



800 YEARS OF HUMAN RIGHTS

From the Magna Carta to the Human Rights Act, the UK's proud human rights tradition has always faced threats from those in power. We need a greater sense of public ownership and support for our Human Rights Act, says **Geraldine Van Bueren QC**.



The UK has a long and proud tradition of developing human rights, from the Magna Carta in 1215 to the Bill of Rights in 1689, the involvement in drafting the European Convention on Human Rights (ECHR) to the enactment of the Human Rights Act (HRA) in 1998. Over the centuries many brave Britons, both famous and unknown, have died arguing for and protecting human rights. However, as well as protecting human rights, some in government have also derided charters of rights and the courts that enforce them.

There now appears to be a campaign to scapegoat human rights and repudiate our proud history. This goes against the British tradition of increasing rights for all rather than limiting them.

More generally there is a substantial lack of understanding of the act, with significant misconceptions among the public, politicians, lawyers, the media and public authorities of whom it protects, where it derives from and the limits of its application.

The HRA fits into the UK's particular constitutional traditions, providing essential human rights protection to everyone in the UK: it helps protect women from domestic violence, keep families together, make it safer to be gay, and allow the UK to take a principled stand on human rights around the world, to name just a few examples. Significantly, the Act has also 'brought rights home'; while previously British citizens had to endure delay in bringing a human rights case before the European Court of Human Rights, they can now go first to courts in the UK, using the European Court as an essential safety net.

If a new British Bill of Rights is to be developed it should only build on and expand the rights and mechanisms contained in the HRA. It would provide an opportunity for a national convention on human rights. This did not happen with the HRA, and is one of the principal reasons for its lack of enthusiastic support. There is no sense of ownership. A national convention for a new British Bill of Rights would not only mean through government channels and major conferences, important as these are, but also small local meetings and high street campaigning – answering people's genuine worries and fears about human rights respectfully, honestly and fully, face to face and online.

We need to protect freedom of speech, due process and privacy, but also the rights that many regard as important to daily life, particularly when times are tough. There is a group of human rights not yet included in UK law that would provide everybody, majorities and minorities, women and men, with a much needed safety net.

The right to the highest attainable standard of healthcare, access to housing, and the right to work are rights recognised by the British government in international treaty law but not yet brought home. These socio-economic rights would help to protect the elderly in care homes and could make it easier to receive life-saving drugs, and ought to be included in a British Bill of Rights. Many countries have found that they help bolster democracy and widen the appeal of human rights.

The reluctant King John



THE HUMAN RIGHTS ACT IN ACTION
Articles 2, 3 and 8 of the Act allowed patients who had suffered inhumane and degrading treatment at Stafford Hospital to claim compensation.

Geraldine Van Bueren QC is a former Commissioner on the Equality of Human Rights and is Professor of International Human Rights Law, Queen Mary University of London and Visiting Fellow Kellogg College, Oxford.

The UK's membership of the ECHR is also under threat, and a similar level of confusion surrounds it. In late 2014, Justice Secretary Chris Grayling said that a future Conservative government would withdraw from the ECHR if the UK parliament failed to secure the right to veto its judgments.

A rich and informed debate based on evidence is a sign of a vibrant democracy and one of which we should be proud. We all therefore have the opportunity, in our own ways, to correct misleading and erroneous stories. It is critical to make more widely known that the ECHR has rejected most of the cases brought against the UK.

It is worth bearing some in mind that the ECHR is not only a sword but also a shield for governments of all political persuasions. If the UK were to seek to withdraw from the ECHR, or to rebalance the relationship between national courts and the European court, it would become the first country in Europe to do so. This would have immense ramifications and would irreparably damage our reputation as a supporter of democracy and human rights globally.

Magna Carta is rightly celebrated by politicians of all persuasion in the UK and abroad. It is, however, worth remembering that King John – who gave his seal to the document 800 years ago – did not welcome it: he sought to resist Magna Carta and even asked Pope Innocent III to annul it. Today's controversy becomes tomorrow's proud recognition of our human rights.





AN INVISIBLE SAFETY NET

The Human Rights Act is surrounded by a fog of myths, mischief-making and confusion. Yet our everyday lives depend on it. **Rachel Logan** explains what it is, how it protects us and why we need to campaign hard to save it

Susan Smith outside the High Court in 2006. Her son Philip Hewett was killed in an unprotected vehicle in Iraq © AP

THE HUMAN RIGHTS ACT IN ACTION
Relatives of soldiers who died in Iraq while in unprotected vehicles used Article 2 of the Act to sue the government for negligence.



Jenny Paton, with daughters Nina, Esme and Thea at home in Poole, Dorset. The local council illegally put the family under secret surveillance after an anonymous caller accused them of lying about where they lived so that Esme could go to the same school as her sister. © Andrew Testa / Panos



What has the Human Rights Act ever done for us?

Before 2000, when the Human Rights Act came into force in the UK, it was very difficult for ordinary people to enforce their human rights. Everyone was theoretically protected by the European Convention on Human Rights, but you could not easily rely on this inside the UK. You had to go all the way to the European Court of Human Rights in Strasbourg to challenge the UK government if they violated your rights, which was time-consuming (often taking many years), difficult, and potentially expensive.

