Dinah Rose QC

What's the Point of the Human Rights Act?

The Common Law, the Convention, and the English constitution

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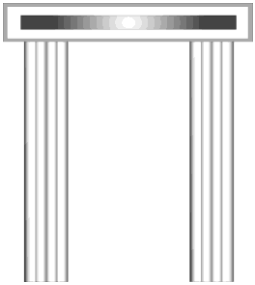

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THE AUTHOR

Dinah Rose QC is a barrister at Blackstone Chambers, practising in public law, civil liberties and European law.

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Introduction:*

On the edge of Hampstead Heath stands Kenwood House: a graceful Robert Adam palazzo that presides like a physical embodiment of the Enlightenment over its immaculately-landscaped parkland.

This was the country home of Lord Mansfield, Lord Chief Justice for more than 30 years from 1756, and a towering figure in the development of the modern common law. It was his pride and refuge, particularly after his town house in Bloomsbury Square was burnt to the ground by a mob during the Gordon Riots. The splendour of Kenwood tells its own tale of the relative decline in legal and judicial incomes over the past 250 years. Its beauty is a more depressing reproach: it is impossible to imagine any modern plutocrat creating a home of such sophistication and delight.

It is important not to romanticise Lord Mansfield: in many ways, he is not an obvious icon for fundamental rights. He sat at the heart of the Georgian establishment, and was very far from being a member of the liberal chattering classes, notwithstanding the Hampstead location of his country mansion. He vigorously enforced the laws against seditious libel in a way that threatened the freedom of the press. His notion of fair trials and conflicts of interest was very different from our own: juries would visit him at his home to ask for private assistance on issues they were finding vexing in cases in which he was the presiding judge. At the same time that he was Lord Chief Justice he held a variety of government offices, including for a time the office of Chancellor of the Exchequer.

But Lord Mansfield is still known today for his decision in *Somerset's Case*, one of the most famous of all common law judgments. He ruled in this case in 1772 that the master of a slave who had brought him to

*This is the text of a lecture which was initially given in October 2014 to Politeia and was subsequently updated and prepared for publication.

England had no right to detain the slave after he had sought to escape, or to take him outside the jurisdiction.

'The state of slavery is of such a nature,' he said,

> that it is incapable of being introduced on any reasons, moral or political; but only positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: slavery is so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.

Lord Mansfield's judgment caused a political and public sensation which marked one important step towards the abolition of the slave trade, and, ultimately, slavery itself, at least in Britain's colonial possessions. But his decision is important not just for its refusal to countenance the legal endorsement of a state of slavery in England. It is also significant because of its legal reasoning.

Somerset's Case is one of the earliest articulations of what is now known as the principle of legality: the notion that fundamental rights have an inherent force at common law. They cannot be interfered with except by clear, positive law, authorising the interference. The judgment, in short, recognises that liberty is more than a mere absence of restraint. It is a form of common law constitutional right; and slavery is 'odious' to it.

Lord Mansfield's approach is entirely consistent with that expressed by William Blackstone seven years earlier, in his seminal *Commentaries on the Law of England*. This is not surprising, since Lord Mansfield was a friend and patron of Blackstone, was best man at his wedding, and read and commented on drafts of the *Commentaries* before their publication.

It is hard to overstate the importance of Blackstone's *Commentaries* in the development of the common law. Quite apart from their profound influence on the development of our own law, they travelled to America, where they were a centrally important sourcebook, and have remained so for more than two centuries.

The concept of fundamental common law human rights with a special status is clearly spelt out in Blackstone. Book 1 of Chapter 1 is entitled 'The absolute rights of individuals'. Blackstone says:

> For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these *absolute* rights of individuals…
>
> And, therefore, the principal view of human laws is, or ought always to be, to explain, protect, and enforce such rights as are absolute, which in themselves are few and simple: and then such rights as are relative, which, arising from a variety of connections, will be far more numerous and more complicated. These will take up a greater space in any code of laws, and hence may appear to be more attended to - though in reality they are not - than the rights of the former kind. Let us therefore proceed to examine how far all laws ought, and how far the laws of England actually do, take notice of these absolute rights, and provide for their lasting security.

