

## Cameron's approach to a British Bill of Rights lacks solutions and is essentially unconservative in nature

***Peter Munce** looks at David Cameron's proposal to replace the Human Rights Act (HRA) with a British Bill of Rights. He argues that Cameron's radical approach to the Bill of Rights issue is unconservative and offers no guarantee that it can solve the perceived problems that the Conservatives have with the HRA.*



Research conducted by [UCL's Constitution Unit](#) in the run up to the 2010 General Election concluded that the Conservatives had a much more ambitious agenda for constitutional reform than many imagined. As the Unit's Director pointed out, '[David Cameron's plans are much bigger than perhaps even he realises](#)'. The research highlighted 40 separate proposals that a future Conservative Government had committed itself to implement [across a range of areas](#) from the working of Parliament and the Executive to the European Union and devolution. One element of the Conservative's proposals was David Cameron's commitment to repeal the Human Rights Act (HRA) and replace it with a British Bill of Right first made in a [speech to the Centre for Policy Studies in June, 2006](#). This commitment reflected growing concern within Conservative ranks about the operation of the HRA particularly in the field of counter terrorism and a widely held perception by many Conservative MPs that the HRA had tipped the balance in the criminal justice system in favour of perpetrators of crime rather than victims.

Work on this policy in opposition continued under the Shadow Justice Secretary, Dominic Grieve, and an internal Conservative Party Bill of Rights Commission was established by the Leader in March 2007. However, the failure of the Conservative Party to form a majority government in May 2010 and the subsequent Coalition that was formed with the Liberal Democrats had an impact on this particular policy. If the Conservatives entered the election with a desire to repeal and replace the HRA, the Liberal Democrats were equally committed to maintaining and defending it. Therefore, as a result of coalition negotiations, a carefully worded paragraph was inserted into the coalition's Programme for Government outsourcing this contentious issue to a [Commission that was established in March 2011](#) to investigate 'the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extend our liberties.'

The HRA was introduced by the New Labour Government in 1998 to give further effect in UK law to the rights enshrined in the European Convention on Human Rights (ECHR) and was amongst one of the more significant constitutional changes to occur in Britain during New Labour's time in office. Many within the Conservative Party reacted with great hostility to what they argued was the '[constitutional vandalism](#)' of the New Labour years. However, the reality was that, irrespective of one's view about the constitutional changes, the British constitution had changed during New Labour's time in office. The challenge for Conservatives, as both [Philip Norton](#) and [Matthew Flinders](#) have previously considered, was how a future Conservative Government should react to these changes. Lord Norton has suggested that [Conservatives had 3 options](#) (reactionary, conservative and radical). Firstly, as Norton argued, they could attempt to return the constitution to the way it was when the Conservatives last held power (Reactionary). Secondly, accept the change that has occurred and conserve, once back in power, those changes (Conservative). Thirdly, craft a new constitutional settlement (Radical).

Conservatives have to a large extent adopted an essentially conservative approach to the bulk of New Labour's constitutional reforms but one significant area where they eschewed this approach in favour of pursuing a more radical agenda was on Human Rights. Indeed, there is a curious paradox at the heart of Cameron's proposal to replace the HRA with a British Bill of Rights. At first sight it appears that pledging to scrap the HRA is a very conservative thing to do. After all, it's what a lot of Conservative MPs wanted

Cameron to do. However, on closer inspection it can be argued that the proposal is actually [profoundly unconservative](#). Rather than accept that the HRA now has a place as part of the UK's body politic and constitutional order, David Cameron has committed the Conservative Party to uprooting the HRA and to planting a new mechanism for the protection of rights in the form of a British Bill of Rights with no guarantee that any of his or the Conservative's criticisms about it can be addressed.

David Cameron's commitment to repeal the HRA and replace it with a British Bill of Rights neatly illustrates the dilemma facing Conservatives over constitutional reform. Questions immediately arise such as: once a problem with an aspect of the constitution has been identified, what should Conservatives do about it? To what extent should Conservatives embrace radicalism and change if that change is necessary to construct a better constitutional settlement? These questions go right to the heart of the philosophical dilemma for Conservatives when they find themselves as protagonists and agitators of constitutional reform. This dilemma was insightfully considered by the late and distinguished political scientist [Nevil Johnson in an essay published in 1980](#). After a period in the 1970s when figures like Lord Hailsham were unlikely protagonists calling for a new constitutional settlement in the UK, Johnson observed the fundamental dilemma for Conservatives of such a position. Conservative thought has always stressed dealing with the world as it is rather than attempting to construct institutions or constitutional mechanisms on abstract, idealist principles. Conservative constitutional reformers must ask themselves to what extent does the radicalism of a proposal for constitutional reform bring itself into tension with traditional conservative approaches to constitutional reform? To what extent are proposals for constitutional reform constructed on abstract principles rather than on the concrete circumstances of social, cultural and political life in the world as it is?

As much as Cameron was committed before the 2010 election to replacing the HRA with a British Bill of Rights it is a near certainty that whilst he remains in Coalition with the Liberal Democrats this will not happen. However, this does not mean that the human rights issue will go away. The Conservative Party remains committed to developing its own internal policy work and the shape and scope of a British Bill of Rights. Indeed, it would only take [an outburst from the Conservative backbenches](#), [a decision from the European Court of Human Rights](#) or an intervention from the [Liberal Democrats](#) to show how it continues to be a source of tension between the Coalition partners.

**This is the ninth in a series of posts by contributors to the recent 'Conservatives in Coalition Government' conference organised by the [Political Studies Association Specialist Group for the study of Conservatives and Conservatism](#) and the [Centre for British Politics at the University of Hull](#). The views expressed are those of the author alone and not those of the Political Studies Association or the University of Hull.**

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### **About the author**

**Peter Munce** is a [Leverhulme Early Career Fellow](#) in the [Department of Politics and International Studies](#) at the University Hull researching the Conservative Party and the protection of human rights in the UK. He can be contacted at [p.munce@hull.ac.uk](mailto:p.munce@hull.ac.uk).

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