



***A British Bill of rights: thinking through the issues***  
**A note from the three party fringe meetings held by JUSTICE**

**Labour:** Michael Wills MP; Stephen Hockman QC; chaired by Emily Thornberry MP

**Lib Dems:** David Howarth MP; Alistair Webster QC, chaired by Sarah Ludford MEP

**Conservatives:** Dominic Grieve QC MP; Jonathan Fisher QC; chaired by Eleanor Laing MP

Roger Smith, Director of JUSTICE, also sat on each of the panels.

1. At the outset, it must be said that the Lib Dems were sceptical of the immediate need for a Bill of Rights, raising doubts over the motivation of the other two parties behind the rights and responsibilities agenda. For the Lib Dems, any Bill of Rights should be part of a move for a written Constitution, which they have advocated for a number of years.

**Importance of consensus**

2. It was clear that all panellists were acutely aware of the fundamental importance of the discussion over a Bill of Rights. All three politicians involved accepted that the debate over the Bill of Rights should not be seen as a party-political problem, but rather a constitutional one. Indeed, as Roger Smith highlighted, one of the problems over the Human Rights Act was that it became highly politicised when it was in fact a constitutional Act. Any Bill of Rights must avoid this politicisation, and the parties should not use it as a political football. There would be nothing worse than having a *Conservative* Bill of Rights, followed by a *Labour* Bill of Rights ten years down the line. As such, any Bill of Rights must achieve a substantial degree of consensus amongst more than one political party – a point definitively agreed upon by all panellists. Indeed, as emphasised by Michael Wills, there should be consensus not just among the political class but among the British people, who should lead the debate.

**ECHR-plus**

3. There was total consensus amongst all panellists at the three meetings that the ECHR is here to stay. Dominic Grieve pointed out that the ECHR was largely British, that we should all be proud of it and that there was nothing in it that a right-thinking person could disagree with.

As such, if there is to be a Bill of Rights, it is the ECHR that would be the starting point. He continued by emphasising that the ECHR rights cannot be diminished. In particular, he asserted that the prohibition on torture in Article 3 would not be altered in a Bill of Rights, from the position taken by the ECtHR and under the HRA.

4. According to Jonathan Fisher, the ECHR has proved inept at protecting rights in some areas, namely extradition, trial by jury and habeas corpus. Many voiced the opinion that a Bill of Rights would give the opportunity to set down 'quintessentially British rights'. Michael Wills suggested that a possibility may be the inclusion of socio-economic rights. However, he emphasised that it is for the British people to lead the debate about what should be in a Bill of Rights through a process of deliberative democracy.

### **The Human Rights Act**

5. Roger Smith explained JUSTICE's position at each of the meetings: that the HRA is an extremely good piece of legislation that has worked well, has bedded down well, and that any tampering with it should be avoided, lest there be unforeseen and dire constitutional consequences. Stephen Hockman called the HRA the greatest achievement of the Labour government, and Michael Wills likewise expressed his pride, and that of the current Labour government, for the Act. He went on to say that the HRA had exceeded expectation and that any meddling with it would constitute unprecedented constitutional vandalism. However, he did accept that the HRA had not been universally accepted, and this was in part the fault of the Labour government, as they took for granted that the legislation would be seen positively and failed to promote it.
6. Michael Wills pointed out that parts of the media are viscerally opposed to the HRA, which Roger Smith called the dark side to the discussion. He explained that significant elements of the media were driven to opposition of the Act by the fear of and desire to hold back privacy rights. David Howarth stated that the approach of the media was based not just ideological but material interests. As a consequence, myths have flourished in the media when they should have been stamped out.
7. Both Alistair Webster and David Howarth made it very clear that the HRA, which dealt with fundamental human rights, should not be watered down. They accepted that there may be scope for certain civic rights to be developed in a Bill of Rights, but that it was crucial that fundamental human rights do not get confused with civic rights.