Blackstone identifies three principal absolute rights: security of the person (which includes life, health and reputation); liberty; and private property. He then identifies what he calls three further 'auxiliary subordinate rights of the subject, which serve principally as outworks or barriers to protect and maintain inviolate the three great and primary rights, of personal security, personal liberty, and private property'. These are first, the powers and privileges of parliament;

second, the limitations on the royal prerogative, and third, the right of access to justice.

Blackstone thus grasped the two concepts which are essential to a system that protects fundamental rights. First, the substantive rights themselves must be identified and their parameters defined. Second, there must be available a constitutional framework to protect those rights, and enable them to be properly applied and enforced. That involves the exercise of powers and functions by parliament, the executive (in other words, the Crown), and the courts.

Rights may be identified by the common law or by legislation, but ultimately, the interpretation and application of that legislation to the myriad factual circumstances that arise in daily life, and the vindication and provision of a remedy to those whose rights have been breached, must be a matter for the courts.

About the right of access to justice, Blackstone says:

> A third subordinate right of every Englishman is that of applying to the courts of justice for redress of injuries. Since the law is in England, the supreme arbiter of every man's life, liberty, and property, courts of justice must at all times be open to the subject, and the law be duly administered therein. The emphatical words of Magna Carta, spoken in the person of the King, who in judgment of law (says Sir Edward Coke) is ever present and repeating them in all his courts, are these: "… to no man will we sell, deny, or delay justice or right: and therefore every subject," continues the same learned author, "for injury done to him without any exception, may take his remedy by the course of the law, and have justice and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay."

Effective access to justice, in other words, the central still extant provision of Magna Carta, is a right which underlies and guarantees the protection of all other fundamental rights.

This powerful vision of the English courts as enforcers of fundamental rights, the supreme arbiters of every Englishman's life, liberty and private property, was a source of immense popular pride to the 18th century public. A common theme of popular songs of the day was the contrast between the liberty of the British, who 'never, never shall be slaves', and the miserable French, who were labouring under the arbitrary tyranny of the Ancien Régime, complete with its *lettres de cachet* and other abominations. The Sublime Society of Beefsteaks, with its slogan 'Beef and liberty' pretty much summed it up. Liberty, and fundamental rights, were British values: as British as roast beef itself.

Which brings me to the Human Rights Act.

I do not intend to retread the familiar ground which points out how the European Convention on Human Rights was in large part drafted by English common lawyers, and reflects British legal values, though all of this is true. It must be acknowledged that, for a variety of reasons, the Human Rights Act has been a public relations disaster (though in substance a relative success) for our civil liberties in Britain. Rights, and the enforcement of rights, which were once seen as being entirely, indeed distinctively, British, are now popularly regarded as a foreign imposition, beneficial only to foreigners and criminals.

As *The Daily Mail* put it in a typical headline on 7 October 2013:

'Human Right to Make a Killing: Damning dossier reveals taxpayers' bill for European court payouts to murderers, terrorists and traitors'

This particular article is unusual only in that the Daily Mail later apologised for it, because it was shown to be seriously misleading. There has been a flood of similar material.

It may be futile now to point out that those who have benefited from the Human Rights Act include not only the Daily Mail's 'murderers, terrorists and traitors', but also disabled children and their families, those suffering from mental illness who have been wrongfully detained, gay people, Christians who have suffered discrimination at work because of their faith, and our own troops sent into war zones with inadequate equipment.

It may also be pointless to reiterate that the whole point about human rights is that they apply to <u>all</u> human beings: and that even and perhaps particularly those whose causes are unpopular, like prisoners and immigrants, need protection against the abuse of state power.

There are no votes to be lost by a government that detains immigrants without any lawful authority to do so; or which deports terrorist

suspects to countries where they face torture. But there is a lot to be said for the values of a society that refuses to countenance such behaviour. Take the case of Abu Qatada: often cited as an example of the flaws in the Human Rights Act. What actually happened in that case was that the European Court of Human Rights ruled that Abu Qatada could not be deported to Jordan because there was a real prospect that evidence obtained by torture would be used against him in a criminal prosecution there, resulting in a flagrantly unfair trial. As a result, the Home Secretary obtained Jordan's assurance that no torture evidence would be used, and that he would receive a fair trial. He left the UK voluntarily, and stood trial. The net result: the Home Office achieved its objective that he should leave the country; and was able in the process to assist Jordan to achieve higher standards of human rights protection. This surely ought to be regarded as a resounding success, both for the Home Office, and for the Human Rights Act.

