Dangerous ideologies were to be met by 'challenge and debate' not the coercive force of law. The outstanding legal development of the period 2010-2015 was a general public sector duty to have due regard to the need to prevent terrorism, not extremism. Terrorism has a much narrower definition based on the use or threat of serious violence or serious damage to property for ideological ends. However, the Government did take steps to ensure that the counter-extremism strategy was addressed in schools. In the case of state-maintained schools, the legal tools have been the Teachers' Standards, which apply to the training, appraisal and discipline of teachers, as well as the advice issued by the Department for Education in respect of the duty to provide for the 'social, moral, spiritual and cultural development' of pupils. In 2012, the Teachers Standards were reformed and given statutory force. In the case of independent schools, statutory regulations also define the social, moral, cultural and spiritual development requirement to encourage pupils in the first place to respect fundamental British values.

Since 2015, the Conservative Government has sought to strengthen its opposition to non-violent extremism. A new version of the Counter-Extremism Strategy was published in October 2015, which treats violent and non-violent extremism on equal terms. It detaches 'extremism' from its location as part of one strand of counter-terrorism policy and considers it a 'harm' in its own right. The Queen's Speeches of 2015 and 2016 indicated that there would be new powers to ban extremist organisations, powers to restrict the activities of extremist individuals; and powers to restrict access to premises which are repeatedly used to support extremism. New powers for Ofcom and an extension of the Disclosure and Barring Service were also announced. Detailed policy proposals are so far lacking, except in one area. In November 2015, the Department for Education proposed to regulate 'intensive education in out-of-school settings', i.e. youth work above a certain threshold number of hours each week. All groups would be required to register and submit to an Ofsted inspection scheme, to include standards referring to the promotion of fundamental British values. There has been considerable opposition to these proposals, and it is still not clear which elements of them, if any, will finally make it onto the statute book.² Crafting a workable legal definition of 'extremism' is, to put it mildly, difficult.

Regardless of these current developments, the educational aspect of 'fundamental British values' is already in place, and it is hard to see it being removed. What are we to make of this development?

Problems with ‘fundamental British values’

Each term in the phrase ‘fundamental British values’ is problematic. First, the word fundamental raises a problem of status. When Jesus was asked what the most important commandment was he replied that we should love the Lord our God with all our heart, soul, strength and mind, and that we should love our neighbour as ourselves (Luke 10:27). Nicholas Wolterstorff helpfully defines love of neighbour as the promotion of the goods of another’s life as an end in itself.³ Part of that ‘love’ is indeed political, but there are many areas of life which are not political in that sense. If we had to state which of our many overlapping identities and communities is the most important to us, we would probably not single out our British citizenship. In an educational context, the most important value is arguably the pursuit of truth. It is understandable that politicians might think that their vocation is the most important of all; we all tend to think that. But objectively speaking these values are important, not fundamental. The danger here is ultimately a narrowing and distorting of the real conditions for human wellbeing to an unthinking statism.

Second, the word British raises a problem of national identity. It has often been pointed out that these values are not distinctively British at all. They are the values of liberal cosmopolitanism, as significant in Washington or Warsaw as in Westminster. If the Government had sought to identify distinctively British values the list would have been far more specific and correspondingly contentious. Indeed, it is precisely the contested and overlapping nature of national identities which make the attempt at an official definition particularly inept. All that the word does is try to harness the emotive force of nationalism in a context in which the content of that idea is too difficult to define.

Third, the word values raises all sorts of difficulties. Headteachers have already reported the difficulties of trying to teach or assess conduct by reference to what are highly general states of political affairs.⁴ What does it actually mean in practice for a teacher to ‘promote the rule of law’? Values-talk can be useful to secure agreement on common aims at a basic level, but there is a risk that the terms become a shibboleth, mere words to be pronounced at moments of confusion to show that we belong. They also have the potential to restrict the enjoyment of fundamental political rights in the name of the creation of a thick ethical homogeneity. Civil liberties such as the freedoms of conscience, religion, speech and association then become proportionately valuable to the extent that their use promotes the values of the liberal democratic state. Thus fundamental rights become curtailed by reference to content and usage. Signs of this danger materialising are clearly apparent in the current proposals.

Finally, one can raise a question about the range of values identified in what has rapidly become a canonical list. It is common enough to place democracy and the rule of law in close proximity to each other, indeed in some tension with each other. Democracy is not mob rule but is expressed through law; law is not simply order but ordered to the common good. It is then curious that individual liberty appears on its own and is not paired with its own sparring partner, social justice. Mutual respect and tolerance fall into a different category, since these are not really values but virtues which make democracy and the rule of law, individual liberty and social justice possible. We return to this point below.

