

Failed Derailment: Britain's Human Rights Act

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Global Research, May 29, 2015

Region: [Europe](#)

Theme: [Law and Justice](#), [Police State & Civil Rights](#)

Common law countries, contrary to popular belief, regard enshrined human rights with suspicion. Unconvincing arguments suggest that having such rights grants judicial officers greater powers while undermining the scope of Parliament's jurisdiction. They are rigid inconveniences on the road of majoritarian governments.

The gentleman's code prevails in this idea of parliamentary supremacy – members of parliament will not only behave in the name of justice but protect the public's interest. Abridgments of human rights and liberties are not presumed when it comes to the passage of legislation – judges make the automatic assumption that such an instance would be inconceivable. Within such reasoning lies the seeds of casual tyranny and encroaching despotisms. It has proven very attractive.

The campaign against the Human Rights Act in the UK has assumed various forms. It is deemed European, largely because it incorporates the European Convention on Human Rights in to British law. It is deemed a foreign intrusion, one of those nasty externals that have a habit of getting into the local blood stream.

The emphasis from the conservatives – at least some of them – has been the idea that a British Bill of Rights is bolder and better than any European inspiration. It clarifies, and orders. At its centre is the idea that the European Court of Human Rights will be removed as the final court of appeal. The pride and place of the House of Lords is thereby restored. Not that the Commission on a Bill of Rights was in full agreement – the findings revealed a significant division between those in favour of the HRA and those against.[1]

Since 1997, when the British Parliament got busy over the subject of passing the bill, grumbles and mumbles have been noted about the chaining of Britannia to an externally imposed human rights regime. In a speech at the Centre for Policy Studies in June 2006, David Cameron took to the high road.[2] In it lay the problem of balance, and an environment which sees threats given a good deal of airing around the clock; when conventional criminal activity is deemed exceptional and extraordinary, was bound to throw things out of kilter.

While acknowledging “some of the direct consequences of the Human Rights Act” as positive, Cameron wasted little time in attacking a statute he sees as making “the fight against crime harder.” Cunning criminals have made use of the HRA. “This has bogged down cases for years, and the backlog in the courts has grown to 146 uncompleted claims.”

All of this has ignored supporters within the conservative party for the HRA. Even within the Tories lies a resistant core, including Dominic Grieve, Ken Clarke and David Davis, all former

cabinet ministers who would have trouble scrapping the associated link between the Human Rights Act and the ECHR. Liberties do matter for them, even if they echo from across the channel, and have roots in European institutions. Former Justice Secretary and Home Secretary Clarke even went so far as to suggest that this was non-starting “xenophobic and legal nonsense” while Francesca Klug observed that pitching for a British Bill of Rights constituted an “unedifying race to the bottom.”

The current platform of the government has gotten a few veterans worried. A senior Tory was noted as suggesting that the broader agenda of the Cameron government would only be realised if the prime minister removed “the deeply offensive threat to withdraw from the ECHR. There is no way the Conservatives can propose that – we wrote the convention for heaven’s sake” (Guardian, May 27).

Combined with the spoiling efforts of Labour and the Scottish National Party (SNP), then the newly elected Cameron would have more than just egg on its face. The result is a hiatus on the subject of repealing the HRA, however brief. The traditional Queen’s speech, highlighting the policies of the newly elected government, revealed that Cameron and his band of merry shredders would “bring forward proposals for a British bill of rights.” Employment minister, Priti Patel, suggested that the government would want to do things “properly”.^[3]

There was the fate of Corporal Anne-Marie Ellement, bullied and allegedly raped by two military police officers.^[4] It came to the service of Patience Asuquo, brought to Britain as a domestic worker only to never be paid by her employer. Her passport having been taken, she was fobbed off by authorities, a mere complainant overly keen to protect her rights.

Even Benedict Cumberbatch has stepped off the cinematic screen to battle for the Human Rights Act on behalf of the civil rights group Liberty.^[5] In characteristically haunting fashion, his voice intones about a victim who choked on his blood while police chatted idly by.

The Human Rights Act has acted as a constant inconvenience against authoritarian mishap, institutional cruelty and police state indifference. It has provided protection for the bullied, the trodden, the abused. Another one of those indispensable inconveniences the security-minded Cameron wishes to do away with. Parliaments should never be assumed to be wise. They should, generally speaking, be watched.

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Notes:

[1] <https://www.liberty-human-rights.org.uk/news/blog/my-hra-patience-asuquo>

[2] <http://www.theguardian.com/politics/2006/jun/26/conservatives.constitution>

[3]

<http://www.theguardian.com/law/2015/may/27/threat-exit-human-rights-act-convention-dropped-tories-america>

[4]

<http://www.telegraph.co.uk/women/womens-politics/11632976/Queens-Speech-Camerons-Human-Rights-Act-reform-scotched-by-Sturgeon.html>

[5]

<http://www.telegraph.co.uk/women/womens-politics/11632976/Queens-Speech-Camerons-Human-Rights-Act-reform-scotched-by-Sturgeon.html>

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