

“Highly problematic, to put it mildly”: Experts react to David Cameron’s pledge to repeal the Human Rights Act

By Democratic Audit UK

Human rights law has long been a bug-bear of the Conservative right, with critics of the Human Rights Act particularly vocal in their condemnation of its restrictive nature. At his recent Conservative Party conference speech, the Prime Minister David Cameron re-committed his party to its repeal. Democratic Audit asked human rights law experts to respond, with the verdict not good for Cameron and his party.

Nicolas Kang-Riou, Lecturer at Salford Law School, University of Salford

So David Cameron has done it again. He has re-committed the Tories party to replacing the Human Rights Act 1998 (HRA) with a British Bill of Rights. Labour, most human rights lawyers and NGOs have made very hostile declarations against this decision, often been hailed as an attack on human rights themselves. The problem with these reactions is that they sound like if politicians and the public at large should not really debate the content of Strasbourg judgments, or only to approve of them. Yes, the Strasbourg Court has a good pedigree but there are no reasons why one could not disagree with some of its judgments.



Many recent important decisions, such as the issue of the right to vote of prisoners or the global reach of the ECHR abroad, can be challenged from various angles, including from within the perspective of liberal democracy. So, let’s welcome political challenges made against some of the judgments of the European Court of Human Rights. The human rights debate should not be left for lawyers to decide. However, human rights are not any political football. They are at the core of the British and European constitutional values. So let’s hope that a British bill of rights debate would focus on their constitutional role. Let’s hope that for a principled discussion not just an appeal to Europhobic sentiments.

Aiofe Nolan, Professor of International Human Rights Law, University of Nottingham

One of the effects of repealing the HRA would be to remove a key avenue for challenging measures that impact upon the most vulnerable members of UK society: the poor. Article 8 (right to respect for the home), Article 14 (non-discrimination) and Article 1, Protocol 1 (the right to property) have proved to be vital tools in challenging austerity measures that have had a savage and disproportionate impact on the most vulnerable in UK society, including disabled people, single-parent families and domestic violence victims. Such challenges have not always, or even generally, been successful. But they have been possible – and have played an important role in complementing political advocacy on welfare reform.



If the HRA goes, the question inevitably arises as to which (and what version) of these rights will make it into its replacement. The Conservatives want to accord a greater weight to ‘responsibilities’, to ‘clarify’ human rights and ‘to limit human rights law to the most serious cases’.

It has long been clear that they do not consider the situation of the feckless and undeserving poor to be worthy of their concern. As such, any new measure seems poised to further relegate the human rights issues faced by the poor beyond the protection of UK law.

Francesca Klug, Professorial Fellow and Director, Human Rights Futures Project, LSE

The Prime Minister has [repeated a commitment](#), first made to his Party in 2006, to repeal the UK's Human Rights Act (HRA) and replace it with a so-called British Bill of Rights. [...] Whether or not the UK formally withdraws from the ECHR in the future, Cameron is clearly signalling that his so-called British Bill of Rights is aimed at exempting Britain from judgments of the European human rights court that have not found favour with the government.



We are told we will find out more from Grayling soon but this bid for 'British exceptionalism' is not ultimately sustainable if we do remain signatories to the Convention. Even if it were, it would probably fatally damage the ECHR's impact on other members of the Council of Europe, from Russia to Turkey, who are equally restless about complying with the judgments of the Court. It is also deeply inconsistent with our repeated admonishments to the rest of the world to abide by international human rights law. Surely this cannot be what the Government means by 'British values' that are now required teaching in our schools?

Colm O'Cinneide is a Reader in Law, UCL

The Conservative Party's proposals for a new 'British Bill of Rights' have been unleashed – they can be read in detail [here](#) . The right-wing press have reacted with delight: the left-wing press with disdain, along with many legal commentators. The former Attorney General, Dominic Grieve MP, has described the proposals as 'almost puerile'.



Deciphering the detail of these proposals is difficult. The eight-page policy document prepared by the Conservatives, 'Protecting Human Rights in the UK', is riddled with silly errors, distortions and imprecise language. For example, it implies that the Human Rights Act 1998 (the HRA) made judgments of the European Court of Human Rights 'binding over the UK Supreme Court' and enabled the Strasbourg Court to 'order a change in UK law'. This is legal gibberish: the HRA does not make ECHR judgments binding upon the sovereign Westminster Parliament, or indeed the UK Supreme Court which decides for itself whether to follow Strasbourg case-law.

However, wading through the gobbledygook, it appears as if the Conservatives are trying to achieve two policy aims through their proposed new Bill of Rights. Firstly, they wish to minimise the impact of ECHR judgments on UK law, and to reduce the status of the Strasbourg Court to a purely 'advisory' role. Secondly, they wish to carve out exceptions to the system of rights protection established by the ECHR and HRA, which will greatly limit the rights of terrorist suspects, Travellers and other 'undesirables'.

Both of these policy aims are highly problematic, to put it mildly. Minimising the influence of Strasbourg will cut UK law off from a rich seam of jurisprudence that has enriched Britain's rather

thin common law tradition of rights protection. By undermining the Strasbourg Court, it will also inflict potentially irreparable damage on the world's most effective system of international human rights protection. Furthermore, by limiting rights protection to reflect a compendium of popular prejudice, the proposed 'Bill of Rights' will provide demagogues and tin-pot dictators the world over with a handy, British-approved model of how to deprive human rights law of any meaningful content.

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