

“An opportunist piece of electioneering”: experts criticise the Conservatives’ Human Rights Act repeal pledge

By Democratic Audit UK

David Cameron recently announced his intention to repeal the Human Rights Act were his Conservative Party to be returned to Government following the General Election scheduled for May 2015. Democratic Audit asked human rights experts to contribute their assesment of the idea, particularly in light of further details of the proposal outlined by the Justice Secretary Chris Grayling. Part one can be [found here](#).

Prof. Gavin Phillipson, Deputy Head, Durham Law School, University of Durham

The international law aspects of these plans are of particular importance. There are three ways of interpreting them, under which they’re either dishonest, fantastical or disastrous. The document says judgments of the European Court of Human Rights ‘will be treated as advisory’ and Parliament will decide whether to implement them. However, it also admits that ‘judgments of the Court will be seen to be binding on the UK’ (my emphasis).

Under the first reading, then, these plans are just window-dressing: Britain will still be bound by the Court’s judgments, but Parliament will consider whether to implement them. Since Parliament already does this, (because it’s sovereign in domestic law) these plans are just a pretended ‘reassertion’ of parliamentary sovereignty, for domestic right-wing consumption.

Second, they might mean a Tory Government would seek to persuade the Council of Europe (CoE) that the UK should, uniquely, cease to bound by Court judgments, while all the other states continued to be (under Art 46 ECHR). But this would obviously never happen.

So, third, they might mean that the UK would seek to change the system so that no states were bound by Strasbourg judgments – which would quite simply rip the heart out of the Strasbourg system for protecting rights, by making compliance optional. The thought that the Tories would be prepared in principle to commit such an astonishing act of international vandalism is chilling. In practice, though, it wouldn’t happen. So given that options two and three are, to put it mildly, impractical, the real agenda (if this if this is more than window-dressing) is clear: eventual UK withdrawal from the ECHR. This is the outcome the document says would result if the CoE would not accept the new arrangements. It wouldn’t.



Claire Overman, Editor, Oxford Human Rights Hub Blog

In terms of the substantive protection of human rights, there is no reason why European institutions are intrinsically better than domestic institutions at protecting human rights. At present, they simply offer an additional layer of review of human rights protection, made clear by the fact that petitions to the European Court of Human Rights are only permitted when an applicant has exhausted his or her domestic remedies.

However, there is justifiable concern about the political climate in which a British Bill of Rights



would be conceived. In particular, there is a decided air of “human rights scepticism” in certain parts of the media and the public; the worry is that this will translate into a Bill of Rights which affords less protection to certain rights (such as religious freedom, for instance). There is further concern about what message this will send to other States.

Conor Gearty, Professor of Human Rights Law, and Director of the Institute of Public Affairs at the LSE



The Conservative plan to repeal the Human Rights Act has gone down badly. Of course it is an opportunist piece of electioneering, driven by focus groups, overseen by political adviser Lynton Crosby and designed to trump UKIP’s English nationalism with a souped-up Tory version of the same. Even gestures like this need some underlying rationality and to excite more people than they alarm. This initiative is incoherent: full of mistakes of fact, general confusion and non-sequiturs. Not just the usual liberals but informed Conservatives and impartial observers have been pointing all this out.

The utter disregard of Scotland, Wales and Northern Ireland has definitively exposed the Party as the gathering of ageing little Englanders that it has slowly but surely become since Margaret Thatcher. Even supporters are not convinced it’s that great an idea to let the authorities torture, imprison and limit the speech of anyone with whom they disagree. On the back foot, expect the draft bill of rights due before Christmas to be remarkably similar to the current Human Rights Act – with a tweak here or there to support ‘our judges’.

David Mead, Professor of UK Human Rights Law, University of East Anglia



The Tories must confront the fact that as long as the UK remains a member of the Council of Europe, and thus of the European Convention on Human Rights (ECHR). At state-level we are committed to abide by judgments of the Strasbourg Court, however unpalatable. That is an international law commitment, contained in Article 46 of the ECHR, and not something that can be altered by a domestic statute. Thus, problem cases such as prisoner voting or Abu Qatada will not go away – if we lose in Strasbourg we are bound to implement. Though it is true that courts in the UK are not “bound” by Strasbourg (i.e. it is not a superior court), the legal reality is the law must change.

Decoupling UK law from Strasbourg – by removing s.2 of the HRA and its requirement to “take account” of ECHR case law – while achieving the objective of creating a domestic legal order untainted by foreign influence (save that already here and/or that which might unconsciously seep in) is simply going to increase the number of cases we lose there – having washed our dirty linen in public – and at greater cost. Not an especially edifying sight. It would also remove the mediating influence of British judges both here, when Strasbourg jurisprudence is at issue in an instant case, and then at Strasbourg when cases reach there as part of what’s called inter-institutional dialogue.

It was one of the marked successes of Dominic Grieve’s time as Attorney-General to lay the ground for this approach – thinking here of his work at Brighton in 2012, along with Ken Clarke – and the more sensitive and sympathetic approach by the Strasbourg Court in recent years has been well-

| *documented.*

Note: David Mead's [contribution](#) is a modified extract from a longer piece which appeared on the LSE Politics and Policy blog. This post represents the views of the contributors and not those of Democratic Audit or the LSE. Please read our [comments policy](#) before posting. Cover image credit: [thierry ehrmann, CC BY 2.0](#)