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FIVE IDEAS TO FIGHT FOR

How our freedom is under threat and why it matters

'[An] engaging combination of practicality and passion' Vikram Seth

Anthony Lester

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How Our Freedom Is Under Threat and Why It Matters

ANTHONY LESTER

ONEWORLD

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For Katya, Gideon, Maya and Benjamin.

ACKNOWLEDGEMENTS

This book began three years ago prompted by Zoe McCallum, a postgraduate working for the Bill Rights Commission. I needed to be persuaded because there are too many self-serving politic memoirs and lawyers' casebooks, and I did not want to add to them. But Zoe prevailed and ha collaborated in drafting and editing a book about the ideas for which I have fought. She is a exceptional young writer and political advocate (soon to be at the Bar).

My wife Katya patiently supported my work and writing and my tilting at windmills. Without h loving support I would have achieved little. Our son Gideon, who escaped law for theatre in the USA suggested the title and shaped the work. Our daughter Maya, a far better barrister than me, enriche my understanding of the law and beyond.

Thanks to the generosity of David Sainsbury's Gatsby Charitable Foundation, the Sigrid Rausin Trust and the Open Society Institute, I have had crucial back up for my political office, the Odysseu Trust. Zoe McCallum, Caroline Baker, Emma Fenelon and Clare Duffy helped me to prepare the book They are the most recent in a long line of brilliant young women and men who have collaborated my political work.

My literary agent, Zoë Pagnamenta, led me to my publisher, Oneworld, owned by its founder Novin Doostdar and Juliet Mabey. It has made all the difference to have the backing of a nimble an public-spirited publisher. Unlike so many in the international book trade these days, Oneworld is n owned by a conglomerate and publishes not to make huge profits but to support interesting work They and their editors, first Mike Harpley and more recently Sam Carter, have helped me to cut an polish and refine. I am also grateful to their publicity director Margot Weale, and Becky Kraemer wh acts for Oneworld in the USA.

Many others have read draft chapters and given their feedback. With apologies to thos inadvertently omitted, I am grateful to Gloria Abdullah, David Anderson, Lisa Appignanesi, Jo Ashby Mairead and Tony Barry, Janet Benshoof, Jonathan Self, Roger Berry, Tim Colbourne, Sandy Colive Jonathan Cooper, Jill Davidson, Charlotte Dewar, Harry Evans, Margaret Ferguson, Melanie Fiel Maurice Frankel, Jo Glanville, Jim Goldston, Martine Croxall, Beth Hallinan, Rebecca Hilsenrat Susan Hitch, Greg Jones, Kate Jones, Jeffrey Jowell, Jocelyn Keith, Ken Keith, Gail Kent, Amand Lamugisha, Anne Lapping, Brian Lapping, Mick Levens, Teo Soh Lung, Sujata Manohar, Monic McWilliams, Rose Mulcahy, Anthony Neoh, Anthony and Julia Neuberger, Angelika Nussberger Michael O'Boyle, Kate O'Regan, Simon and Louise Palmer, David Pannick, Kathy W. Pollak, Dina Rose, Khatun Sapnara, Pia Sarma, Katherine Schofield, Stephen Sedley, Jill Silverman va Coenegrachts, Audrey Simpson, Soli Sorabjee, David Stephen, Chris Stone and Frederick Wilmo Smith.

I of course take full responsibility for the contents of the book, and for errors of fact and judgemen

NO TIME FOR APATHY

This book charts the ways that ideas about human rights, equality, free speech, privacy and the rule o law have evolved over the last sixty years. It explains why they matter, how well they are protecte and how they are threatened. It describes what has been achieved, how it happened, and what we nee to fight for now. There is never a time for apathy, especially now.

This is not an autobiography, though some account of my life is given where relevant. It is not lawyer's casebook, though cases I have argued are discussed where they have inspired reforms. It not a political memoir, though it is highly political. It is not a scholarly work, but rather an overvie of practical change in the five fields, drawing on my experience as a barrister, parliamentarian an campaigner – at home and abroad.

I want to show that it is possible to bring about change and to encourage active engagement. Th British political system has been decaying for decades and is falling apart. The main parties are spl into hostile factions. They play clumsy games with our fragile constitution, like children playing wi boxes of matches. The American diplomat Dean Acheson once observed that Britain had lost a empire but not yet found a place in the world. That remains true. Britain is only half in Europe, semi-detached and grumpy member punching below its weight and size. Foreign invasions, terroris and mass migration have bred fear and insecurity, conditions easily exploited by extremists.

Our increasingly disunited kingdom is threatened by powerful forces of nationalism – pressu exerted by those who would quit the European Union or the United Kingdom or both, and from tho who would impose their values and beliefs on the rest of us. This threatens our secular tradition. The is a risk that our governors may sleepwalk the UK into leaving the European Union, and that Scotlan may leave the rest of the UK, and that Northern Ireland will remain politically polarised.

Disintegration of the UK and disengagement from Europe would weaken our capacity to tackle th problems that cannot be solved by a single country – perplexing problems of corruption, inequali between rich and poor, racism, terrorism, xenophobia, the misuse of religion as a weapon of ma destruction, and the devastation of the global ecosystem.

The Astronomer Royal, Martin Rees, has warned that we are 'destroying the book of life before w have read it'. The pressures of a growing human population and economy, on land and on water, ar already high and we have a responsibility 'to our children, to the poorest, to steward the diversity an richness of life on earth'.[1] Working across Europe and beyond it, we must also tackle world hunge disease and over-population; the effects of wars that have destroyed stable societies and resulted millions of refugees; terrorism, racism and political extremism.

This is the worrisome context in which the book explores the five ideas I have chosen to fight fo They reflect my practical experience and personal choices. They are not presented as a hierarchy greater and lesser importance. The ideas are interdependent but each is looked at separately. Each ha a particular history and its own dilemmas and puzzles. Each is under threat.

Do we really know why we are the way we are? Short of consulting a psychiatrist, I cannot be su why I have spent my adult life fighting for these ideas. It had to do with my upbringing by Jewis

parents whose European relatives had been murdered in the Holocaust and who sympathised wi
disadvantaged people. It had to do with my education at a liberal school – Asquith's City of Londo
School – in the 1950s, and with feeling the pinpricks of English anti-Semitism during Nation
Service. It had to do with what I learned about politics when I studied history at Cambridge (discusse
in the 'Equality' chapter).

When I left Cambridge in 1960, I had been put off a legal career by the austere diet of English la
on which I had been fed. The unwritten common law was the staple curriculum for la
undergraduates. Acts of Parliament were treated as unfit for university study. One ancient la
professor from my college lamented the fact that industrial law and family law were entering th
syllabus even though they sprang from statutes.

I learned about the legal rules governing contracts, torts (civil wrongs) and crime but little attentio
was paid to law in context. Public law was undeveloped. My mentors, like the judges at that tim
were uncritical of the way that state powers were used. Written constitutions were regarded wi
disdain as suitable only for less mature societies than ours. There was no developed equality or huma
rights law. English judges, sitting in the Judicial Committee of the Privy Council in appeals from th
former Empire, gave judgments condoning racial discrimination in Africa and Canada.

