

LEGAL WEEK

An odd feature of the Human Rights Act has been its deep unpopularity among politicians. Even before it was brought into force (in October 2000, nearly two years after Royal Assent), new Labour had begun to disown it, dissatisfied even then with its likely solicitude towards the kind of marginal communities (prisoners; criminals; suspected terrorists; travellers) that its advisers were probably already telling it to get tough on. The Conservatives have pretty well hated it from the start, seeing in its scheduled European Convention rights a whiff of a Continent which their backbenchers and activists increasingly loathe. Even the Lib Dems have been false friends, moaning about the Act's lack of reach and demanding greater, more fundamental change than its modest provisions could ever hope to have delivered. Maligned right, left and centre, the Act also almost immediately found itself the target of media attack, its right to privacy threatening the commercial interest that many newspapers have in intrusive gossip.

With such a groundswell of criticism from the powerful, it is perhaps surprising that the Act has lasted as long as it has, much less that even its strongest critics now say that what they want is not 'no rights at all' (which you might have expected) but rather 'a new Bill of Rights'. But how can the answer to a disliked law be more (rather than less) of what that measure contains?

The Tories are caught here between xenophobia and neo-conservatism: even their slower members notice there is something odd about Mr Hague and Mr Cameron telling the whole world to embrace human rights – except, that is, the one bit of global terrain over which they have any power. It is hoped that a 'British' rights document would meet this point while detoxifying rights of their European influence. It would also somehow at the same time (the details are hardly clear) call a halt to interference from the Strasbourg court, or at least that is the prime minister's hope. (Someone seems to have told him about the German Constitutional Court and the lack of trouble Strasbourg makes for it and he hankers after the same for Britain.)

It is not clear, however, in what way this new bill of rights would differ from the Human Rights Act. We are hardly going to have a right to food and shelter under this government, and surely the plan is not to grant jury trials as of right for everything (parking offences? speeding?). Maybe the whole idea is just to make it easier to give suspect foreigners away to foreign countries where they can be tortured with impunity? This would certainly be a novel basis for enactment of a bill of rights but the Strasbourg Court – bill or no bill – would be duty bound to stop it. And claims to the contrary notwithstanding, how can that court be cast aside so long as we belong in the Council of Europe? Is expulsion or withdrawal from the Council a price worth paying to ensure a few terrorist suspects can be safely tortured in evil places?

The Human Rights Act may not have enjoyed many defenders in the higher reaches of politics but it has secured for itself an attractive niche within our legal culture. The judges have dealt with it very well and grown familiar with the modest ethical weaponry it has supplied when they have had to confront egregious governmental conduct which might otherwise have escaped scrutiny. So what has it done? To take just a selection: young people have been protected from serious assault in adult prisons; ordinary members of the public have been given at least a modest legal weapon with which to resist the tabloid destruction of their lives; the police have learnt to be more sensitive to the risks posed by violent persons to former partners; coroners have been guided into asking serious questions about suspicious deaths which were never even considered before;

same-sex couples have been given a security of tenure on the death of one of them which had previously been denied them; vulnerable people have been given a chance to speak before being thrown out of their homes; above all the Human Rights Act has protected us from a system of internment of foreigners which, without the Act, might by now have become a normal feature of our law. The Human Rights Act does not give prisoners the right to pornography, or lavish meals to hostage-takers, or any of the other nonsensical pseudo-entitlements which its enemies have ascribed to it.

Will the Act survive? Almost certainly yes, at least until the next election and very possibly beyond. The Commission the coalition has asked to enquire into the issue will report in a few months and will almost certainly divide along party lines (as it has been designed to do). The Tories have already begun to create a series of manifesto pledges for a post Lib Dem future, and no doubt repeal of the Human Rights Act will appear as one of the Party's more prominent promises. The mechanics of its removal will be left to another day, in the hope that somehow or other the complexities of such a change will be resolved by the magic of government. This won't happen of course. The Tories in power will be as they are now, and as the Labour party was before them - critical of this or that decision of the courts, happy to attack the Act to get a few cheap rounds of applause, but not inclined to follow the logic of such grandstanding into hard constitutional work.

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