

The reluctant role model: why Britain (usually) obeys the European Court of Human Rights

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*Despite often complaining about the existence of the European Court of Human Rights, the UK has one of the strongest compliance records in the Court's 47-country system. **Zoë Jay** explains how the UK's conceptions of human rights protection shape its willingness to comply with the Court's rulings.*



To say the United Kingdom hasn't always seen eye to eye with the European Court of Human Rights (ECtHR) would be an understatement. Since the ECtHR was created in 1959 to defend Europe against totalitarianism after the Second World War, it has been accused of interfering in political issues, of making former Prime Minister David Cameron 'physically ill' at the thought of letting prisoners vote, and even (incorrectly) of blocking the deportation of an immigrant because 'he had a pet cat.'

So vehement are some of the criticisms that the Conservatives want to 'break the formal link' between the UK and ECtHR by repealing the Human Rights Act (HRA), the legislation that gives the rights protected by the ECtHR effect in British law. Although the plan has been shelved until after Brexit is complete, it would replace the HRA with a 'home grown' British Bill of Rights in order to escape the influence of the ECtHR.

Despite these tensions, the UK is an exemplary member of the ECtHR system. The UK has one of the strongest compliance records in the 47-country system, working to fix human rights violations pointed out by the ECtHR quickly and effectively. This includes the difficult and politically unpopular cases that British governments and MPs do not want to accept. But if the ECtHR causes so many headaches for the UK, why does it continue to obey the international court's rulings?

Part of the puzzle lies in the nature of the cases being criticised. The cases that get the most domestic attention – like prisoner voting and deportation – are deeply controversial issues concerning the human rights of criminals and terrorists. Most of the UK's cases at the ECtHR are not nearly as sensitive and attract less attention, so the relationship seems worse than it really is. Tensions are also made worse by the fact that the ECtHR is regularly conflated with the EU. The two institutions are separate, but the confusion means the ECtHR often gets blamed for (perceived) problems with the EU and vice versa.

A closer look at the UK's history with human rights and the ECtHR reveals another explanation: the UK's interactions with the ECtHR are tainted by a belief that there is a uniquely British way of thinking about human rights that sets it apart from the rest of Europe. This narrative – used by politicians, the media, and even judges – is apparent throughout the UK's relationship with the ECtHR, and is increasingly used to criticise

controversial human rights cases. As such, paying greater attention to the idea that British rights are unique, if not outright better, can help us understand the UK's troubled – but ultimately cooperative – relationship with the ECtHR.



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The narrative that the British approach to protecting human rights is better than the European system features several ideas. Specifically, the narrative champions distinctly British institutions like parliamentary sovereignty and the common law. It claims that the ECtHR (and all courts in general) is less accountable than the democratically-elected British Parliament, and too busy thinking about abstract, philosophical interpretations of the law to consider the practical, day-to-day human rights needs of British citizens.

The narrative also suggests that Britain has been continuously protecting rights since Magna Carta was signed in 1215. In reality, many of the original provisions of Magna Carta bear little resemblance to modern human rights, but the myth that the UK has been protecting human rights for over 800 years is an important part of British (especially English) national identity.

Finally, this view paints the ECtHR as 'foreign', run by judges that do not fully appreciate or understand British human rights traditions. Arguments resting on this assumption are common, even amongst politicians and judges who are supportive of the ECtHR. Even Lord Irvine of Lairg, architect of the HRA and one of the ECtHR's staunchest supporters in the UK, has suggested that Britons 'should trust our own judges to reach a "better" answer' than the ECtHR because it is 'our own Judges who are embedded in our culture'.

The narrative therefore helps to explain the ECtHR's poor reputation in the UK, because it implies that only British judges and MPs truly 'get' British human rights needs. For its many critics, the ECtHR is seen as an unaccountable outsider, trying to impose changes that threaten British traditions and ways of thinking.

This line of thinking is clearest in the fierce debate surrounding the infamous prisoner voting case, *Hirst v United Kingdom*. The case – which is still unresolved over a decade after the ECtHR first made the judgment in 2005 – has become, in the eyes of some MPs, a battle to defend the uniquely British tradition of Parliamentary sovereignty from an over-zealous court. The ECtHR has been accused of infringing on the British Parliament’s ‘right to decide on matters which are fundamental to the British way of life.’ In this instance, the reason for the Government’s reluctance to obey the ECtHR’s ruling is clear: if the centuries-old, democratic, sensible British Parliament decides that prisoners cannot vote, then a seemingly unaccountable, European (foreign) court should not be able to challenge it. This means that the UK is most likely to resist ECtHR rulings that appear to fundamentally challenge or threaten elements of the ‘British approach’.

Yet the idea that the British approach to rights is ‘better’ than the European approach also helps to explain why the UK still obeys ECtHR judgments most of the time. The narrative reflects a deeply entrenched respect for human rights and the rule of law, as well as a sense that the UK is a ‘human rights entrepreneur’ – it may be reluctant to have laws imposed on it from outside, but is also eager to promote its own ideas abroad and act as a role model for Europe and the world. As the former Conservative Attorney-General, Dominic Grieve, argues, ‘it is only by setting an example at home that the UK is able to exert influence in the international arena.’ In short, the UK has made a commitment to the European human rights system and it intends to stick to it, even if it doesn’t like specific cases.

Tensions between the UK and the ECtHR are likely to continue, or worsen, especially if the Conservatives enact their plan to repeal the HRA. But paying attention to the factors that shape what the UK thinks is important about human rights can tell us what types of issues might cause conflict, or create opportunities for cooperation in the future. For now, the UK seems most likely to accept ECtHR judgments when they match, or at least don’t contradict, British human rights traditions. But if a ruling challenges fundamental elements of the British tradition – like Parliamentary sovereignty – the UK and ECtHR will be much more likely to clash.

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About the Author

Zoë Jay is a PhD Candidate at the University of Tasmania.



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