In 1962, I came back from the United States reluctantly, to a country whose rulers were depressingl
complacent. At Harvard Law School I had learned the benefits and burdens of a written constitutio
and Bill of Rights. I had seen from abroad the flaws in the English legal system, which was narrow
legalistic and ethically aimless – without a compass to steer by. In those days, our most senior judge
the Law Lords, had denied themselves the power to overrule a previous judgment even if it was wron

I went back to the States for Amnesty International during what became known as the long h
summer of 1964. I was tasked to report on racial justice in the Deep South. It was a transformi
experience. When I returned home and began to practise at the Bar in 1965 I was determined to u
what I had learned and seen to protect human rights. I was uncomfortable in the snobbish, mal
dominated, racist and arrogant world of the English Bar in those far-off days. I was initially refused
tenancy in my chambers on the ground that I was too political – too close to politics and the press. A
that time I regarded the American system of government under law as vastly superior to ours.[2]

But the spirit of the age was beginning to change. It was reflected in the work of a new breed
legal scholars who were internationally minded. They understood the need for stronger safeguar
against the misuse of the powers of the state. In 1959, Stanley de Smith had published his semin
work *Judicial Review of Administrative Action*. In 1961, after I had left Cambridge, H.R.W. Wade, m
former mentor in property law, published *Administrative Law.* In 1963, Harry Street publishe
Freedom, The Individual and the Law, the first survey of civil liberties in Britain. A year later, c
Smith published *The New Commonwealth and its Constitutions*.

These oracles encouraged me to hope that a change of government to Labour would be infused wi
this new spirit. I was sadly mistaken. In 1963, Gerald Gardiner, soon to become Lord Chancellor
Harold Wilson's Labour government, published a book of collected essays with Andrew Martin, soc
to become a member of the Law Commission. It was entitled *Law Reform Now.* Many of its proposa
were progressive but the book said nothing about the need to protect fundamental human rights. At
time when the judges were executive-minded and timorous in challenging government decisions, o
essay on administrative law in the book even rebuked judges for being over-enthusiastic in using the
powers of judicial review.[3]

In 1966, the Wilson government allowed cases against the UK to be taken to the European Court

Human Rights in Strasbourg. But it shied away from making rights enshrined in the Europea Convention on Human Rights part of domestic law, or strengthening the courts' ability to curb abus of power. A year later I argued the first British case to the European Commission of Human Rights o behalf of a Pakistani mill worker from Bradford and his young son, who had been refused permissio to join him in the UK. We won the argument and the government undertook to allow the boy to joi his father. It also promised to introduce an immigration appeal system – the first of its kind.[4] Th made me appreciate that the European Convention system could provide remedies where there we none in our courts.

The following year, in 1968, Harold Wilson's Labour government rushed an emergency Bill throug Parliament in three days and nights. It took away the right of British Asians from East Africa to ent and live in the UK. It was racist, and in breach of a pledge by a previous British government – that East Africa's newly independent governments expelled British Asians, they would retain the right t settle in the UK. But because the Westminster Parliament is supreme and the courts cannot strik down Acts of Parliament, the only way of challenging the law was to complain to the Europea Commission of Human Rights in Strasbourg. That seemed to me to be absurd. The Commission was vital long stop – but we needed effective remedies for violations in our own courts.

In November 1968, I gave a Fabian lecture advocating a Bill of Rights built on the Europea Convention on Human Rights. It would put a protective fence around fundamental rights an freedoms.[5] There were plenty of American but few British thinkers that I could rely on to support m argument. In 1859, J.S. Mill had warned in his essay *On Liberty* against populism becoming a weapo of arbitrary power – the 'tyranny of the majority'. Eight decades later, in 1939, H.G. Wells ha championed the need for an international declaration of human rights. In 1945, Hersch Lauterpac (later to become the British judge on the International Court of Justice) published his seminal work *A International Bill for the Rights of Man*, which faced up to the English dogma of parliamenta sovereignty. Harold Laski, influenced by his contact with the United States, observed in 1948 that th real value of a Bill of Rights was to act 'as a rallying-point in the State for all who care deeply for th ideals of freedom'.[6]

The *New York Times* chief London correspondent, Anthony Lewis, attended my lecture. He agree with the need for a modern British Bill of Rights based on the Convention but doubted it would ev come to pass. Most British thinkers fifty years ago regarded the idea of fundamental rights wi disdain – suitable for the United States or Napoleon's Europe or newly independent Commonweal countries, but not for the United Kingdom. Ivor Jennings, a leading British constitutional scholar an grand poo-bah of his day, regarded India's written constitution with disdain. In 1954, Herbe Morrison, former Deputy Prime Minister, published *Government and Parliament*, glorifying the statu quo without any mention of abuses of power or the rights of the individual. In 1957, Prime Minist Harold Macmillan told his fellow Conservatives that the British had 'never had it so good'.

In several cases I tried to persuade our judges to take human rights more seriously, quotin American and European analogies. My successes were few. I found that I was able to achieve more i two years as special adviser to Roy Jenkins at the Home Office – in 1974–76 – than in ten years at th Bar. We shaped sex and race discrimination laws and advanced the case for a British Bill of Rights.

When I returned reluctantly to the Bar in 1976 I no longer had a practice in commercial law. But developed a practice in what is now known as public law – the judicial review of the actions of publ bodies to ensure they act lawfully, rationally and fairly. I acted as well in cases on equality, fre speech, privacy and other human rights, making submissions before a new generation of judges who

values were very different from those of their predecessors.

Meanwhile, the Labour Party turned against Europe and liberalism and became dominated by trad union corporatism. My political life declined after I was rejected as a parliamentary Labour candida whose views were out of favour. When the Gang of Four[7] broke with Labour and set up the Soci Democratic Party I went with them, and later joined the merged Liberal Democrats. During that tim my barristers' chambers were enriched by a new generation of women and men – better educated tha we had been and keen to take on public interest cases.

There were clear limits to what could be achieved using the judicial process. In 1993, I turned dow the offer of a High Court judgeship for which I was ill suited. Thanks to Paddy Ashdown, then lead of the Liberal Democrats, I became a member of the House of Lords instead, focusing on th constitutional and human rights issues that I cherish.

Peers are unelected and independent-minded – counter-majoritarian and sometimes in the vangua of ground-breaking reform. About a fifth of the House of Lords are not appointed by the politic parties. That secures our independence. Because of them, the government does not have commanding majority and can be defeated by cross-party alliances. We have much more time tha members of the Commons to debate and introduce reforming Bills. And among the politicians c yesteryear are experts in many fields, including law and government, academia and the professions.

