The Implications of and Responses to COVID-19: Localizing Human Rights in the City of York (UK)

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Abstract
This essay attempts to capture the human rights implications of COVID-19, and responses to it, in the city of York (UK). Three human rights contributions are identified: ensuring that responses enhance dignity, the right to life, non-discrimination, and protect the most vulnerable; using human rights when balancing priorities and making difficult decisions; and optimizing the link between disease and democracy. The overarching aim is to localize and contextualize human rights in a meaningful way in the city, and thereby to provide meaningful guidance to the City Council and statutory agencies when implementing the difficult measures required by the pandemic, and to support civil society advocacy and monitoring. This work, led by the York Human Rights City (YHRC) network, illustrates the value of a localized ‘thick description’ of human rights and the multi-dimensional picture of challenges, innovations and solutions facilitated by such an approach.

Keywords: balancing rights; COVID-19; human rights city; localism; non-discrimination; rights and democracy

This essay captures the human rights implications of COVID-19, and responses to it, in the city of York (UK). It is based on fact sheets that identify human rights concerns (summarized here on a grey background), followed by empirical evidence and case studies from the city. The fact sheets have been written for the York Human Rights City (YHRC) network, and the network hopes they will be of use to the City of York Council and statutory agencies—notably, the National Health Service (NHS) and the police—and community and

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1 The fact sheets are available on the website of York: Human Rights City (https://www.yorkhumanrights.org/current-work).
voluntary groups. For the former, the fact sheets provide guidance on how to address human rights concerns when implementing the difficult measures required by the pandemic; for the latter organizations they set out frameworks to support advocacy and the monitoring of policy as it impacts on individuals, families and communities and/or on issues of concern such as mental health, disability, and the situation of refugees. The overarching aim is to localize and contextualize human rights in a meaningful way in the city.

The local newspaper—The Press—is providing a day-by-day account of the local effects of COVID-19, and it is drawn on heavily as a source in the fact sheets and this essay to paint a multi-dimensional picture of the city of York. By the middle of June, 132 patients with COVID-19 had died in York Hospital (The Press, 16 June 2020a). In early May, 50 per cent of York’s 36 care homes had reported COVID-19 outbreaks (The Press, 2 May 2020), and between 10 April and 12 June, 63 deaths were reported in York care homes (The Press, 16 June 2020b). In terms of the full profile of COVID-19 effects, York appears to be doing well in some areas—for example, the Google Community Mobility Report has commended York as one of the best cities in the country for adhering to the lockdown (The Press, 18 April 2020). But it is faring less well on other issues. Spending in York fell by over 50 per cent in lockdown, the fifth biggest fall out of 80 larger cities in England and Wales. The main reasons cited were the closure of universities, and the end to tourism. Non-grocery shopping collapsed, falling by 75 per cent (The Press, 23 April 2020). A number of reports in June underlined a bleak economic picture: closure of national chain stores and restaurants pointed to a high street in decline, and York ranked the eighth most affected city in the UK (The Press, 5 June 2020); while unemployment has risen by 141 per cent during the pandemic, with young people and those aged over 50 worst affected (The Press, 11 June 2020).

In this article, three human rights contributions to efforts to combat COVID-19 are identified: ensuring that responses enhance dignity, the right to life, non-discrimination, and protect the most vulnerable; using human rights when balancing priorities and making difficult decisions; and optimizing the link between disease and democracy.3

Dignity, the right to life and non-discrimination

Thus, whereas the plague by its impartial ministrations should have promoted equality amongst our townsfolk, it now had the opposite effect and . . . exacerbated the sense of injustice rankling in men’s [sic] hearts.

—Camus, The Plague

There are three main routes to discrimination, with implications for dignity and the right to life:

1. Discrimination in access to health care, for example, the suggestion that groups such as the elderly or disabled people should be excluded from access to ventilators or other kinds of health care.

2 On 24 April 2017 York declared itself the UK’s first Human Rights City. The declaration was the culmination of six years’ work by YHRC, a network including the City of York Council, local statutory bodies such as North Yorkshire Police, York Citizens Voluntary Service (CVS), and the Centre for Applied Human Rights, University of York.

3 There have been a number of overview pieces setting out the links between COVID-19 and human rights. For example, see Carver (2020); Casla (2020); and Donald and Leach (2020).
2. *Indirect or inadvertent discrimination* may arise from measures to combat COVID-19 which appear neutral. For example, ‘social distancing’ means little in overcrowded houses and prisons, and may stigmatize already marginalized groups and increase levels of domestic violence and child abuse.