Even at the most basic level of self-interest, the preservation of human rights for everyone may be a good idea: you never know when you might need them. As Nigel Evans MP recently found, innocent people can also get arrested and charged, and find themselves at the mercy of the state. He was appalled to discover, after his acquittal for sexual offences, that the legal costs of his defence were largely irrecoverable, as a result of legislation passed by this government, in favour of which he had himself voted.

There is an interesting story to be told as to why exactly the Human Rights Act is so unpopular. That is not a route I intend to explore now. I want to ask this question: given our own tradition of common law fundamental rights, do we need the Human Rights Act and the Convention at all? And if so, why?

There are two reasons in principle why we might need the Convention and the Human Rights Act.

First, because there might be some gap in the scope of the substantive

rights protected under our own common law, which can only be filled by reference to the Convention.

Second, because the Convention and the Human Rights Act offers a constitutional framework for the enforcement of rights which would otherwise be lacking in order to ensure their effective protection.

As to the first reason, the circumstances in which the Convention offers rights which are not already recognised by the common law are in fact limited. Common law rights remain vibrant, and are now the renewed focus of important decisions of our appellate courts. As the Court of Appeal said in *Guardian News & Media* (concerning the right of the media to access to information about legal proceedings, in the interests of open justice and freedom of expression): 'The development of the common law did not come to an end on the passing of the Human Rights Act 1998. It is in vigorous health and flourishing in many parts of the world which share a common legal tradition.'[1] The Court urged parties to consider comparative common law as a source of rights, rather than focusing too narrowly on the Convention.

The common law has been particularly powerful in protecting the rights to freedom of expression, liberty, open justice and access to court. In some of these areas, it offers protection that actually goes significantly beyond that which is guaranteed by the European Convention on Human Rights or the Human Rights Act.

For example, Article 6 of the Convention guarantees the right to a fair trial in civil or criminal proceedings. But it does not guarantee the right of the parties to see *all* the evidence relied on against them. In some circumstances, such as when national security is in play, the Convention countenances the redaction of materials so that only a broad outline of allegations is disclosed. In other circumstances, it may not even require this protection to be granted. But the common

[1] *R (Guardian News & Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA 420, [2013] QB 618 at para 88.

law goes further. At common law, the principle that a party must know the whole of the case being made against him, and have an opportunity to respond to it, is regarded as absolute. Our adversarial system cannot function effectively without it. As the Supreme Court held in the case of *Al Rawi*, the common law court does not permit the state to advance its case, or defend a claim, by reference to material which is shown to the court but not to the other party.[2] Since the abolition of the Court of Star Chamber and the civil war, secret courts have been anathema to the common law.

In other cases, such as *Osborn v Parole Board* (concerning the circumstances in which the Parole Board is obliged to hold an oral hearing before deciding whether to free a prisoner on parole) the Supreme Court has criticised counsel for relying on the Human Rights Act and the Convention rather than on the common law, stating that 'the Convention cannot be treated as if it were Moses and the prophets': the first port of call should always be domestic law.[3]

The most significant right which is guaranteed under the Convention which has not been generally recognised at common law is the right to respect for private and family life under Article 8. Interestingly, and probably not coincidentally, this is the right which causes by far the most political controversy in this country, especially when invoked by foreign criminals as a reason why they cannot be deported. Is one of the reasons for its lack of acceptance here the fact that this is not a recognised common law right, but, unlike virtually all the other rights in the Convention, it actually is an alien imposition? The situation, of course, is not helped by the fact that Article 8 has been the subject of some of the most creative and expansive interpretation by the Strasbourg court.

I would suggest that, Article 8 aside, the substantive content of fundamental rights is not really the issue here. Whether we have the

[2] *Al Rawi & Ors v The Security Service & Ors* [2011] UKSC 34
[3] *R (Osborn) v Parole Board* [2013] UKSC 61

Human Rights Act or a British bill of rights, or just leave the common law to develop, the content of the rights protected is likely to be broadly similar.