For all but the five years of coalition government, I have sat on the opposition benches und Conservative and Labour governments, working with colleagues from all parties and none, as well a civil society. My maiden speech was about the need for better human rights protection. I used publ lectures and questions to ministers and Private Members' Bills to achieve reforms – Bills on huma rights, equality, civil partnership, forced marriage, constitutional reform and defamation.

When Gordon Brown replaced Tony Blair as Prime Minister in 2007 he made a powerful stateme on the case for constitutional reform. I was invited informally to rejoin the Labour Party and become minister. When I declined I was invited to become an unpaid independent adviser to the Lor Chancellor, Jack Straw, as what became known as a 'goat' – a reference to a 'government of all th talents'. My experience as a tethered goat inside Gordon Brown's big tent was an exercise in futility. resigned after fifteen months when it became plain that Gordon Brown, Jack Straw and the colleagues had wasted the opportunity of a generation for constitutional reform.[8]

There was one redeeming achievement by the Brown government before it lost power. Under Harri Harman's determined leadership, what became the Equality Act 2010 was successfully navigated. became law on the eve of the General Election on 6 May 2010. It was modelled on my Priva Member's Equality Bill, introduced seven years before, and had crucial support from the Liber Democrats.

The five years in coalition with the Conservatives were painful because we Lib Dems had to suppo measures with which we strongly disagreed. An embarrassing example of excessive loyalty aros during the passage of the Public Bodies Bill designed to axe or merge many 'quangos'.[9] The form Lord Chief Justice, Lord Woolf, had accused ministers of treating some of the quangos in a cavali fashion. So I introduced an amendment restricting the way ministers could use their new powers b forcing them to ensure that they respected judicial independence and human rights.

The government was vigorously opposed to my amendment. When I was strong-armed I tried withdraw it – but the cross-benches objected and my amendment was passed.[10] From a surfeit loyalty I voted idiotically against my own amendment. I am much happier to be back in opposition, n longer having to perform political contortions to vote for unconscionable proposals.

The Liberal Democrats suffered a devastating defeat in the 2015 General Election, but I do n believe that the British people rejected liberalism. The current government wants to suppre extremist activity, and the Prime Minister and Home Secretary define extremism as 'vocal or activ opposition to fundamental British values'. Those surely are the values of a liberal society that inclu freedom for political dissent and respect for human rights and the rule of law (see the 'Free Speec chapter).

Those fundamental values are threatened not only by terrorists but by the state and its agents a populist politicians. Human rights are under threat at home and abroad. So is the internation reputation of the UK as a country that respects the European rule of law. David Cameron government was elected with a pledge to tear up the Human Rights Act, replacing it with a 'Britis Bill of Rights and Responsibilities'. It is not likely to give greater protection to our rights a freedoms than what we have now. The European Court of Human Rights is under attack by ministe for having supposedly undermined the sovereignty of the Westminster Parliament.

Successive governments have continued to flout the Strasbourg Court's judgments requiring at lea some convicted prisoners to be entitled to vote in parliamentary elections. That violates o international legal obligations. It sets a shameful example for pseudo-democracies when they t violate human rights.

I hope that this book will encourage readers to fight for the country we love – and for a more ope democratic society based on equal justice under the rule of law. Each chapter highlights the histor the threats we face and the challenges to human rights, equality, free speech, privacy and the rule law.

1 'Scientists and politicians alike must rally to protect life on earth', *Financial Times*, 6 September 2015.

2 I no longer think so. American judges are politically appointed or elected. Elections are dominated by wealth and the electo machinery is wide open to corruption. The politically polarised US Congress filibusters obstruct much needed reforms on healthca gun control and other important topics. Public figures are defamed by wickedly untrue libels by Fox News and other media. Racis persists in criminal justice and prisons, and the death penalty is still lawful.

3 *Law Reform Now* (London: V. Gollancz Ltd, 1963), p. 52. The essay was presumably written by John Griffiths, a fierce left-wi critic of the judiciary for what he regarded as its reactionary decisions.

4 *Alam and Khan v United Kingdom* Application 2991/66 (1967).

5 *Democracy and Individual Rights*, Fabian Society Tract 390 (London: Fabian Society, 1969).

6 Harold Laski, *Liberty and the Modern State* (London: George Allen & Unwin Ltd, 1948), p. 65.

7 Roy Jenkins, Shirley Williams, Bill Rodgers and David Owen.

8 Anthony Lester, 'My misery as a tethered goat in Gordon Brown's big tent', *Guardian*, 27 July 2009.

9 Quasi-autonomous non-governmental organisations.

10 HL Deb 23 November 2010, vol. 722, cols. 1010–1041.

1

HUMAN RIGHTS

'Power is delightful and absolute power is absolutely delightful.' Notice on a Home Office immigration official's desk in the 1960s

'For too long we have been a passively tolerant society, saying to our citizens "as long as you obey the law, we will leave you alone".'
David Cameron (13 May 2015)

The way we protect human rights is under sustained attack. Politicians and sections of the press pedd lies and distortions about the European Convention on Human Rights, the Strasbourg Court and th Human Rights Act. They allege that the system distorts justice, preventing evil people from gettin their just deserts. They complain that it hampers governments in tackling terrorism and serious crim They decry rulings preventing deportation to a country where there is a risk of torture or the dea penalty. They object when a court rules that bed and breakfast owners must not refuse t accommodate a gay couple. They blame the Human Rights Act when our soldiers are made to accou for complicity in torture. They accuse the Strasbourg Court of undermining democracy by being to activist and overriding our sovereign Parliament.

The phrase 'human rights' has become a buzzword used to attack judges and the rule of law here an in Europe. It has weakened public confidence in the system that protects our basic rights and freedom – as well as public confidence in our judges, who cannot answer back.

Journalists and the public need human rights law to protect a free press. Newspapers rely on th Convention to protect free speech, but many editors and their owners do not accept that they mu respect the human rights of those whose private lives they expose for commercial gain. That is on reason why the public is fed a diet of half-truths and downright lies about the so-called 'threats' to ou way of life. Story after story is run each week attacking what they describe as 'this human righ farce',[1] calling the Human Rights Act a 'gift to our enemies',[2] and demanding that the governme ignore the rulings of 'this foreign court'.[3] That makes good copy and boosts sales, as does salacio gossip about the private lives of public figures. But it undermines public confidence in the ver system that protects their and their readers' free expression.

Populist ministers are also to blame. In September 2013, the Home Secretary, Theresa May, voice her frustration at her inability to deport the radical cleric Abu Qatada to Jordan because of the risk th evidence gained through torture might be used against him in a trial there. She found it ridiculous th the government should have 'to go to such lengths to get rid of dangerous foreigners'. That is why, sh explained, 'the next Conservative manifesto will promise to scrap the Human Rights Act . . . It's wh the Conservative position is clear – if leaving the European Convention is what it takes to fix ou

human rights laws, that is what we should do'.[4]

The then Lord Chancellor, Chris Grayling, also declared his hostility to the Act and the Strasbou Court. Kenneth Clarke and Dominic Grieve were the only two Conservative ministers within t coalition to stand up publicly for the European rule of law. Clarke retired and Grieve was remove from office shortly afterwards.