3. *Contextual and structural discrimination* encompasses enhanced vulnerability relating to the qualities of COVID-19 itself, or the nature of society with which it interacts. Children, often considered a vulnerable group, are not especially at risk of contracting the virus or from its effects if they do contract it. Other groups, however, may be particularly vulnerable including BAME (Black and Minority Ethnic) communities, homeless people, those with mental illnesses, people deprived of their liberty, migrants and refugees, and key workers, including health and social care workers.

Many of the vulnerabilities and forms of discrimination anticipated in the summary above can now, sadly, be supported by empirical data. Early in the pandemic in the UK there were concerns about elderly and disabled people being denied medical treatment—the National Institute for Health and Care Excellence (NICE) was forced to redraft its initial guidance to the NHS that it should assess patients with conditions such as learning disabilities and autism as scoring high for ‘frailty’, meaning they could be refused treatment because they needed support with personal care in their everyday lives (Ryan 2020). Human rights prescribe that access to medical care, in particular in situations of scarce resources, should be equal and guided by medical criteria—in short, decisions about the efficacy of treatment are not the same as judgments about the quality of a person’s life, and as such no blanket measures excluding categories of people are permitted (Council of Europe Committee on Bioethics 2020; Lewis 2020). Evidence also indicates that diverse groups are subject to acute vulnerabilities and both indirect and structural discrimination. For example, it has been predicted that over half the COVID-19-related deaths in England will occur in care homes, affecting the elderly (Savage 2020). It is also clear that COVID-19 is disproportionally affecting ethnic minorities and people living in poverty (Fawcett Society et al. 2020; Platt and Warwick 2020; Public Health England 2020a).

A final example relates not to the effects of the virus, but to the effects of governmental responses to the virus. Very significant concerns have been raised about the Adoption and Children (Coronavirus) (Amendment) Regulations 2020, which came into force on 24 April (they are not due to expire until 25 September 2020, and may be extended). These concerns relate to the dilution of social care and protection for some of the most vulnerable children in the country (those in care), the lack of consultation about the new regulations, and fears that for a government sceptical about these protections the COVID-19 crisis is being used as a cover to dilute hard-won protections, and that temporary measures may become permanent. In short, while it is frequently claimed that ‘we are all in this together’ and that COVID-19 does not discriminate, it is now clear that neither of these statements is completely true. Rather than being a great leveller, COVID-19 is holding up a mirror,

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4 For more general discussion of the short- and long-term impact of the virus on children, see Camporesi (2020) and Nolan (2020).

5 A *Guardian* editorial noted: ‘The removal of protections in 10 sets of regulations relating to the care of looked-after children in England, with no public consultation or parliamentary debate, must be seen for what it is: an attack on their rights’ (*The Guardian* 2020). For further criticisms of the regulations, see Children’s Commissioner (2020) and Lucas (2020).
highlighting and possibly accentuating the divides and inequalities that characterize the UK, through intersecting forms of inequality and discrimination—in access to health care, and through indirect, contextual and structural discrimination.

While the issues set out in the paragraph above are national-level concerns, they will all affect York—for example, local authorities deliver social care and protection for children in care. Annual indicator reports produced by the YHRC network have found that inequality in the city is a cross-cutting concern, on issues ranging from educational attainment to life expectancy, child poverty and ‘in work’ poverty.6 There are already clear signals that COVID-19 is affecting the vulnerable, fuelling discrimination and exacerbating inequalities in York. The economic and employment data cited in the introduction reinforce this assertion. Further examples are not hard to find, and include: claims that elderly people in care homes are being neglected (The Press, 13 April 2020a); evidence that food bank use has more than doubled in the city (The Press, 26 May 2020), and the number claiming universal credit—a state benefit for those who are unemployed or on low incomes—also nearly doubled between 9 April and 14 May (The Press, 17 June 2020); reports from the Samaritans—a telephone helpline—of a ‘huge rise’ in calls seeking help, notably in relation to domestic violence and mental health issues (The Press, 4 May 2020); and concerns about an increase youth homelessness as lockdown is eased (The Press, 16 May 2020). Issues such as mental health, poverty, inequality, domestic violence, and racial injustice represent what Yamin (this issue) calls the ‘shadow pandemics’ created by COVID-19. Such concerns are becoming more visible, simultaneously illuminated and accentuated by the pandemic. Their legacies will long outlast the pandemic itself, setting the agenda for policymakers and practitioners for decades to come.