The Human Rights Act changed that. It brought rights home: requiring all public authorities – central government, councils, schools, courts, anyone responsible for carrying out a ‘public function’ – to think about human rights whenever they make decisions or write a policy that affects your life, and ensure they respect, protect and fulfil your rights.

It gives you the right to go to a UK Court if the authorities get those decisions wrong or are about to do so, and get a swift, local remedy. It also makes the government explain how new laws they want to pass are compatible with our rights before they bring them to Parliament. The Human Rights Act has gone a long way towards creating a progressive, equality-minded culture that quietly promotes and protects human rights for all of us every day. Without the Human Rights Act, there would be no easy way for ordinary people to make sure the government is actually protecting their rights.

Human rights seem very abstract – what sort of rights does the act actually protect?

The rights protected in the Human Rights Act can seem quite broadly worded, so sometimes it’s hard for people to understand what is or is not protected, and how far that protection goes.

Take article 8, the right to ‘private and family life, home and correspondence’ - what does it actually do? It protects things like that very basic right for you to live together with your family, secure from illegitimate or disproportionate interference from the state.

In the past you’ve had cases where elderly couples would be forced to live apart by social services when they ran out of money or one of them became infirm; now they can rely on article 8 of the act and say, ‘We want to stay together and you have to support that’. Article 8 has also been used to ensure that councils make it possible for domestic violence victims to continue living with their children when things get tough, rather than only looking at how much things cost.

Other rights are more obvious – article 3 for example, which unlike article 8 is an ‘absolute’ right: you can *never* be subjected to torture, inhuman or degrading treatment. No excuses, no exceptions, no matter how ‘legitimate’ the aim might otherwise seem. It’s a red line.

The Human Rights Act provides an invisible safety net for all of us, often only being seen by the most vulnerable people at the sharp edge when the government acts unlawfully. It hums away in the background, protecting you from what you might think of as ‘serious’ abuses, but also protecting the sort of rights you don’t

THE HUMAN RIGHTS ACT IN ACTION
After living together for 65 years, Mr and Mrs Driscoll were separated when he became unwell. Mrs Driscoll wanted to move into the same care home as him, but the council refused to allocate her a place because it said she didn’t meet the criteria. Their family used Article 8 of the Act to convince the local authority to change its mind and reunite the couple.



necessarily think about on a day-to-day basis like your right to practice your religion freely, or go where you want. Without the Human Rights Act the government could pretty much do what it wanted. You may not know it’s there, but you would notice if it wasn’t!

Do you have to go to court to protect your rights?

A great benefit of how the Human Rights Act is written is that normally you don’t need to go anywhere near a court. If something is going wrong and you write a letter or assert your rights and speak up, the public authority is obliged to try to sort it out – and will almost always want to do so without going to court. However, the courts are there if you need them. In fact Amnesty has just had a significant victory for our human rights. With a group of other NGOs, we went to the Investigatory Powers Tribunal, challenging the UK’s indiscriminate mass surveillance practices revealed last year by Edward Snowden. This is to ensure that Amnesty as an organisation, and every individual in UK jurisdiction, have their rights to privacy and freedom of expression properly protected online and in the ‘real’ world. We are able to do this because of the Human Rights Act. (see page 5)

Why do some people think the Human Rights Act is just an example of ‘political correctness gone mad’?

The Human Rights Act generally works brilliantly. Like any piece of human law, it is subject to human error, and no one will agree

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Jan, who has multiple sclerosis, used Article 3 of the Act to get her local council to increase the amount of care she receives.

■ *Rachel Logan is Amnesty International UK’s programme director for law and human rights*

■ *For more information see www.equalityours.org.uk which documents the many real life stories of the Human Rights Act in action, a few of which we refer to with this feature.*

with all the outcomes all the time. The problem is that most people don’t really understand what it is or how it works. If you grow up in the USA, you are taught about how the constitution works and what it does for you. That doesn’t happen in the UK. Instead we have what looks like a sustained campaign of disinformation in the media and elsewhere creating so many myths around the Human Rights Act.

People successfully use the Act every day, but these stories seldom become public. Those opposed to the Act repeatedly try to focus on a tiny, a minuscule, minority of particular cases whose outcome they disagree with and they cite this as evidence that the whole Act should be scrapped, that the whole system is bad. It is so frustrating! It is shocking to think that you would dramatically reduce human rights protection for everyone in the UK simply because you disagree with a couple of cases. Human rights are universal: governments shouldn’t be able to pick who is deserving of human rights and who isn’t.

So what needs to be done?

We need to stand up for the Human Rights Act – and education is the way forward. That’s why the work Amnesty is doing in this area is so important: once people understand the Human Rights Act and what the country would be like without it, then they want to fight for it. Governments are just made up of human beings, who are fallible, have opinions, make mistakes. You need to be able to hold them in check. The Human Rights Act helps you do that.