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The Human Rights Act: Labour renews its vows to the UK's Bill of Rights

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The question of whether the UK's Human Rights Act is the vehicle through which the European Convention on Human Rights is incorporated into domestic law or a standalone UK Bill of Rights by another name has raged on since this key piece of New Labour's constitutional reform package was drafted sixteen years ago. Yesterday, Labour's Shadow Justice Secretary [Sadiq Khan announced](#) that an incoming Labour Government in 2015 would put the issue to bed once and for all. Pronouncing victory for the Bill of Rights side of the debate not only does justice to the intentions of the Act's drafters but carves out both a principled and pragmatic approach to domestic human rights protection for the Labour Party, which, in this era of divide and rule UKIP-isation of politics, is to be warmly welcomed.

The [Human Rights Act](#) (HRA), passed by the New Labour Government in 1998 and in force since 2000 has seen Local Authorities reprimanded for [snooping on families](#), Councils required to consult [care home residents](#) before closing homes and the police held to account for retaining information about [non-violent protesters](#). It has been used by a [Morrisons employee](#) to challenge his constructive dismissal for wearing a Help for Heroes wrist band and small poppy badge to work, by [the families of the soldiers](#) who died whilst undertaking SAS selection tests to secure a wide ranging investigation into their deaths and by Asperger's Syndrome sufferer [Gary McKinnon](#) to prevent his extradition to the US on hacking charges.

But this story of increased state accountability is not the one told by the British press. The hostility to the HRA among both [senior Conservative Party figures](#) and the press – fuelled in part by the Act's privacy-protecting potential for characters who could otherwise be revenue-boosting headline news – finds two forms.

The first objection is to the HRA's universal application. Arguably unsurprisingly, the HRA's protection extends to all humans. This includes unpopular groups like foreigners, criminals, [foreign criminals](#) and minorities like [Gypsies and Travellers](#). It is worth noting that the HRA doesn't grant unqualified rights to all, however. For example, challenges to deportation orders are most often successful where children are involved, since a foreign criminal's right to respect for his private life is balanced against the public interest in deporting him; the prospect of a child growing up without a parent is usually what tips the balance. But this nuance is all too often lost, and the label of 'villain's Charter' applied to an Act that has done much for [victims of crime](#).

Shadow Justice Secretary Sadiq Khan's [intervention](#) yesterday, therefore, is as notable insofar as it does *not* compromise this universality principle, as for what it *does* propose. "None of what I've outlined alters one bit Labour's unwavering support for the Human Rights Act and our membership of the European Convention on Human Rights (ECHR)", writes Khan, the ECHR having emerged from the de-humanising horrors of National Socialism. The human in the Human Rights Act is safe under Labour is both a principled stance and strategically sound move.

In speaking to the second bugbear of Senior Conservatives and their allies in the press, namely the European connection with the HRA, Khan invites his opponents to come clean about the true nature of their opposition, either to the Act's universalism (see for example Martin Howe QC's categorisation of rights-holders in his draft Bill of Rights in the [report](#) of the Commission on a Bill of Rights), or indeed their opposition to the very concept of judicially-interpreted rights protection (see Anthony Speaight QC's proposed 'interpretive rule' in the Commission on a Bill of Rights [report](#), which would all but nullify the section 3 HRA instruction to the judiciary to interpret statutes in a rights-compatible way).

The Labour announcement is relatively simple. As Justice Secretary, Khan would issue guidance (or legislate as necessary, and [some have already argued](#) legislation would be necessary) to ensure that UK courts do not consider themselves bound by the decisions of the European Court of Human Rights in deciding cases under the HRA. The issue arises since the text of the rights in the HRA is taken directly from the European Convention on Human Rights (ECHR), which is policed by the European Court of Human Rights in Strasbourg. (It had taken long enough to agree on the need for a UK Bill of Rights; why risk the project with suggestions of more controversial wording!) 'Incorporationists' have long argued that this text symmetry points to the HRA's role as an 'ECHR Act', designed simply to bring 'Strasbourg justice' to Slough or Staines. But [section 2](#) of the HRA is clear; UK courts are obliged only to 'take into account' decisions of the European Court. In other words, they should come to

their own conclusion about any given human rights challenge. As Khan recalls, a Conservative amendment that would have seen UK courts bound by the case law of the European Court was explicitly rejected during the parliamentary debates on the Human Rights Bill.

But this clarifying guidance is designed to do more than simply set the record straight or even placate Tory opponents of the Act. It sees the Labour Party responding to the serious criticism of our judiciary's failure to sufficiently pave its own human rights way in the fourteen years of the Act's operation (arguably understandable in a judicial system rooted in precedence). By re-invigorating the notion of the HRA as '[the first Bill of Rights this country has seen for 300 years](#)', Labour seeks to embolden UK judges, arguably more in tune with UK custom, tradition and society than their counterparts in Strasbourg, to develop a British human rights jurisprudence. And through its doctrine of the [Margin of Appreciation](#), the Strasbourg court is expected to defer to this new confidence where appropriate.

Khan couldn't have been clearer, however, that citizens will retain their right to petition the Strasbourg court, given the rooting of the ECHR system in the need for international judicial oversight of national governments. In responding to concerns about the interpretation of the rights in the HRA, the bathwater of strict adherence to Strasbourg case law has gone, but the baby of universal human rights protection remains. How will the Conservative Party respond to Labour renewing its vows with the UK's modern Bill of Rights? The honest thing would surely be to concede that any Bill of Rights introduced a future Conservative Government would throw the baby out with the bathwater and therefore be undeserving of the very label Bill of Rights.

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