

THE KNIVES ARE OUT

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- *The UK government's plans to withdraw from the European Convention on Human Rights and scrap the Human Rights Act will seriously undermine rights protection in the UK and beyond*

ABSTRACT

Following the recent general election in the UK, the Conservative Party is promising to abolish the Human Rights Act – which allows UK citizens to defend – in British courts – their rights set out in the European Convention on Human Rights. There is even the threat to withdraw from the Convention itself. As an alternative, the Conservative Party is proposing a British Bill of Rights. However, details remain vague and there are serious concerns that it will fall far short of the current human rights system – one that has proven time and time again to offer real protection to real people. Shami Chakrabarti describes why the arguments being used for the abolition and withdrawal are misguided and why doing so would be a disaster for the protection of human rights, not only in the UK but also internationally.

KEYWORDS

UK Human Rights Act | European Convention on Human Rights | Liberty | Magna Carta | British Bill of Rights

The dust had barely settled from the United Kingdom's general election in April 2015 when the knives came out for the British Human Rights Act (HRA). The speed at which the new Conservative government jumped on an issue, which had only merited a few sentences in the party manifesto, simply reinforces how poorly thought through calls for its abolition are.

The HRA enshrines the European Convention on Human Rights (ECHR) into British law. This means that human rights claims can be raised in British courts. Prior to the HRA's enactment, those in the UK could only raise rights issues in the European Court of Human Rights (ECtHR) in Strasbourg, making the process both incredibly time-consuming and expensive, closing the door to many. Liberty client Janet Alder is just one example of a claimant who suffered under that system. Although she was ultimately successful, Janet's struggle to get justice for her brother who died in police custody lasted an unacceptable 13 years.

Thankfully, this is no longer the case. Time and time again the HRA has enabled ordinary people – soldiers, journalists, bereaved families, victims of domestic violence, slavery and rape – to hold the powerful to account in UK courts. Simply put, the HRA protects everyone. Can the same be said of the so-called British Bill of Rights – the vague alternative proposed by the Conservatives? The danger of replacing “Human” with “British” is clear; rights for some but not all – who on that list above will miss out? And when and where will victims get justice? These are just two of the many questions that have not been answered.

We are told that replacing the HRA with a new British Bill of Rights will restore parliamentary sovereignty; ensure that the UK's Supreme Court is actually supreme; correct the “mission creep” which has moved human rights into areas never envisioned by the drafters of the European Convention in the late 1940s; ensure human rights law only applies in serious cases; and ultimately inject some much needed common sense into rights protection. So important is the issue that Prime Minister David Cameron hijacked the 800th anniversary of the great Magna Carta to remind the UK that it falls on us “to restore the reputation of [human] rights”.

Far from laughing in the face of Magna Carta, the HRA builds on its tradition of liberty, offering far more meaningful protection than its lauded medieval forbearer. It is a dark irony that British government ministers lined up to celebrate Magna Carta while seeking to put its present day equivalent out to pasture. And it is something all the more sinister for the British Prime Minister to stand before the nation and use the anniversary to declare that “the good name of human rights has sometimes become distorted and devalued” when that distortion has often emanated from his own party.

Both the Prime Minister and the Lord Chancellor (the UK's Minister of Justice) have said they are prepared to withdraw the UK from the European Convention – Churchill's post-war legacy – altogether to achieve their aims. They level two main criticisms at the Convention. It will come as no surprise to learn that they are completely wrong.

The government claims that withdrawing from the European Convention will end the ECtHR's ability to require the UK to change British laws. The Court has no such ability – British law can only be changed with the approval of Parliament.

In addition, the British government also claims the ECtHR has developed “mission creep”, with human rights moving into areas never envisioned by those who drafted the Convention. But it can only be right that the ECHR is seen to be a living instrument, capable of developing over time rather than remaining stagnant. When the Convention was drafted homosexuality was still illegal in much of Europe whereas marital rape and corporal punishment were not, and such scientific developments as DNA could never have been envisioned, let alone its mass retention on a police database. Far from being a problem, this “mission creep” is one of the Convention's great strengths.

Not only is this crusade against imaginary problems pointless, it is incredibly dangerous on a global scale. The international impact of the UK's departure from the ECHR cannot be overstated. The UN special rapporteur on torture Juan Méndez said that a UK withdrawal would be “a very bad example for the rest of the world” and that it could increase the risk of individuals facing cruel, inhuman or degrading treatment. He stressed that to be making these moves during the current European migration crisis was “pernicious” and “an ungenerous and cold-hearted way of dealing with a crisis”.

The Council of Europe's Human Rights Commissioner has said it could be the “beginning of the end of the ECHR system”. Last year, survivors and relatives of the victims of the 2004 Beslan massacre in Russia – who are raising rights violations at the ECtHR which occurred both at the time of the massacre and in the subsequent trials – also warned that British withdrawal would be greeted with delight by Putin who would see it as an opportunity to flout Russia's human rights obligations. They appealed to the British government to “understand that we all live in the same world”, explaining that the UK leaving the ECHR would be disastrous for Russians. David Cameron also takes the dubious accolade of being cited by the former Kenyan president Uhuru Kenyatta – who is facing war crimes for thousands of deaths and displacements following the 2007 Kenyan elections. In defending Kenyan sovereignty in a speech to the country's parliament he cited the Conservatives' plans to quit the ECtHR. The UK has a proud history of highlighting human rights issues and promoting the rule of law internationally, as well as calling global attention to serious abuses – its withdrawal from the ECHR would dramatically undermine this credibility.

The current UK system of rights protection is not completely invulnerable, but it stands up incredibly well to attacks. Respect for rights and parliamentary sovereignty are near-perfectly balanced, yet the British government says it wants to inject some common sense into the system. Well, common sense is not allowing a powerful politician to decide which cases are important; it is not preventing rights protection from evolving with scientific and technological advances; it is not forcing victims in the UK to go to Strasbourg to enforce

their rights while simultaneously cutting legal aid; and it is not endangering the lives of citizens of other countries by taking the ECHR out of the equation entirely.

A small group of British politicians think human rights do not matter, but more and more people at home and abroad know that's not the case. The HRA received support from all political parties when it became law, and all but a minority oppose its repeal. The growing consensus is that the alternative is simply untenable. We have a fight on our hands, but together we can save our Human Rights Act.



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