It was not ever thus. After the Second World War, the Conservative Party led the way unde Winston Churchill and David Maxwell Fyfe in creating the Convention system. Yet now the Camero government wants to tear up the Human Rights Act to replace it with a 'British Bill of Rights'. invokes the Conservative election manifesto to justify its threatened measures. At first it hinted at t possibility of withdrawing altogether from the Convention and the institutions which oversee it, t European Court of Human Rights and the Council of Europe. It then rowed back from that positio The Prime Minister, Justice Minister, Home Secretary and their supporters in Parliament a populists, driven by the wish to appease anti-European MPs in the Commons and to be rid Strasbourg Court rulings with which they disagree. They have amended the Ministerial Code to dele the duty to comply with international law and treaty obligations.

Ministers want to be free to send away a suspected terrorist even to a country where he would ri torture or face the death penalty. They would like Parliament to limit the courts' powers to review t legality of what they can and cannot do. They would like to give more power to themselves Parliament to overrule judgments that they dislike. If we do not succeed in defending the way w protect human rights, five decades of hard-fought progress will be lost.

What are human rights?

We must strive to protect the basic rights we all enjoy because of our shared humanity. They includ the right to life, the right not to be tortured or subjected to inhuman or degrading treatment punishment, the right not to be enslaved, the right to a fair trial, to freedom of thought, conscience a religion, to freedom of expression, to respect for private and family life, the right to marry, the rig to private property, to education, to take part in free and secret elections, and to enjoy these righ without discrimination. They are the bedrock of a democracy based on the rule of law and o common humanity and dignity. They call for special protection against undue interference and abu whether by elected politicians or public officials.

Human rights are not the gift of governments. They are our birthright. Some believe human righ are part of natural law and religious teachings; for others they are fruits of the eighteenth-centu Enlightenment; for pragmatists they are the basic freedoms of the individual. Philosophers a theologians reflect about origins and sources of fundamental rights. I am neither a philosopher nor theologian. What matters to me is whether they are observed in practice and whether there a effective remedies for victims when they are breached.

Some rights are suitable to be enforced by judges. Others should be put into effect by t government. It is the responsibility of the political branches to secure and protect economic, soci and cultural rights. Judges have no competence or expertise to decide how to create a health servic or tackle poverty, or make the trains run on time. It is not the judges' function to solve politic problems or to consult the public about them. Judges have no mandate to make law and must take ca to keep off the political grass when deciding how to balance individual rights and the public interest.

It is only rarely, when the democratically elected arms of the state have failed completely to fulf their obligations to protect economic, social and cultural rights, that the courts may intervene, f

example, to prevent starvation or to halt discrimination in providing healthcare. If the cour attempted to impose an economic theory or a political ideology, they would undermine both the legitimacy and public confidence in the administration of justice.

Origins of the European system

The European Convention on Human Rights came into force in 1953. The barbarous atrocities of th Second World War – the mass extermination of millions of Jews, gypsies, gay men and the disabled mass torture, discrimination and pillage – enabled the newly born Council of Europe to muster enoug political will to create the Convention in the late 1940s. Without Hitler's Nazi Reich, there woul have been no Convention – no moral compass to guide governments and to protect the governe through European and national laws.

The Council of Europe's founders understood the need to forge a new international system of huma rights protection that transcended political and legal frontiers. They sought to guard against the rise new dictatorships, to reduce the risk of relapse into another disastrous European war, and to provide beacon of hope for the peoples of Central and Eastern Europe living under the yoke of totalitaria Soviet regimes. They were determined never again to permit state sovereignty to shield th perpetrators of crimes against humanity from international liability; never again to allow governmen to hide with impunity behind the traditional argument that what a state does to its own citizens or outsiders is its business and beyond the reach of international law.

The Strasbourg system was a revolutionary initiative. For the first time, individual men and wome would be able to enforce their rights against their own governments before an international court, th European Court of Human Rights. British politicians and lawyers made key contributions to the fin wording of the Convention. They were determined that it would reflect the values that our country ha fought to preserve in our battle against Hitler. The final version is as British as roast beef an Yorkshire pudding.

When the Convention was being prepared, in 1949, Clement Attlee's Labour government had dee reservations about it. The Cabinet papers reveal that Lord Chancellor Jowett opposed the creation of supranational court. The Chancellor of the Exchequer, Stafford Cripps, believed the Convention wa inconsistent with a planned economy. The Attorney General, Hartley Shawcross, regarded th possibility of UK citizens lodging complaints against their government in Strasbourg as 'whol opposed to the theory of responsible government'.[5]

Like David Cameron's government today, the Attlee government saw itself as protecting th integrity of the British constitution and the judicial system against subversive European influence. B the Foreign Secretary, Ernest Bevin, argued that the European movement could not be held back an that the UK was in danger of being politically isolated. He persuaded the Cabinet to agree ratification. It did so reluctantly, on condition that the UK would not allow individuals to take a cas against the state to Strasbourg. In those days the system allowed governments to deny individuals th right to bring a case.

On 8 March 1951, the UK became the first among the nineteen founding Council of Europe states ratify the Convention. Lord McNair, a British scholar of international law, became the first Presider of the European Court of Human Rights, in 1959. Successive governments continued to refuse th right to complain against the UK to the European Commission and Court of Human Rights or to mak the Convention rights part of British law; so the Convention had no practical value to victims in th UK.

It was Harold Wilson's Labour government that accepted the right of individual petition in Janua 1966. The decision was taken at a time when the Strasbourg Court had decided only one case. The was no formal decision by the Cabinet and no parliamentary debate. Yet the consequences were fa reaching. It meant that individuals could challenge Acts of Parliament and judgments of our highe courts for violating Convention rights.

After the collapse of the Soviet Empire in 1989, membership of the Convention rapidly enlarged include formerly totalitarian states. Today, the Convention binds forty-seven members of the Counc of Europe. It requires each of them to give effective remedies in their national systems for breaches the Convention rights and obliges them to comply with the Court's final rulings against ther however much they disagree. It gives – or is supposed to give – equal protection to some 820 millio citizens of Europe, as well as non-citizens, from Ireland in the West to Azerbaijan in the East, fro Russia in the North to Greece in the South.

Because it is an international court of last resort and not a court of appeal, the Strasbourg Court do not take the place of the national authorities. It takes on a case only when the national system fails provide an effective remedy for a violation of a Convention right. It grants governments a margin appreciation, aware that contracting states have a better knowledge of their own political, social a cultural traditions than a European Court. When it finds a violation, the Court recognises that it is f the state concerned to choose how to give effect to its ruling. In other words, the Court is cautious n to trespass into the political arena.

