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June 27, 2006

Politicians must learn to keep the volume down

POLITICAL BRIEFING BY PETER RIDDELL

DAVID CAMERON is playing with fire over the Human Rights Act, and he knows it. His speech yesterday on a British Bill of Rights was both more thoughtful and more cautious than either the populist/tabloid Right would like, or human rights lawyers claim. In opening the debate, however, he risks raising expectations that cannot be fulfilled.

If you go back 20 years, it was mainly Conservative lawyers, as well as Liberal and SDP lawyers, who favoured incorporation of the European Convention on Human Rights into British law. Then, in the mid-1980s, most Labour lawyers and politicians opposed incorporation because it risked giving judges too much power compared with elected politicians.

It was only the long period of Conservative

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government and talk of arbitrary power by central government (sounds familiar) that convinced Labour leaders and lawyers to back human rights legislation. And the initial emphasis, up to 1993, was on a British Bill of Rights.

The Human Rights Act of 1998 is much misunderstood. It did not create new rights, nor allow judges to strike down, or annul, Acts of Parliament. Rather, its main impact has been to allow British citizens to raise human rights issues in domestic courts, rather than incur the cost and time of going to the Strasbourg court. Moreover, the European Convention, far from being a foreign device, was largely written by British and American lawyers in the late 1940s.






Many of the understandable concerns raised yesterday by Mr Cameron, as well as earlier by Tony Blair, about the handling of terrorists, particularly their deportation, a seeming bias in favour of the rights of criminals rather than victims, etc, are only partly to do with the 1998 Act as such.

For instance, the key case limiting the deportation of people at risk of torture or inhumane treatment, even if they are a danger to British security, was taken by the Strasbourg court in 1996, two years before the passage of the Act.

But Mr Cameron is not proposing to pull out of the European Convention because this would remove the protection of individuals against government, while leaving it would "send a message to all those countries that we encouraged to sign up to it that you cannot have rights and security at the same time".

His suggestion of a British Bill of Rights is intended to redress the balance, protecting fundamental liberties, but making it harder to use them "inappropriately". The problem, however, is that the more this Bill of Rights differs from the 1998 Act, the greater the chance of successful appeals to the Strasbourg court on the basis of the convention.

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So, contrary to the hopes of the anti-Human Rights Act lobby, there is no easy way out. Many of the problems are less to do with the 1998 Act than with the human rights "culture" applied, not only by judges and lawyers but also by public officials. It is not anti-judge, or anti-rights, to argue that this balance needs to be addressed. But to have the type of debate that Mr Cameron wants, the volume needs to be turned down by the politicians, and judges and lawyers need to recognise the legitimacy of some of the complaints about the "rights" culture.



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