However, as I have noted, there is a second reason in principle as to why we might need the Convention and the Human Rights Act.

The true significance of the Human Rights Act, and the Convention, is the constitutional mechanism which they provide for the *enforcement* of fundamental rights.

There is no doubt that this does give rise to a conceptual problem for our legal system. The traditional view (though Sir Edward Coke, Lord Mansfield's great 17th century predecessor, suggested differently before the Civil War) is that parliament is sovereign and can legislate as it pleases. Crucially, it can legislate, if it so wishes, to limit or abrogate a fundamental common law right. The difficulty is that without at least *some* check or balance on parliament's power to do this, fundamental rights cannot be effectively enforced in law: they are protected only as far as their protection is regarded by parliament as politically expedient.

This may be problematic: if the rights in question are invoked by unpopular minorities, there may be little incentive for parliament to protect them, and, indeed, significant electoral advantage to be gained from infringing them.

This leads to the fundamental question: how do we reconcile the sovereignty of parliament with the protection of fundamental rights?

Currently, the enforcement of fundamental rights is achieved by a combination of obligations, under the Convention, in international law, and under the Human Rights Act, as a matter of domestic law.

As a matter of international law, the UK has signed up to the Convention. By Article 46 of the Convention, 'the High Contracting Parties undertake to abide by the final judgment of the Court in any case in which they are parties'. This provision obliges the UK to

follow judgments of the Strasbourg court, but only as a matter of international law. Article 46 is not a legal requirement enforceable in our courts. Its enforcement is a matter for the Strasbourg court and, ultimately, for the Committee of Ministers of the European Council.

The position under the Human Rights Act is significantly more nuanced. By section 2, courts are required to 'take into account' decisions of the Strasbourg court, but they are not obliged to follow them: it is thus wrong to suggest, as some government ministers have done, that our courts are bound by Strasbourg decisions. They are not. Indeed, it has happened that the Supreme Court has refused to follow a Strasbourg decision, and the Strasbourg court has later changed its position.

By section 4 of the Human Rights Act, if courts conclude that a provision of UK legislation is incompatible with a convention right, they may make a declaration of that incompatibility. However, crucially, if such a declaration is made, the legislation remains in force. It is still valid. It is a matter for parliament (or under section 10 a Minister of the Crown) to decide whether, and if so how, it should be amended in the light of the court's judgment.

But it is section 3 of the Human Rights Act which is really significant.

Under this provision, courts are obliged to interpret legislation compatibly with the Convention, so far as it is possible to do so. This obligation has been very widely interpreted by UK courts. It enables courts, if necessary, to read words in or out of legislation, and to interpret legislation in ways which are not supportable by the statutory language. It is only if, regardless of the language of the statute, the court concludes that a compatible interpretation is inconsistent with some fundamental feature of the policy underlying the legislation that it will decline to use section 3 to render the legislation compatible with convention rights.

Section 3 has undoubtedly resulted in the interpretation of some statutes in ways very different from parliament's intention when they

were enacted. For example, the House of Lords used this provision to interpret legislation which *prevented* the admission of evidence by the defence relating to an alleged rape victim's previous sexual history as *permitting* such evidence to be admitted where its exclusion would deprive the defendant of a fair trial.[4]

Section 3 is a particular focus of hostility in the Conservative Party's proposals for the abolition of the Human Rights Act. It is said to impinge on parliamentary sovereignty and democratic accountability.

I doubt whether this is true: after all, it is parliament, through section 3 of the Human Rights Act, which has required the courts to interpret legislation compatibly with the Convention wherever this is possible. In reinterpreting other legislation in this way, the courts are doing no more than applying the will of parliament as expressed in the Human Rights Act itself.

But in any event, without section 3, or something like it, it is hard to see how there can be effective protection for fundamental rights in the UK under a proposed new British bill of rights.

[4] *R. v A* [2001] UKHL 25

If there was no section 3, how would courts go about protecting fundamental rights? This is by no means clear. But it is possible that the common law might develop further to fill the gap.

The traditional view is that parliament can legislate as it chooses. However, there are some judgments (*AXA*, *Cart*) that suggest that there may be limits to that principle.[5] For example, if parliament were to legislate to abolish judicial review entirely, the courts might either interpret the legislation so strictly as to deprive it of any meaningful effect or even, much more radically, might even conclude that parliament had no power to enact such legislation.