The prime responsibility for securing the Convention rights is at national and not at European leve But it is a convenient fiction for governments and European bureaucrats to suppose that t Convention is properly observed across Europe. And it is remote from what happens in practice. Fe countries have courts that are really independent, decide cases impartially and respect human right however unpopular or inconvenient the decision may be to a citizen, the public or the state. The wor repeat offenders are Turkey, Italy, Russia, Romania and Ukraine.[6] The UK continues to flout bindi judgments requiring at least some convicted prisoners to be allowed to vote in parliamenta elections.[7]

English opposition to bringing rights home

It took decades to win the right to complain to our *own* courts about violations of their Conventio rights. Although from 1966, alleged victims of UK violations could seek redress in Strasbourg aft the damage had been done, they could not rely directly on their Convention rights in UK courts. Whi the Convention was not part of our law, ministers, politicians and public authorities could not b called to account in our courts for decisions that were incompatible with it.

There was strong resistance among English politicians and civil servants to the idea of giving t Convention rights direct effect in UK law. When I suggested the idea in a public lecture in 1968, was greeted with incredulity by almost everyone. In 1998, we won the Human Rights Act at last. W now rely upon the Act, on the Strasbourg Court and our own courts (as well as the common law) as o legal bulwark against the abuse of power by the state and its agents.

Hostility to judicial enforcement of fundamental rights is deeply rooted in history. Since t seventeenth century, the UK has been governed by a peculiarly English constitutional principle: t absolute sovereignty of Parliament. Under the English system a governing party with a majority in t Commons can make or unmake any law without the restraint of a supreme law of the constitution. T Dentists Act could in theory repeal the Act of Union 1707 with Scotland or the Scotland Act 1998, o

the Bill of Rights 1689. That is because our courts treated all Acts of Parliament as equal and equal able to be trumped by a future Act of a future Parliament.

That is not the position in the rest of Europe or the rest of the democratic Commonwealth, apa from New Zealand. Their written constitutions require their legislatures to use their powers in a wa that is compatible with their Bills of Rights, and that is what the Human Rights Act now does in more nuanced way.

Fifty years ago, we had no modern system of public law and no Human Rights Act. There wa nothing our courts could do to protect us from a Parliament that abused its powers. Francis Bacon, th seventeenth-century Lord Chancellor, warned judges to remember that their office is 'to interpret law and not to make law, or give law'. His essay ended: 'let them be lions, but yet lions under the thron being circumspect that they do not check or oppose any points of sovereignty'.[8] Our judges have bee careful to obey the warning, but some judges have cautioned that they could one day be provoked refuse to recognise the legitimacy of an arbitrary Act of Parliament.[9] If that were to happen, the would be a major constitutional crisis.

Each society has its own pathology of human rights violations. Fifty years ago, most British huma rights problems stemmed from a lack of judicial control of powers delegated by Parliament ministers and public officials. The conventional wisdom was that the gentlemen in Whitehall kne best, and that they and their ministers could be trusted to act fairly and reasonably without the nee for judges to look over their shoulders. Civil servants would use their benevolent wisdom in acting guardians of the public interest. Powers would be protected from misuse by ministers' sense of fa play. If a politician erred, the free press would expose the wrongdoing. The remedy would be achieve through politics and publicity, not the courts. If powers were abused, the rascals would be booted o at the next election.

That conventional wisdom has much in its favour. One virtue of our unwritten constitution is that is flexible. It can be changed easily to meet current needs and values. Change comes from legislatio when governments have the necessary political will and skill. It comes from court rulings th gradually clarify and develop the law. Another advantage of parliamentary supremacy is that it doe not give exclusive responsibility to judges to protect human rights. It recognises the crucial role of th elected branches of government. It also avoids the trap of legalism – that is, strict obedience to th letter rather than the spirit of the law.

But our system has serious disadvantages too. Most modern democracies protect their civic valu in their written constitutions as well as in ordinary laws. In the UK, we do not have a codifie constitution expressing our core civic values. Our system is based on the supremacy of th Westminster Parliament, the rule of law and a political culture that cherishes individual liberty. W have important Acts of Parliament defining and protecting some of our basic rights – the Equali Acts, the Freedom of Information Act and the Representation of the People Act, for example. Bu unlike France, Germany, Italy, Canada, India, South Africa or the United States, we have no suprem constitution that proclaims our political and legal values, subject to alteration only by speci procedures.

A government with a commanding majority in the House of Commons enjoys much greater pow than most other democracies, and can trump the unelected House of Lords. That is why a former Lo Chancellor, Lord Hailsham of St Marylebone, described our system as an 'elected dictatorship'. theory, there is nothing in law that would prevent a future Parliament from abolishing the court unless the courts themselves were to decide not to recognise what Parliament had done because

violated the rule of law and the basic structure of our (unwritten) constitution.

In the 1960s, UK governments exported the Convention wholesale to many countries of its form Empire. The Convention rights were codified in independence constitutions in Commonwealth Afric Asia and the Caribbean. But UK governments still refused to make those rights directly enforceable our own courts. It was fine to bridle the powers of Commonwealth governments and legislatures b not the Crown in Parliament.

A cynic might describe opposition to a modern Bill of Rights as based on the self-interest bureaucrats for whom power is delightful and absolute power absolutely delightful.[10] Ministers ar their civil servants of that age enjoyed being able to use their powers without the inconvenience judges looking over their shoulders and applying a code of human rights. There was much to be said favour of their view that a culture of liberty matters more than a hundred paper constitutions. Law not a panacea. A charter of human rights can only work if it commands public confidence and rooted in a culture of respect for it. The written constitutions of Soviet countries were full statements of rights and freedoms, but they were meaningless in practice.

The Whitehall mandarins who were so hostile to a Bill of Rights saw themselves as independe Platonic guardians of the national interest, maintaining the integrity of government from Londo across the realm. They believed that the benevolent discretion of the administrator is preferable lawyers' legalisms and an inflexible codified constitution. They considered themselves better able understand the needs of government and the governed than judges remote in their ivory towers. The worried that a concern for individual rights would be at the expense of the interests of the communit They feared that a rights-based approach would undermine our parliamentary system. They worri that the inevitably vague language of a Bill of Rights would give too much power to unelected judg to make law – disguising it as interpretation.

These objections need to be taken seriously. But they do not justify root and branch opposition to Human Rights Act, European oversight or a written constitution protecting human rights. The plight vulnerable minorities in the UK thirty years before the Human Rights Act shows how much we nee the oversight of the Convention system.