Towards civic loyalty

The introduction of fundamental British values exposes an anxiety about the social preconditions for the liberal democratic state. The German Roman Catholic and constitutional judge, Ernst-Wolfgang Böckenförde once famously stated that ‘the liberal, secularized state lives from preconditions it itself cannot guarantee’.⁵ Of course, no regime can guarantee its own survival. What he meant was that the programme of political liberty characteristic of liberal democratic constitutionalism both depends on certain prior forms of ethical community and consciously denies to itself the right to take steps to inculcate and nurture such community. Any attempt directly to prescribe the values on which it is based as official state ideology leads back to the very totalitarianism the liberal state has sought to escape.

This raises the difficult question of what degree of ethical homogeneity is needed to support the modern state, and how to secure it. Böckenförde’s essay was cited by the Federal Constitutional Court when it decided a case in 2000 on the legal status of Jehovah’s Witnesses.⁶ The question was whether they qualified for status as a ‘public law body’ (very roughly equivalent to the question in English law whether a religious group qualifies for

charitable status). Registration had been refused on the grounds that the Witnesses actively discouraged their members from participating in elections and democratic bodies, and in that sense were 'anti-democratic'. But as far as the enjoyment of rights is concerned, the Federal Constitutional Court was clear that all that can be required of any person or group is obedience to law (*Rechtstreue*) not the thicker commitment actively to display loyalty to the state.⁷ There is an important point here. It is the hallmark of a liberal society that we tolerate the existence of peaceful, law-abiding groups who want to keep themselves to themselves. Law-abiding citizens have a right to be left alone.

But Government would collapse if we all adopted the stance of a quietist sect. So it is entirely legitimate for the state actively to promote its own ethical foundations in the educational context. Indeed, as a range of thinkers have emphasised it is primarily through its oversight of the education system that the state can legitimately attempt to form children into good citizens. That is how it addresses its vulnerability.

Jürgen Habermas has suggested that our aim must be to develop a form of 'constitutional patriotism'.⁸ His argument is that in a post-national context of complex and overlapping identities, we need to develop a thin form of political community which is characterised by our common commitment to living together under just and fair arrangements. This term has immediate advantages over 'fundamental British values'. It makes clear both its limited political nature and its positive affective stance towards fellow-citizens. Our commitment is not to a thickly constituted and contentious concept of nation or *Volk*, but to a system which seeks to make civilised life possible among those who are more or less excluded from such a concept. Yet this is not a 'bloodless' idea. There must be genuine commitment and affection, a love if not for 'country' then at least for its political and legal institutions.

However, constitutional patriotism does not translate well. The United Kingdom does not have a codified constitution, so the question 'what is the constitution?' does not admit of a simple one-line answer. The language of 'patriotism' is perhaps not entirely comfortable either, affective for sure, but still conjuring up bitter memories of the two world wars. It would be better to replace 'constitutional' with 'civic', which if anything has helpful overtones of local participation. For patriotism we could use 'loyalty'. For Jews and Christians, loyalty conjures up the covenant faithfulness of the God who constituted his people a nation at Sinai. It is clearly present at moments of high constitutional symbolism, expressed as much in the oaths to govern well sworn by the Sovereign on accession, as in the oaths sworn by naturalising citizens to 'be faithful and bear true allegiance ... according to law'.⁹ Loyalty helpfully identifies the sense of betrayal we feel when those who live among us use their freedom to perpetrate random acts of violence in pursuit of their political and religious visions. Loyalty is a characteristic of persons who act in commitment to each other over time. In short, it is a virtue, not a value.

Exploring the virtues of civic loyalty

The language of virtues has this immediate advantage over values. It is concrete and rooted in the practices of persons rather than a label for an abstract state of affairs. Of course, liberal states are cautious about promoting virtues for the same reasons that they should be cautious about promoting values.¹⁰ But at least as long as our focus remains educational, the caution is misplaced. Schools, colleges and universities are not polities, they are, in part, staging posts towards that end. Our challenge is thus to think more rigorously about the mundane educational practices which express and develop personal character such that each successive generation become people among whom states of affairs such as democracy, the rule of law, individual liberty and social justice become normal and secure. How do we educate for civic virtue?