Local authorities, including the City of York Council, are helping vulnerable groups in various ways, such as supporting Community Hubs (run by council staff and volunteers, to deliver food and medication, check in on vulnerable people, and so on), but it is clear that ongoing vigilance will be needed to ensure that dignity, the right to life and non-discrimination are not significantly diminished during the pandemic and its aftermath. Such work will need to address discrimination in all its forms—in access to health care, and through indirect, contextual and structural discrimination.7

Balancing priorities, making difficult decisions

[Qualified or non-absolute] (b)human rights do not really resolve the tension between competing interests and various visions of how the world should be; rather, human rights ideas provide the vocabulary for arguing about which interests should prevail and how best to achieve the ends we have chosen.

—Clapham (2007)

While some human rights are absolute, many are not. Human rights law recognizes that there are circumstances when the enjoyment of (qualified or non-absolute) human rights may be restricted, subject to certain conditions being met. Public health is specifically

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6 The indicator reports can be found on the website of York: Human Rights City (https://www.yorkhumanrights.org/current-work).

7 For the City of York Council work to support vulnerable people, see https://www.york.gov.uk/C19CYCStaff/VulnerablePeople. The NGO JustFair has documented what local authorities in the North East of England are doing to protect vulnerable people (http://justfair.org.uk/north-east).
named as a legitimate reason for instituting what are termed ‘public interest restrictions’ on such human rights. For example, the lockdown entailed restrictions on our freedom of movement and assembly because of COVID-19.

Policymakers are faced with numerous trade-offs and difficult decisions at present. The first way in which human rights are useful is that they acknowledge these dilemmas—these decisions are difficult—and, as the quote at the head of this section suggests, provide a vocabulary for balancing, debating and prioritizing interests—for example, when and how should restrictions on freedom of movement be eased?

Human rights make a second contribution by outlining criteria on the basis of which difficult decisions to restrict human rights should be made. Any restrictions must pass a three-part test—they must be provided by law, address a legitimate purpose, and be 'necessary in a democratic society':

1. The ‘provided by law’ requirement also means that restrictions to rights must be clearly formulated and be accessible to the general public (ideally in written form).
2. In order to lawfully restrict rights, governmental authorities must pursue legitimate purposes, which include the protection of health (as noted above) and public safety.
3. The phrase ‘necessary in a democratic society’ means that restrictions on rights should be required by and be proportionate to the threat they are designed to meet—they should not go beyond responding to the threat in scope (materially, geographically), nor be open-ended. Restrictions should not undermine the essence of democracy and human rights.

These criteria can be used by the City of York Council and other statutory bodies in policy formation, and by civil society to assess whether the criteria have been fully and fairly applied (especially criterion 3).

The clearest example of the need to balance interests and rights in York during the early stages of the pandemic was the issue of whether and how funerals should be held during the lockdown. On 9 April the City of York Council banned mourners and stopped funeral services at York crematorium. The dead were to be subject to ‘direct cremations’ until further notice (The Press, 8 April 2020). There was recognition that this would be heartbreaking for the families of the deceased. The fact that families could not visit loved ones in hospital, nor attend their funerals, for fear of further infections had to be balanced against public health concerns and the safety of crematorium staff. There was a strong public response against this measure, and a petition quickly started to gather signatures. By 11 April the City of York Council agreed that a celebrant or minister could perform a short service, which would be filmed free of charge, and up to ten mourners could attend but would have to remain outside the crematorium (City of York Council 2020a). The backlash continued, asserting that these compromises were not enough. Petition organizer Kelsey Dobson stated that ‘Whilst yesterday’s renewed guidelines allow immediate family outside the crematorium, this still refuses immediate family their right to be with their loved one during the service’ (The Press, 13 April 2020b). On 14 April the Council confirmed that up to ten immediate family members could attend the crematorium, with a short ceremony held outdoors (City of York Council 2020b). This is a good example of balancing, with a sensible compromise reached through public debate. Public health concerns had to be weighed against other priorities and rights, notably the right to respect for private and family life, freedom of religion and belief, and freedom of assembly and association. All of these rights are protected within
the 1998 Human Rights Act. Such balancing acts often involve everyday issues, and as such are an important means to engaging the majority of the public, and not just vulnerable groups, in discussions about the relevance of human rights to their lives.

Disease and democracy

We don’t do charity in Germany. We pay taxes. Charity is a failure of governments’ responsibilities.

—Henning Wehn, a German comedian, at the start of the pandemic

There are two issues at stake in this final section.