The Convention and the Strasbourg Court protected the right of gay people to love each other at time when homosexual love was criminalised in the UK. In 1983, Strasbourg ruled that the ve existence of the criminal offence caused fear and suffering and violated the right to a private life[11] and later, in 2000, that a blanket ban on gay men and women serving in the armed forces breached th Convention.[12]

The Convention system provided redress to children in the 1980s and 1990s, when UK law sti permitted corporal punishment in schools[13] and still allowed a stepfather to beat his stepson wi impunity.[14] It protected parents when their local authority banned them from seeing their childr without giving them a means to question the decision or argue against it.[15]

The Convention protected the right to privacy before it was recognised as part of UK law. Th Strasbourg Court ruled that police could not tap telephones unless Parliament enacted a la specifically authorising them to do so.[16] It found against the authorities for deporting vulnerab people to countries where they faced a risk of torture or inhumane treatment.[17] It decided that worker claiming unfair dismissal from his job had a right to have his case determined by the cour within a reasonable time.[18]

In the years before UK courts recognised a common law constitutional right to free speech, th Strasbourg Court came to the rescue. It recognised the vital role of the press as public watchdog an purveyor of information on matters of public interest[19]. It emphasised that restrictions on th publication of information and opinions must be exceptional and objectively justified.[20] It rule against the UK for using broad contempt of court laws to prevent the media from reporting on a publ health tragedy[21] and to punish the public disclosure of information about a controversial prisc regime involving solitary confinement.[22]

What is known as the *Ireland v United Kingdom* case showed the value of European supervision exposing abuses that would otherwise have been condoned or covered up. It arose in the context of th longest and most violent terrorist campaign witnessed in either part of the island of Ireland. Th violence found expression in part in civil disorders and in part in terrorism, that is, organised violen for political ends. Five judges were murdered in their cars. The judiciary lived and worked und constant threat of assassination, with police officers watching over them at home and in court. Th 'Troubles' led to the civil rights movement, to 'Bloody Sunday', a deadly spiral of sectarian violenc and a secret war between the British security and police forces and the IRA.

Between August 1971 and December 1975, the Northern Ireland authorities used speci extrajudicial powers of arrest, detention and internment. The Irish government brought the ca against the UK, complaining of the ill treatment of men deprived of their liberty.

The European Commission of Human Rights heard evidence from 119 witnesses. It found that th Royal Ulster Constabulary had used five interrogation techniques on fourteen men, including wal standing, hooding, subjecting detainees to continuous loud noise and depriving them of sleep, foo and drink.

The English Intelligence Centre had taught the techniques as a way of extracting confessions fro those suspected of terrorism. They were used in unidentified interrogation centres in Northern Irelan They were applied in combination, with premeditation and for hours at a stretch. They caused inten physical and mental suffering, and acute psychiatric disturbances during interrogation. They arous in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them an possibly of breaking their physical or moral resistance.

I was a member of the British legal team. The Attorney General, Sam Silkin QC, promised th Strasbourg Court that the five techniques would not in any circumstances be reintroduced as an aid interrogation. The Strasbourg Court accepted the undertaking and agreed with the government th although the treatment was inhuman it did not amount to torture.

The Treasury Solicitor heading the government legal service was Basil Hall. He had been awarded Military Cross for bravery during the Second World War and had been involved in the first inquir into the 'Bloody Sunday' shootings. He had initially been sceptical about the Strasbourg system b had been impressed by the quality of the fact-finding of the European Commission of Human Rights 'as good as a British High Court judge'. He told me that without the Commission he doubted wheth the truth would have emerged about what had happened in Northern Ireland. Basil was so impresse that, after his retirement as treasury solicitor, he served as a member of the Commission in th 1990s.[23]

Changing judicial attitudes

When I began at the Bar in 1965, the British judiciary was narrowly restrictive and executive-minde

Judges from a generation that had lived through the Second World War and its aftermath wer excessively deferential to authority. There was no developed system of public law to review abuses governmental power. Most lawyers and politicians regarded written constitutions and Bills of Righ as suitable for lesser breeds but unnecessary in our mature democracy.

During the next three decades there was a gradual but profound shift. Social attitudes changed fro a climate of deference to one more critical of authority – including the attitudes of a new generation judges. After the UK joined the European Community in 1972, judges had to interpret a system European fundamental law and to set aside inconsistent legislation. Senior judges sitting in the Priv Council also heard appeals from Commonwealth countries and the remaining British colonies. The learned how to interpret generously guarantees of human rights modelled on the Convention an included in the new independence constitutions.

The Strasbourg Court's rulings made English judges more willing to take the Convention int account when developing the unwritten common law and reading statutes, even though Parliament ha not made the Convention rights part of UK law. The way they interpreted Acts of Parliament change from a focus on the letter of the law to considering its purpose, context and impact.

English judges decided in the mid-1970s to reform their outmoded procedures for reviewing th actions and omissions of public bodies. They later created a specialist division of the High Court deal with applications for judicial review. Judges became adept at protecting the individual against th abuse of power. They developed principles of law that require public authorities to act lawfully, fairly with proper authority, and in a way that does not defy logic or accepted moral standards.

Where could the judges discover those accepted 'moral standards'? By whom were they 'accepted Parliament had not produced a code of moral standards. The common law lacked a moral compas Were the standards to be found in the Bible? Or in the opinions professed by the editor of the favourite newspaper? The judges were given no guidance by Parliament.

Under the UK system, an international treaty does not become part of the law of the land unless an until Parliament enacts legislation to incorporate it into domestic law. The Convention is a treaty bu even though Parliament had not made Convention rights part of our law, the new generation of judge increasingly had regard to Convention law for guidance in making their rulings – in interpretin ambiguities in the law, or in deciding moral questions about life and death.

When the Law Lords decided whether a local authority could end a mother's access to her chil they looked to the Convention right to a private and family life.[24] When they decided whether journalist could refuse to disclose his sources to the police, they looked to the Convention right freedom of expression.[25] They did so too when giving guidance to prevent juries from awardin excessive amounts of damages in libel cases.[26] Without any statutory mandate, they developed th common law – that is, the body of our law developed by the courts rather than by Parliament – match the rights and freedoms protected by the Convention. They went as far as they could witho trespassing on political grass.

But there were limits that confined them. Because Parliament had not made the Convention part our law, the Law Lords felt unable to intervene to protect free speech when the Home Secretar banned Sinn Féin and the IRA from taking part in broadcasts of any kind with the aim of depriving them of the oxygen of publicity.[27] They considered that it was wrong for them to do through the back door what Parliament had failed to do through the front door. The only way that ministers could b made to comply with the Convention rights was by a new Act of Parliament – what became the Human Rights Act 1998.

The political campaign for a Human Rights Act

For thirty long years I campaigned in favour of a Bill of Rights. Senior civil servants used sneak tactics to fight the idea. In 1976, a Whitehall committee on which I served produced a report on th pros and cons of making the Convention part of our law. The Permanent Secretary at the Home Offic tried to persuade me that the report should not be published. When he failed, Whitehall mandarin briefed the Cabinet to oppose publication. When the Cabinet rejected that advice, the Home Offic craftily printed only a few hundred copies[28] and it was hardly noticed by anyone.