Democracy requires a willingness to listen (humility) and the ability to express one's own ideas and arguments (courage). It requires both to represent to others those sectional and individual interests I know best, but also attention to the good of all. It needs openness to collective decision-taking, and subordination to decisions collectively reached. Since democracy is an ongoing project, as one of the majority, I need to be gentle towards the minority, not using my power as an excuse for oppression. As a minority I need to resist the temptation to disengage, but to submit with good grace to the ongoing collective project. All these are characteristics of any well-functioning group, and can be practised in the home and classroom as much as in the debating chamber.

The rule of law is also rooted in trivial actions of daily life. It requires honesty, consistency and transparency of thought, speech and action. It requires collective discipline, and the willingness to live by rule. Queuing is a familiar example of a conventional and ordered response to problems of distributive justice. We must be even-handed in our treatment of others and develop that distinctive combination of open-mindedness and decisiveness which is the characteristic of the 'judicious' person. Above all, we need to be disinterested, that is, able to treat others according to criteria appropriate for the context at hand, and not by reference to other extraneous matters. When I interview you for a job I am not admitting you to membership of my church. When I pick you for my sports team, I am not interested in your taste in music. Only in this way can we build communities of justice in the face of our differences.

Individual liberty and social justice correspond to two basic attitudes of respect towards others: avoidance (negative rights) and assistance (positive rights). There is a place for both. We need to learn to allow others to make their own choices, to join themselves with others and separate themselves from us. We need to allow others to be alone. Yet this negative dimension of respect for others is inadequate by itself. We also need to know when to intervene, when to be pro-active, when to assist. This engagement is the fundamental interpersonal transfer characteristic of social justice, and it is as much a part of respect for others as avoidance. Valuable – or harmful – patterns of avoidance and assistance are as obvious in the playground as in the state.

Conclusion

Much more can be said. But the basic point is clear: there is a sense in which the language of fundamental British values is not demanding, not radical, enough. It speaks to a real need, which is at root the formation of virtuous citizens. As Christians we share that concern wholeheartedly and we are called to show our love for our fellow-citizens 'not with words or tongue but with actions and in truth'¹¹ by taking practical steps as we have opportunity to play our part in those processes of mutual formation.

For further reading

- Karol Edward Soltan, 'Constitutional Patriotism and militant moderation' (2008) 6.1 *International Journal of Constitutional Law*, 96-116.
- Peter E. Gordon, 'Between Christian Democracy and Critical Theory: Habermas, Böckenförde and the Dialectics of Secularization in Postwar Germany' (2013) 80.1 *Social Research*, 173-202.
- Julian Rivers, 'The living rule of law: an essay in virtue jurisprudence' (2015) 174 *Law & Justice*, 5-34.

Julian Rivers is Professor of Jurisprudence at the University of Bristol Law School. He was chair of the KLICE Advisory Council from its founding in 2006 to 2009.

-
- ¹ An earlier draft of this paper was presented to the Church of England Further and Higher Education Development Group on 14 October 2016. I am grateful to members of the Group for their comments; the views expressed remain my own.
 - ² See the report of the Parliamentary Joint Committee of Human Rights, Counter-Extremism, Second Report of Session 2016-2017, HL Paper 39 HC 105 (22 July 2016).
 - ³ Nicholas Wolterstorff, *Justice in Love* (Eerdmans, 2011), 4.
 - ⁴ Lynn Revell and Hazel Bryan, 'Calibrating fundamental British values: how head teachers are approaching appraisal in the light of the Teachers' Standards 2012, Prevent and the Counter-Terrorism and Security Act 2015' (2016) 42.3 *Journal of Education for Teaching*, 341-353.
 - ⁵ 'Die Entstehung des Staates als Vorgang der Säkularisation' (1967).
 - ⁶ BVerfGE 102, 370.
 - ⁷ Jonathan Chaplin draws a similar distinction between 'mere citizenship' and 'virtuous citizenship' in *Multiculturalism: a Christian retrieval* (Theos, 2011), ch. 7.
 - ⁸ See, e.g., Jürgen Habermas, 'Citizenship and National Identity' in *Between Facts and Norms*, tr. William Rehg (MIT Press, 1996) 491-515. Generally, Jan-Werner Müller and Kim Lane Scheppele, 'Constitutional Patriotism: an introduction' (2008) 6 *International Journal of Constitutional Law* 67 and subsequent articles.
 - ⁹ British National Act 1981, Schedule 5.
 - ¹⁰ For a neo-orthodox response to this caution, see John Milbank and Adrian Pabst, *The Politics of Virtue: post-liberalism and the human future* (Rowman & Littlefield, 2016).
 - ¹¹ 1 John 3:18.