

# CIT-3 “We can depend on our elected representatives to defend our Human Rights; we do not need the Human Rights Act of 1998.”

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## Introduction

Human Rights legislation is a subject of much debate in British Politics today. Most would agree that the Human Rights enshrined in our laws are in many cases being twisted and abused by criminals and lawyers to gain their own ends. However, there is a large difference of opinion in what should be done about this. Some suggest that the Human Rights act should be scrapped, and that we need not worry about our Rights being infringed, as they will be defended by politicians. Here I will examine that view, and reach an informed conclusion on the issue by deciding my own view in the course of the essay.

## The Human Rights situation now

I feel, as do many others, that Human Rights are in this country being abused by those who are attempting to escape or lessen punishment. Whilst some might dismiss such claims, it is undeniable that in many cases criminals are having sentences lessened or even overturned simply by pleading that a certain ‘Right’ will be violated by their punishment. One notable example is the controversial ‘Article Eight’, which states that *“Everyone has the right to respect for his private and family life, his home and his correspondence.”*<sup>1</sup> This is routinely being used as grounds to prevent foreign criminals from being deported- they have a family life, they claim, in Britain, which would be harmed if they were returned to their home country.

An example of this in action is the case of Learco Chindamo, an Italian immigrant who murdered a headteacher, Philip Lawrence, when he was just 15, in 1995. On completion of his prison sentence in 2007, it was ruled he could not be deported back to his native Italy, as doing so would breach his human rights- namely his right to a family life. His family all lived in London, and thus in Italy he would not be with them. Therefore, he was released. In the words of the then Shadow Home Secretary David Davis: *“It is a stark demonstration of the clumsy incompetence of this Government's human rights legislation that we are unable to send a proven killer back to his own country, especially when that country is in the EU.”*<sup>2</sup> This case received a huge amount of media attention, with virtually all outlets mirroring my own view- that this was a ridiculous twisting of our laws.

I feel this system is extremely unfair, and I believe we focus legally too much on the rights of the criminal instead of the victim. The rights of a crime’s victim have been violated- should the perpetrator not suffer the same? In the previous example, the headteacher who was murdered defending a pupil lost his life, and yet his killer, after only 12 years in prison, is

free. I do not suggest he be put to death, merely that his human rights should come secondary to consideration of those he took from another. Some of our rights are lost when we break the law- our right to freedom of movement and our right to vote, for example, are taken away when we are imprisoned. Yet it seems criminals often maintain some they do not deserve. Thus, I feel something must be done about the current situation in our courts. The unfairness and focus on rights of the criminal needs to be addressed by the government.

### Is removing the bill the way forward?

However, removing the Human Rights Act, as has recently been proposed by Conservative Home Secretary Teresa May<sup>3</sup>, is not the way forward in my opinion. Without it, our rights will have little serious legal protection- and even if ministers suggest an alternative- a 'British Bill of Rights' has been suggested by David Cameron for example<sup>4</sup>- there will surely be a period in which we are without such legal protection. If no alternative was brought forward immediately, how could we trust our rights would be fully protected? I ask this question because of the attitudes and histories of those in government: why are certain ministers so desperate to remove the act? Do they genuinely feel the way our courts currently work is unfair? If so, why not address that problem directly- why attack the act which is being misused? Is there something contained in the act they would like to remove, to achieve their own ends?

The past Labour government was that which agreed and put in place the Human Rights Act, and yet they themselves were responsible for many violations of it. After the 9/11 terror attacks, the opportunity was seized to give additional powers to police and security services to spy on and arrest individuals without charge for longer- for instance- police were given the ability to hold terror suspects for 28 days without charge by the Labour government's Terrorism Act in 2006<sup>5</sup>, and the law has only been recently reversed to the previous 14.<sup>6</sup> (Although this in itself is an extension put into place in 2003 from the original 7.) Airport security has been given 'naked' scanners, controversial devices which take a naked picture of those who walk through to detect weaponry. However, these may well breach the human right to privacy set out in Section Eight of the Human Rights Act.