A year later, in Northern Ireland, officials linked with the Home Office shelved a report by th Standing Advisory Commission on Human Rights that advocated bringing the Convention into U law.[29] I had contributed to the report as special adviser to the Committee. In 1984, another seni civil servant at the Home Office tried to stop me from being appointed chair of an Anglo-America conference on a Bill of Rights because I was biased in favour. When he failed to persuade th conference director to remove me, he insisted that Enoch Powell MP should be invited to take par Powell enlivened the proceedings by explaining that a black person did not become British merely b being born in Britain. He also suggested that I was guilty of treason, for bringing cases in Strasbou against the Crown.[30]

The 1980s were an ice age for constitutional reform, though Margaret Thatcher was radical in oth ways. It was not until the 1990s that the tide began to turn in favour of bringing the Convention righ home. NGOs and the Institute of Public Policy Research published proposals in favour incorporation. Members of both Houses of Parliament introduced Private Members' Bills incorporate the Convention, and I introduced a couple of my own in the House of Lords. Two form Lord Chancellors, two former Home Secretaries, the Master of the Rolls, the Lord Chief Justice England and Wales, leading Law Lords, the Bar Council and the Law Society came out in favour.

Before New Labour won power in 1997, Labour and the Liberal Democrats cooperated with on another in devising a programme of constitutional reform. Robin Cook and Robert Maclenna negotiated a crucial agreement bringing together key elements of constitutional reform.[31] It include making the European Convention part of UK law and setting up a parliamentary Joint Committee o Human Rights to monitor compliance with human rights.

An ingenious compromise

The Human Rights Act subtly reconciles respect for parliamentary supremacy with the need fo effective remedies for violations of the Convention rights.[32] The Act does not empower the courts disregard Acts of Parliament that conflict with the Convention.[33] That would have made its passag through the Commons unlikely. Instead, it requires the courts to read and give effect to statutes in way that is compatible with the Convention rights. Where that is impossible, it enables the courts make a declaration of incompatibility. It is left to politicians to decide whether to take remedial actio or leave it to the claimant to go to Strasbourg. In this way, the Act respects parliamentary sovereignt but it is anchored in the Convention and the right of recourse to Strasbourg if the national system fai to deal with a case properly.

Our courts are in a weaker position in dealing with human rights issues than the courts of man other European and Commonwealth countries. Those courts have the power to strike down law that unconstitutional. Ours can only declare that a given statute is incompatible with a Convention righ

On the other hand, the political branches of government in the UK share responsibility with the cour in giving effect to the Convention rights. That is a great advantage.

The Act requires a minister in charge of a draft law to make a statement as to whether the Bill compatible with the Convention before it is debated in Parliament. This might appear technical ar boring but it is of real practical value. The statement alerts ministers and parliamentarians to th human rights implications of what they are doing. It ensures that any attempt to authorise a violatio of Convention rights is properly debated.

The parliamentary Joint Committee on Human Rights was set up after the Act came into force. looks at every government Bill and decides whether it agrees with the Minister's view that it pass muster under the Convention. It takes evidence from ministers and civil society and reports Parliament so as to inform members of both Houses, including ministers, about the human righ implications of pending legislation. It monitors whether the UK is complying with judgments of th Strasbourg Court, and with the various international human rights treaties by which the UK is boun It undertakes inquiries on issues affecting human rights in the UK, such as domestic violenc trafficking, children's rights and the rights of people with disabilities. It is well staffed and resourced

When the UK joined Europe in 1972, British judges received no special training about the immen legal implications for the British system of parliamentary government and law. But after the Huma Rights Act was enacted, the government waited for two years (until October 2000) to bring it in force. This allowed time to train the judiciary and the civil service about the impact of the Ac Nothing like it had ever happened before. As a result our judges were well prepared, as were the leg profession and the civil service.

Teething problems

Whenever a court or tribunal determines a question that engages a Convention right, the Huma Rights Act says it must 'take into account' Convention case law. In 2004, Tom Bingham, the senio Law Lord, explained that the British courts have a duty 'to keep pace with the Strasbou jurisprudence as it evolves over time: no more, but certainly no less'.[34] His words 'no more, b certainly no less' were repeated again and again but they created the impression that British cour must follow all decisions of the Strasbourg Court strictly and go no further. The Conservative complained in their 2015 General Election pledge that 'problematic Strasbourg jurisprudence is ofte being applied in UK law'.[35] In fact, the requirement does not mean that Strasbourg judgments have be followed slavishly as binding precedents if our courts think them wrong in principle. 'Take in account' does not mean 'bound by'.

British judges have matured in their understanding of the Human Rights Act and have become mo self-confident. They have made it clear that they are not strictly bound by the Strasbourg Court judgments.[36] They have sometimes departed from Strasbourg decisions. As a result, the Europea Court has thought again and changed its mind. For example, the Strasbourg Court held that it wa incompatible with the right to fair trial to convict a man of sexual assault using a dead victim witness statement.[37] The Supreme Court declined to follow this decision because the Strasbou Court had disregarded other protections given to criminal defendants within our trial processes. As result of our Supreme Court explaining its reasoning, the European Court modified its approach.

This dialogue between our courts and Strasbourg is important in both directions. The Conventio and its case law need to be woven into the fabric of the British political and legal system, maintainin

the integrity of British laws and public confidence in the way the system works. The Human Righ Act makes that possible. It encourages European law to be approached *through* UK law, rather tha *around* it. In the absence of a written constitution, we need our courts to articulate our constitution principles in their judgments.

UK involvement with European Convention law has brought great benefits to Europe as wel Because of the way the Human Rights Act works, our courts give the Convention case law high priority than in countries such as France or Germany whose written constitutions are paramount. Th standards of advocacy of British advocates, schooled in the common law tradition, are high. Eve though only a tiny minority of four[38] of Europe's forty-seven states have legal systems based on th common law, we should take pride in having had a significant influence on the thinking and practic of the Strasbourg Court.

Threats from within

We rely upon the Human Rights Act together with the common law to protect us against the misuse o power. The British system is a subtle set of checks and balances. It works well for judges, lawyers an civil society, and for the devolved institutions. But it is fragile and can easily be weakened o destroyed because it is not protected as supreme constitutional law.

Because the Human Rights Act uses the Convention rights as a substitute for homegrow constitutional rights, it arouses the hostility of Euro-sceptics. Our system has come under increasin onslaught, not from 'activist' judges but from political opportunists supported by right-win newspapers that have made 'human rights' dirty words.

Critics of the Strasbourg Court complain of its 'activism'. They say that the Court's rulings go muc further than is needed to protect human rights. In particular, they do not like the method by which th Court interprets the rights by current standards, rather than the views that prevailed when th Convention was drafted sixty years ago. They call it 'mission creep' and complain that the Court ha interpreted the Convention far more broadly than its founders ever envisaged – and far beyond i proper limits.[39] There are a few judgments that they target as examples of 'activism'.

One arose in Sidney Golder's case.[40] Golder was a convicted prisoner serving his sentence on th Isle of Wight. In 1969, there was a serious disturbance in which a prison officer was hurt. The offic accused Golder of swinging vicious blows at him. Golder denied having done so and wanted to bring claim for libel against the officer – but he was refused permission to consult a solicitor. H complained to Strasbourg that the refusal of permission impeded his right of access to the courts breach of the Convention right to a fair trial. The puzzle for the Court was that the Convention did n specifically refer to a right of access to the courts but only to a fair, public and expeditious judici procedure.