Such cases are extreme, and hypothetical. In the more usual case where parliament has legislated in a manner which appears to restrict or abrogate a fundamental right, the courts will apply the principle of legality: the very same principle identified by Lord Mansfield in *Somerset's Case*.

The classic modern articulation of this principle is that of Lord Hoffmann in *R v S of S for Home Dept ex parte Simms*, in the year 2000, shortly before the Human Rights Act came into force:

> Parliamentary sovereignty means that parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by parliament are ultimately political, not legal. But the principle of legality means that parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may

[5] *AXA General Insurance Limited and others v The Lord Advocate and others* [2011] UKSC 46 and *R (on the application of Cart) v The Upper Tribunal* [2011] UKSC 28.

> have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document.[6]

The principle of legality has featured in some cases since the enactment of the Human Rights Act, but its development has been somewhat muted. Given the existence of section 3, a very powerful, express, statutory provision, the courts have not in general felt the need to explore the outer limits of this principle. As a result, common law rights have not had the same degree of protection from state interference that convention rights enjoy under the Human Rights Act. And parliament has not shown the degree of deference to the importance of common law rights that might once have been expected.

I have already referred to the case of *Al Rawi*, in which the Supreme Court held, in ringing terms, that the common law would not tolerate any procedure whereby the government was able to present its evidence in secret, in the absence of a claimant. This had been the position at common law for centuries. Our legal system had operated on that basis for hundreds of years without adverse consequence.

Parliament's reaction to the decision of the Supreme Court was to legislate. The Justice and Security Act 2013 permits the use in a national security case of precisely the type of secret procedure which the Supreme Court in *Al Rawi* held was abhorrent to the common law.

This course of events eloquently demonstrates the relative weakness of common law protection of fundamental rights. The common law

[6] *R v Home Secretary ex parte Simms* (2000) 2 AC 115

right to natural justice was broader in scope than Article 6 of the Convention: but it was much easier for parliament to override.

However, the potential is there for the principle of legality to develop, particularly in circumstances in which there is no other effective mechanism for protecting fundamental rights; and especially if parliament were to enact legislation that blatantly violated a fundamental right (for example, authorising the deportation of foreign nationals to countries where they faced a real risk of torture).

The lengths to which a court might go at common law in its approach to the interpretation of legislation which it considered to be unconstitutional can be seen by the case of *Anisminic* in 1968.[7] In that case, the House of Lords considered an appeal brought by a party which had sought to challenge the decision of a commission. The statute establishing the commission stated that 'the determination by the commission of any application made to them under this Act shall not be called in question in any court of law'.

This provision did not inhibit the House of Lords from agreeing that the determination could and should be overturned by a court. They simply decided that if a determination was flawed by an error of law, the commission had no jurisdiction to make it. There had thus been no proper determination of any application, and the purported determination could be challenged and quashed as a nullity.

Putting it another way, the House of Lords was simply not prepared to contemplate a situation in which a public authority could make determinations vital to the interests of private parties without there being any power in the courts to supervise its decisions, and ensure that they were lawful. No statutory language was going to be effective to prevent the court from doing so.

It can be seen from what I have said so far that both the current arrangements under the Human Rights Act, and, indeed, any future

[7] *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1968] UKHL 6

alternatives, whether under legislation, or developed by the common law, depend on the maintenance of a delicate balance between the powers and functions of the government, parliament and the courts: Blackstone realised this, and enunciated it in his *Commentaries*.

The courts, for their part, must respect and give proper scope to the operation of parliament and the executive. In general, courts understand this: the case law is replete with statements by courts stressing that issues of policy are for parliament or the government; that they will not lightly interfere with decisions that have implications for financial resources, or that fall within the particular expertise of government ministers. An especially light touch is applied to national security and foreign relations. Courts recognise that government ministers have both the constitutional legitimacy for such judgements, because they are democratically accountable, and the expertise and sources of information to be best-placed to make them.

However, in order for our uncodified constitution to work effectively, it is equally essential that parliament and the executive also appreciate and seek to maintain the proper balance. They must give proper respect to the role and functions of the courts, and to the rule of law.