Another good example of a mass violation of our rights is the ID card scheme proposed and planned by the Labour party in 2006. It planned to "*make provision for a national scheme of registration of individuals and for the issue of cards capable of being used for identifying registered individuals*"<sup>7</sup>. The act was very controversial and attracted a huge amount of criticism from many corners, some saying it was in breach of Article Eight's Human Right to privacy and would endanger Article Fourteen's right to no "*discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*"<sup>8</sup> by readily providing a huge amount of information on individuals to police and security services. The scheme amounted, in the words of the NO2ID Campaign, to "*a huge database to keep tabs*

*on everyone, a massive infrastructure to collect peoples' details, and a giant network of technology required to verify people against their cards and both of these against the database.*"<sup>9</sup> The criticism of this scheme eventually overcame it, and it was scrapped by the new coalition government in 2010. Nonetheless, it represents the desire of the government to gather information about and control over its citizens for its own use, even in violation of the very Human Rights Act they set out.

## Why the bill should stay

If, as I have just shown, the government has been violating our rights to achieve their own ends while the Human Rights Act is in place, one can easily anticipate what would happen if it were removed. Politicians would surely have their own opinions about the replacement act, and would predictably modify it to suit themselves and their political aims, not those it was made to help protect; this is, I believe, why some are so desperate to scrap the act. Essentially, I do not believe our elected representatives can be fully trusted with protecting something as important as our Human Rights due to their own personal leanings and party aims, and I feel the security of having the Act fully enshrined in our law should not be lost. Nonetheless, I still fully accept change needs to be made to the way Human Rights work in this country due to the ways they are being abused and misinterpreted in our courts.

Perhaps the problem can be addressed in a different manner than simply removing the act- Article Eight for example, which has caused so much argument, gives only a general and broad definition of our right to privacy and family life, and is open to much interpretation. The second paragraph says: *"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."* Perhaps it could be amended to give in more specific terms when the rights set out can be violated- in the cases of foreign criminals, for example. It could also be reworded to prevent the excessive invasions of personal privacy increasingly prevalent today from the police, airport security, and intelligence organisations.

If the act were to be amended however, I feel the process would have to be entirely open and subject to scrutiny from Human Rights watchdogs like Amnesty and Liberty. In this way citizens would maintain the protection of the Human Rights Act by keeping it in force whilst deciding for themselves what needs to be changed- and they would be able to see exactly what parliament was doing with the act. This kind of system would, I believe, give our rights greater security and protection while the transitions and changes are being made.

Another, more specific, possibility would be to pass laws or acts declaring that on committing certain crimes individuals lose certain rights. This could be applied to foreign terrorists who declare they cannot be deported due to a detrimental situation abroad, or British criminals who cannot be sent to prison because it would hurt their families- both are recent cases that have received mass media attention.<sup>10 11</sup> Once again however, any changes to this kind of law would need to be heavily publicised and scrutinised. I do not believe, as I know some do, that Human Rights are a kind of outright, universal law that cannot be touched and must be upheld at all cost, and thus are unchangeable. I feel instead that Human Rights are such a valuable item to us as citizens that if any legal tampering with them is necessary, it would need to be done carefully, and those doing so observed closely.

## Conclusion

To summarise then, I believe that despite the problems associated with its interpretation, it would be foolish to allow the Human Rights Act to be scrapped by a parliament which has been violating the very rights it set out 13 years ago. If our rights are ignored by police and security services in some areas already, it is not difficult to conceive the results of scrapping the act and replacing it with another- the government clearly has its own agenda relating to our rights, and is not merely answering the calls of citizens relating to the matter. Instead, I feel we should perhaps amend the act in its problem areas in an open and scrutinised process, or state legally that if certain crimes are committed some Human Rights are lost. Either way, in answer to the original question, I do not feel we can depend on our government to fully protect our human rights objectively- they have political leanings and goals which I fear would influence them to act in their own interests, not in the best interests of the state's citizens, as has been demonstrated in the past.

## References

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