

Abandoning the Human Rights Act UK. Counterstrike and Replacement

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“The Tories’ major announcement was to scrap the Human Rights Act, because, and I quote, ‘people get very frustrated with human rights.’”

Tim Farron, Liberal Democrats President, The Guardian, Oct 7, 2014

Political positions were only ever the designations of seating arrangements. Left and Right distinctions have as much to do with actual political differences as they do with furniture – witness the 1789 arrangements of the National Assembly. Occasionally, such positions fall to the way side, or at the very least, become peculiarly artificial. The Human Rights Act in the UK has been one of those grand British contradictions, typical in a society thrilled with rights as a matter of “values”, but suspicious about their suggestive nannyism. Be free, but be suspicious when told about where you went wrong about protecting them.

The Tory party are, in that sense, typically confused about where to place such rights. Paradoxically, they batter and pound for the platform that liberties are meant to be protected – at least when it comes to some of them. But liberties are one thing – once they assume the proper form of genuine rights, the sort one can actually claim (lawyers term these “claim rights”) the water of discussion gets somewhat murkier. Liberty talk is always deemed more attractive than that of rights. When the purse gets involved, the conservatives will run.

The Human Rights Act (1998) is deemed insidious in a range of ways. It supposedly clips sovereignty by slipping European law into the lives of British citizens. It stands guard over British officials. For that reason, the British conservatives are advocating the British Bill of Rights and Responsibilities as both counter strike and replacement. The response is characteristically piecemeal, so much so that the anti-EU UK Independence Party have deemed the proposal by David Cameron’s party worthless. Labour and the Lib Dems take more traditional views on this – a pure political agenda is at work.

The Tories point is to place Britain in an exceptional category – for them, it is the Rolls Royce of human rights reform and innovation. This is done while placing the European Convention on Human Rights of 1950 in its historical place. The enemy in this enterprise of reform is the European Court of Human Rights, a creature of judicial unsoundness which is suffering from “mission creep” (such is the curse of military operational language.)

In taking such a stance, the Tory statement is placing the European Convention in the zoo of legal paraphernalia, distant and hopefully irrelevant. “It was agreed in the shadow of Nazism, at a time when Stalin was still in power in the Soviet Union and when people were still being sent to the gulags without trial.”[1]

Such wording sets the scene for a rather crude, and frightened, form of originalism – reading the charter in a virginal state that has bucked evolution over the years. Such documents, in terms of intention, are read at the creation, rather than in the current point of history. When the drafters of the charter came together, claim the writers of the Tory manifesto, they did not contemplate various “voting rights for prisoners”. Nor was artificial insemination for prisoners and their partners something that the drafters had in mind (oh, how unimaginative they must have been.)

The Tories are now arranging the legal furniture for 2015, assuming that they will retain power (without the Liberal Democrats) and be rid of the turbulent priest that is the European justice system. Justice Secretary Chris Grayling has been claiming that there should be no “legal blank cheque to take human rights into areas where they have never applied”, a fascinatingly restricted view on rights if ever there was one.[2]

It is then with some irony that the conservative approach to human rights, once established, is not that they stay in unmodified stone, but evolve in the matter befitting society. Evolution, in other words, is appropriate as long as it is parochial. All is fine if Britain does it. Conservatives, after all that jostling, like nothing more than to mould and adjust the way a human right is applied. The point to stress here is that it is always being done for the public good. “Over the past 20 years, there have been significant developments which have undermined public confidence in the human rights framework in the UK, and which make change necessary today.”

The leap of eccentricity occurs when rights become situational – a matter of interpretation for the country in question. This is the classic contradiction – things change, but things must stay the same. By all means, “fundamental human rights is as important as ever.” But the logic of this, then, is not to have a meddlesome supra national entity seeking to place their judicial paws on the Sceptred Isle, with its own brand of rights to uphold and parade. “That is why we must put Britain first, taking action to reform the human rights laws in the UK, so they are credible, just and command public support.”

Not all will be comfortable with Cameron’s stance. *The Daily Mirror* has made a good fist of attempting to justify the rewards of the Human Rights Act over the years.[3] It points out, as Lib Dem President Tim Farron has, that no one less than the conservative deity, Winston Churchill, saw scope for the European Convention.[4]

The rights of such people as Gary McKinnon, UFO fantasist and hacker of US government computers, were protected because the legislation prohibits “degrading treatment or punishment”. The right to have children is preserved, as is that of preventing families from being separated. Victims of domestic violence fall under its protective umbrella. And it has been used as a weapon against the surveillance community.

Removing the act will not simply be an excuse for political restructuring – it will be an announcement that rights are purely subordinate entities, lying at the mercy of state discretion. This will not worry those negotiators, who are already sharpening their implements. Should there be “anything in that relationship [with the EU] which encroaches upon our new human rights framework, then that is something [...] for us to address as part of the renegotiation.”[5]

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- [1] http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/03_10_14_humanrights.pdf
- [2] <http://www.bbc.com/news/uk-politics-29466113>
- [3] <http://www.mirror.co.uk/news/uk-news/helps-every-day-what-human-4375438>
- [4] <http://www.theguardian.com/uk-news/2014/oct/07/winston-churchill-leave-conservatives--liberal-democrats-protest-human-rights-act>
- [5] http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/03_10_14_humanrights.pdf

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