## **Conservative criticisms**

8. Dominic Grieve was not critical of the HRA *per se* but rather focused on elements of the understanding of the Act. Public perception is that the HRA is for the benefit of the undeserving and that in its implementation the HRA has not commanded the public resonance that may have been desired. He went on to say that if we want to celebrate rights and live in a rights-based society, there needs to be greater public ownership of rights.
9. Dominic Grieve rejected the criticism of the HRA that statutory protections of human rights are antithetical to the traditions of the UK. Dominic Grieve explained that the power of the state has increased dramatically in the last 150 years, and although many Conservatives may lament this, it is a matter of fact. Although Parliament is supposed to be the protector of rights, the evidence has shown that it has not done so. Whilst we may look romantically at the past, people's rights did get trampled on.
10. Dominic Grieve highlighted that myths have arisen from the fact that public authorities have hidden, wrongly, behind the HRA to hide their own incompetence using the HRA as an excuse. Jonathan Fisher went further blaming the HRA and the Convention for causing a rights-based culture, by focusing on rights without responsibilities.
11. Dominic Grieve stated that the UK courts have been following slavishly the jurisprudence of the ECtHR, which was not what was intended by the HRA. Grieve pointed to the danger of the Strasbourg Court micro-managing national decisions. He accepted that where rights are absolute, there would be no room for movement, but where there is a margin of appreciation the UK could, within reasonable bounds and within the limits of this margin, apply specific principles for the UK.

## **Separation of powers: Parliament and judges**

12. Whilst politically there has been much criticism of the allegedly disproportionate power of the judiciary, there seemed to be consensus within the meetings that the problem was actually the disproportionate lack of power of Parliament. As Alistair Webster explained, the issue is one of weak parliament rather than strong courts.
13. As far as the HRA mechanisms are concerned, Stephen Hockman felt that they were a great British compromise maintaining the correct balance between the three branches of government. In particular, respect for parliamentary sovereignty was maintained.
14. Parliament's failure to adequately perform its role in protecting rights has resulted in the need for courts to fill the void, according to Roger Smith. It is thus unfair to criticise judges for

acting as a result of the Parliament's failures. Dominic Grieve agreed that more responsibility was needed from Parliament rather than simply blaming judges.

### **Rights and Responsibilities**

15. Michael Wills gave a strong commitment that the debate about responsibilities was not an attempt to go back on rights, and that rights could not and would not become contingent on the discharge of responsibilities. A Bill of Rights could remind people that they owe duties to each other and to the state. He concluded by saying that the debate about responsibilities is not about sliding into authoritarian communitarianism.
  
16. Jonathan Fisher went further arguing that the Convention had caused a rights-based culture, and that the Convention was an unbalanced charter with no notion of individual responsibility. He pointed to various international instruments including the non-binding Universal Declaration of Human Rights which has a provision relating to individual responsibilities to the community. He did however agree that there should not be a direct cause of action against someone who does not meet their responsibilities.
  
17. Michael Wills made the case that a Bill of Rights should be more than simply a legal document. He said it was unsurprising that lawyers felt provisions not given legal effect would be meaningless. It is ludicrous, according to Michael Wills, to say that the only things that have meaning are laws. He pointed to the example of the US and indicated how language can be used to inspire people.

### **Devolution**

18. Michael Wills explained that although human rights are not devolved, lots of policy areas related to human rights are. Dominic Grieve accepted that the devolution issues make the Bill of Rights process much more complicated because the Scotland Act 1998 entrenches the HRA in Scotland, and likewise the Good Friday Agreement in Northern Ireland. He also pointed to the lack of support in Northern Ireland for the Northern Ireland Bill of Rights recommended by the Northern Ireland Bill of Rights Commission. He accepted that agreement was needed, and because the HRA exists north of the border, there needs to be consultation: although Westminster has the right to make laws in relation to reserved matters and indeed could even legislate on devolved issues, it would be strange to impose a Bill of Rights in this manner on Scotland. David Howarth raised concern at the nationalistic nature of a 'British' Bill of Rights.

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**JUSTICE**