

The Tories' attacks on the Human Rights Act are nothing more than political noise-making

This week at the Conservative Party conference, the Home Secretary Theresa May attacked the Human Rights Act, calling for it to be scrapped. [Conor Gearty](#) argues that this move is a nakedly political tactic, and provides seven reasons why the discussion about the apparent failings of the Human Rights Act is a false one.



Nothing quite marks the decline of the power of British government more powerfully than the performance of the country's political leaders during the conference season. In truth Mr Cameron and his colleagues can do next to nothing to affect the country's current situation, hemmed in as they are not only by their own commitment to austerity but also by the various international, regional and economic realities that inevitably reduce the room for manoeuvre of all minor national powers. The advance messages chosen to inspire the Conservative conference say it all: more bins to be collected; more dead on the roads (so that we can drive faster). And the Human Rights Act of course, the Tory equivalent of Tony Blair's opposition to fox-hunting – a policy to be wheeled on stage whenever easy applause is required from the cheap seats.

The falseness of the discussion over the Human Rights Act is dispiritingly multi-layered. First most of the scare stories put about by the media are (as I have said often enough before) simply inventions, lies peddled to undermine an Act which has damaged the newspapers' commercial interest in the invasion of the privacy of various celebrities and sportspersons. The latest nonsense about a prisoner not being walked across to a hearing from a police cell but having to wait hours for transport is, it seems, in truth a story about the inflexibility of privatised contractual commitments rather than about human rights. But this doesn't matter in the least to the papers, just as it doesn't ever occur to these same 'journalists' (the scare quotes are irresistible) to distinguish between a claim to a human right (to Sky Sports 2 in prison, or pornography) and a successful court action establishing that claim as matter of law.

Second, the supposed negative impact of the legislation on the so-called fight against terrorism is only a bad thing if we want people who are in this country to be sent to states which will in all probability torture and/or kill them. This must be what the Home Secretary Mrs May wants, so why does she not say so honestly? 'We will expel foreigners to countries where they are likely to be tortured or killed and that is why we want to repeal the Human Rights Act' would at least be honest – indeed, and hauntingly, it might even get a round of applause among Tory activists. True sometimes the right to a family life is also weighed in the balance as well, but here it is the interests of the children that are often uppermost in the minds of the judges – so again why doesn't the Home Secretary honestly declare this a price worth paying?

Thirdly, even if the Human Rights Act was repealed it would not make the faintest difference to anything because all the Act requires (including the non-removal of suspects) is already an obligation of membership of the Council of Europe, by whose European Convention on Human Rights (with its European Court of Human Rights) Britain remain bound. The government's answer to this is to say they are going to push for reform of the Court – but why should the other forty six countries help the Tories out of their foolishly vacuous corner? In any event the reform story is already underway: a high level conference at Interlaken in 2010 has been followed by further discussions under the Turkish chairmanship in April this year, the latter leading to the Izmir declaration which among other things stresses the need for domestic remedies for Convention abuses at home, ie something exactly like the Human Rights Act!

Fourthly even if the Convention did not exist, the probability is that the UK courts would themselves simply draw on a developing tradition of local human rights to impose exactly the same kinds of things on government that the Act allows for today. Indeed without the Act's explicit guarantee of parliamentary sovereignty, the courts might be emboldened to go further than they are allowed under the current legislation and actually strike down acts of parliament.

Fifthly, there is the effect on the rest of the UK of this very English party's commitment to repeal of the Human Rights Act: what would the Scots say, or the Welsh or both parts of Ireland given that incorporation was an essential element of the Good Friday Agreement (producing incidentally a very similar human rights law in the Republic of Ireland as well)? Has anybody in the Tory party done any homework on the response of the other nations that make up this supposedly United Kingdom?

Sixthly the Human Rights Act has no negative impact on business; quite the reverse in fact in that it helps

business resist unlawful government regulation and also to challenge the exercise of state power negative to its interests.

Seventhly, there is an obvious point about double standards: David Cameron the liberator of Libya brings human rights to the whole world – except those over whom he himself governs.

In truth of course the policy is a charade. The Tories have not the slightest intention of repealing the Human Rights Act. The whole issue has already been kicked into the long grass with a commission having been set up ([made up of Helena Kennedy and a bunch of middle-aged and old white men from the Tory and Lib Dems](#)) and it has been told to go away and come back sometime towards the end of 2012. The big thing for this week was to find something which Tory party activists wanted which they could pretend it was the Lib Dems fault that they were not able to deliver.

The Human Rights Act has not a reach into UK law remotely to match that of the institutions of the EU and of the European Court of Justice in particular – and this court is now developing a very strong rights dimension to its jurisprudence – the point is made crystal clear in Aidan O'Neill's recent superbly researched tome [EU law for UK Lawyers](#) (Hart, 2011). Ministers are attacking the wrong Europe and the wrong court. The EU is too big so let's pick on the softer Europe epitomised in the Strasbourg court and its rather innocuous European Convention. The bully will always turn on the easier target especially if it means there is an appreciative audience to watch the one sided fight.

Am I getting old? Has party politics always been this crudely, self-consciously stupid? It makes a policy for speeding cars and massive bin collections seem almost sensible.

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