1. The question of what degree of transparency and openness is required in public decision-making at times of crisis. Democracy and associated human rights provide the oxygen that will breathe life into an effective response to the virus—democracy at a local scale, as well as nationally. Those who wrongly believe that authoritarian responses are a quick fix in such crises forget the evidence from past pandemics—HIV, Zika, Ebola, H5N1 (‘avian influenza’), Severe Acute Respiratory Syndrome (SARS) and Middle Eastern Respiratory Syndrome (MERS). We know that human rights need to inform responses: transparency and accurate information about risk, transmission and treatment (the right to information and expression); the active engagement of populations (a cross-cutting principle of participation); and maintaining a climate that will encourage people at risk or ill to seek help, rather than avoid health services because they are afraid of stigma and punishment (non-discrimination, right to adequate health care, right to life).

2. The issue of state capacity and the kind of state—local government and national government—that we want.

At times of crisis, it is inevitable that the weight in decision-making shifts from consultation to direction, and to new constellations of elected representatives, experts (in this case, for example, scientists) and civil servants. But here again it is important that a balance is maintained, with oversight of and limits to new arrangements and practices. At a national level there have been calls, for example, for greater transparency about the composition of, and advice given to the government by, SAGE—the Scientific Advisory Group for Emergencies (Mason 2020). More recently, the UK government has been criticized for omitting sections from the report by Public Health England (2020a) which detailed the disproportionate effect of COVID-19 on the BAME community. The missing sections of the report, based on wide-ranging community consultations with the BAME community and including recommendations which stressed the need to explicitly address ethnicity, racism and structural disadvantage in COVID-19 responses, were subsequently leaked to the press (Tapper 2020). A second report, including the previously omitted information, was published on 16 June (Public Health England 2020b).

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8 For more on the Act, see the Equality and Human Rights Commission (https://www.equalityhumanrights.com/en/human-rights/human-rights-act).

9 Education is a right itself and a gateway enabling access to other rights – the right mental health, substantive equality, and so on.
In York, a basic question is: how many residents would be able to say how decisions are currently being made in the city? While the City of York Council has a web page dedicated to ‘Councillors and local democracy’, which includes urgent decision-making guidance and details a focus on executive and regulatory functions, these new arrangements have been subject to virtually no press coverage or public debate. Concerns have been raised by opposition political representatives and some members of the public that key decisions are not in the hands of elected members, and that there is limited input into and oversight over decision-making—for example, decision logs have not been published in a timely fashion, and often lack detail. While a full assessment of the Council’s response to the crisis will take time, it is important to frame the parameters for this discussion now. Some concerns are more specific. At the end of May, for example, the York Central member of parliament called for greater transparency from local and national government about the number of COVID-19 cases and deaths in York care homes (The Press, 28 May 2020).

At the heart of the current relationship between disease and democracy is the question of the kind of state we want. COVID-19 is a reminder that we need an effective and responsive state, including at local government level. No other organization or mechanism could have responded effectively to the virus on the scale required. Money is being spent on health systems and infrastructure in an unprecedented manner. In essence, human rights are rights claimed by individuals and groups from the state as duty bearer. Decades of privatization and austerity have weakened this bond, but the state is now centre-stage. Human rights are needed not just as a negative shield against government interference, but also as a means to make positive claims on government. Basic social provision, including health, social security, and housing, is a fundamental human right. The realities of this crisis—the state matters; free health care for all is precious—should be remembered when life returns something approximating normality, not just in the priority given to nurses, doctors, carers, and other key workers, but also for the ongoing responses to crises such as climate change.

A key lesson from the COVID-19 response is that we can find the resources to address issues if we want to. A second lesson is that the positive energy from the profusion of volunteering, civic action and Community Hubs needs to be tapped to enhance social cohesion, while not by intent or default replacing the state as the main means of service provision. Charity and volunteering are important, but Henning Wehn (above) has a point—these activities cannot and should not replace government. Finally, the legacy of COVID-19 for the state will be complex. It will have expanded its role significantly in some areas, such as the economy, at least in the short term; but it will have contracted in other areas, such as social care and protection for children. If we want a human rights city, or a human rights state, we will need to be clear about what kind of government we desire, and vigilant in campaigning to bring it about.

10 See City of York Council—COVID-19: Councillors and Local Democracy (https://www.york.gov.uk/COVIDDemocracy). The Centre for Public Scrutiny (CIPS) is providing support for local authorities on governance and scrutiny, on behalf of the Local Government Association (https://www.cfps.org.uk/covid-19-notice).
11 Published decisions are available at City of York Council—Local Democracy During Coronavirus (https://democracy.york.gov.uk/mgDelegatedDecisions.aspx).
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