The Court pointed out that if the Convention were interpreted literally as applying only proceedings already before a court, a state could do away with its courts without breaching th Convention. It is hard to understand how the Court's judgment could fairly be cited as an example o undue judicial activism or overreach. The right to a fair hearing by an independent court would b meaningless if one had no right of access to the court. A literal interpretation of the English text o Article 6 would have had that perverse result.

Anthony Tyrer's case is also cited by critics as evidence that Strasbourg has gone beyond i mandate.[41] Tyrer was a British citizen living on the Isle of Man. In 1972, he pleaded guilty in th

juvenile court to assault causing bodily harm to another pupil at his school. He was sentenced to thr strokes of the birch. It was carried out in the presence of his father and a doctor. He was told to tak down his trousers and underpants and made to bend over a table. Two policemen held him down whi a third administered the punishment, pieces of the birch breaking at the first stroke.

In Britain judicial corporal punishment was abolished in 1948. The UK government considered it degrading punishment in breach of violation of Article 3 of the Convention, but the Isle of Ma government thought otherwise and defended its case to the Strasbourg Court unsuccessfully. Th Court accepted that the treatment might have been normal at the time the Convention was drafted. B it ruled that the Convention is a living instrument to be interpreted in the light of present-da conditions. It found that Tyrer was treated as an object in the power of the authorities and that th institutionalised violence had harmed his dignity and physical integrity.[42]

Those who accuse the Court of undue activism attack its interpretation of the Convention as 'living instrument'. They argue that it should be read and given effect only in accordance with th values and conditions that obtained when the Convention was drafted and came into force. That similar to the 'original intent' approach of Justice Scalia as a member of the American Suprem Court. He insisted that the American Constitution must be read strictly and literally in accordanc with the original intent of the eighteenth-century gentlemen who devised it.

It is not the approach of the courts of other common law countries or of our own courts. The interpret legislation in accordance with contemporary values and conditions to avoid statut becoming ossified relics of a bygone age. As long ago as 1930, the Judicial Committee of the Priv Council had to decide whether women were eligible under the British North America Act to becom members of the Canadian Senate even though the reference to persons in the Act referred only men.[43] The Lord Chancellor, Viscount Sankey, ruled that the Act was 'a living tree capable of growt and expansion within its natural limits'. The reference to 'persons' included women. Presumabl today's critics would regard that as undue 'activism'.

The Privy Council has explained[44] that laws giving effect to basic freedoms call for a generou interpretation – avoiding what has been called 'the austerity of tabulated legalism'. That approach ha been commended again and again by British courts. It is also Strasbourg's approach. Conservativ critics would like Strasbourg and our courts to be narrowly literal. They would like the tree of justi to be petrified dead wood.[45]

Another criticism levelled at the Court is that its rulings encroach on the province of legislators, n judges. Judges are not elected and do not have a mandate to make the law. According to this vie Strasbourg undermines the sovereignty of Parliament. In reality the Strasbourg Court is careful respect the principle of subsidiarity and to leave it to the state to choose an appropriate means giving effect to its judgments.

The UK system is alone in Europe and most of the common law world in placing Acts of Parliame beyond the reach of our courts. If Parliament enacts a racist law, there is nothing our courts can d except to make a declaration of incompatibility, leaving the alleged victim to go to Strasbourg. If th right to complain to the Strasbourg Court were removed, an executive-controlled Parliament wou have absolute power.

The opponents of the Convention system give few examples of what they regard as 'judici legislation' by activist judges. Their arguments are based on ideology rather than fact. The case th has aroused widespread political anger concerns prisoner voting. English law long banned a convicted prisoners from voting in parliamentary and local elections while in custody. John Hirst,

convicted murderer, challenged the ban as incompatible with Article 3 of Protocol No. 1 to th Convention, which protects 'the free expression of the opinion of the people in the choice legislature'. He lost in the English courts but won in Strasbourg.[46]

The Strasbourg Court found that the ban on convicted prisoners was arbitrary and disproportionat It is an automatic blanket ban treating all convicted prisoners alike, whether heinous murderers petty shoplifters, regardless of their particular circumstances. The blanket ban is, in the Court's word 'a blunt instrument. It strips of their Convention right to vote a significant category of persons and does so in a way that is indiscriminate'.

The Court did not conclude that all convicted prisoners should be entitled to vote. It recognised th the 'margin of appreciation' – that is, the amount of discretion allowed to the state – is wide, and th it is primarily for the state concerned to choose the means to comply with the Court's judgment. The are many different ways of organising and running electoral systems in Europe.[47] However, an departure from the principle of universal suffrage risks undermining the democratic validity of th elected legislature. The right to vote is no longer the privilege it was seen to be in the time it wa denied to women. The presumption in a democratic state should be in favour of inclusion.

Without any fuss, the governments of Cyprus and Ireland changed their rules to give prisoners postal vote. Yet in Britain, Hirst's victory aroused fury among opponents of the Court, on the left an right of British politics. Instead of introducing a measure to comply with the judgment, Jack Stra candidly admits that, as Labour Lord Chancellor and Justice Secretary in government, he spent thre years ensuring that the government took no decision in response to it.[48] He says he 'kicked the issu into touch, first with one inconclusive public consultation, then with a second'. After he lost offic Straw went to Strasbourg with David Davis, the former Shadow Home Secretary, to discuss the concerns with the President of the Court. David Cameron told the Commons that giving any prisone the right to vote made him feel 'physically sick'.

The coalition government published a draft Bill on the eligibility of prisoners to vote. parliamentary Joint Committee examined it and published a report in December 2013. recommended that the government bring forward legislation to permit only prisoners servi sentences of twelve months or less to vote in UK parliamentary, local and European elections. Th government did not give effect to that modest recommendation.

In violation of international law, successive governments have failed to introduce a Bill to comp with the Strasbourg Court's judgments. That has gravely undermined the UK's good reputation as state that respects the rule of law. It has set a terrible example to other states that do not respe human rights. In September 2015, the junior Minister of Justice, Dominic Raab MP, went to th Committee of Ministers of the Council of Europe to defend the government's refusal to give effect the judgment. He came under strong attack from many governments across Europe, but the Russia Federation indicated that it might follow the UK's example, and in December 2015 passed a la allowing the Russian Constitution to trump the Convention.

Why human rights matter now

In comparison to his predecessor, Chris Grayling, Michael Gove is a welcome improvement as Justic Secretary. He promised Parliament that he would not withdraw from the oversight of the Conventio system, nor weaken human rights protection. He even promised to legislate for an additional right trial by jury. But his assurances are at best uncertain because of his attachment to parliamenta sovereignty and his refusal to abide by the final judgment of the Strasbourg Court on prisoner voting