Parliament has itself recognised the importance of this. Under the Constitutional Reform Act 2005, the Lord Chancellor is required to swear an oath:

> I do swear that in the office of Lord Chancellor of Great Britain I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible. So help me God.

Respect for the rule of law is thus now by statute as it has always been by common law a fundamental part of the constitutional role of the Lord Chancellor.

That means at least two things in particular: (1) respecting individual judgments of the courts, and (2) respecting the role and function of the courts.

Over 20 years ago, when I was first appointed to the panel of counsel who act for the government, we were told over and over again by the Treasury Solicitors that our role as treasury counsel was not to win at all costs. The aim was to ensure that all arguments were fairly put before the court, and that the government's position was explained. The government saw itself as seeking the guidance of the court as to the correct way to apply the law. Cases were hard fought, but if a case was lost, then lessons would be learnt from it.

Such an approach to public law litigation now seems archaic.

To be fair to the current Lord Chancellor, it had passed long before he was appointed. Some time around the early years of this century, government ministers realised that if they lost a case, they could spin the result, or attack the court, sometimes even attack the judge personally, in a press release or in parliament, and win applause for it from particular sectors of the press. This unfortunate practice goes back at least to the days when David Blunkett was Home Secretary.

David Cameron's reaction to losing the prisoner's voting rights case was to say that the judgment of the Strasbourg court made him feel physically sick.

This sort of reaction matters. It corrodes respect for the courts and the legal process amongst the public, if the government abuses or attacks the judges. A hostile response by government to adverse judgments, picked up enthusiastically by the press, is one of the major reasons for the collapse of public regard and respect for the Human Rights Act.

But equally important, maybe more important than respect for decisions of the courts, is the need for parliament and the executive to understand and respect the proper role and function of the courts. Unfortunately, recent government statements and actions suggest that this is not always the case. For example, in the recently-enacted

Criminal Justice and Courts Act 2015, parliament has sought to impose various restrictions on the courts' powers when hearing claims for judicial review.

The proposals in the original Bill were defeated twice in the House of Lords, following strong opposition led by senior retired judges and lawyers. They have been somewhat modified in the final legislation. However, it is disturbing that in debates in the House of Commons, the Lord Chancellor, notwithstaning his statutory duty to defend the rule of law, described the process of judicial review, by which citizens are able to hold the government to account for the lawfulness of its actions, as 'blackmail'.

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The significance of the Human Rights Act is thus not so much that it defines the substantive content of fundamental rights. Most of these rights are part of the common law in any event. Rather, the Human Rights Act provides a mechanism which, at least to a degree, operates as a check or balance, protecting fundamental rights against the effects of untrammelled parliamentary sovereignty.

This protection is of particular importance in an age where parliament has shown itself willing to override basic common law rights, including fair trial rights which had been respected for centuries. The health of our British Constitution, with or without the Human Rights Act, requires proper respect to be shown by the courts, parliament and the executive for the functions which each performs.

The Conservative party proposals to abolish the Human Rights Act and replace it with a British bill of rights envisage very significant constitutional change.

The initial policy document in which these proposals was published was unsophisticated, and contained a number of legal errors. If the party wins the next election, and wishes to take these proposals forward, it needs to do so in full awareness of the historical context in which they arise, and of the importance not only of the proper definition of rights worthy of protection, but of ensuring that courts have the power to enforce them.

Relatively few MPs these days have any legal training. Not surprisingly, they know very little about the history or operation of the common law. It is one of the problems of an uncodified constitution such as ours that it can be difficult to know what it actually protects.

Might it be an idea to provide new MPs on their election with a short but authoritative course in the constitution and the legal system?

It used to be the case that the Lord Chancellor, head of the judiciary, and always a senior lawyer or judge, sat in cabinet, and was in a position to provide an authoritative legal view of proposed legislation which might have adverse effects on common law rights.

However, the benefits of that system have been lost. The Lord Chancellor no longer has to be legally qualified. There is a risk that the office may be filled by career politicians with little understating and less love for our legal system.

In that situation, it is especially important that the government has access to authoritative and independent external legal advice. A Conservative government ought first of all to be in the business of conserving what is valuable of our traditions. Our fundamental rights and freedoms, and the operation of the legal system which protects them, are foremost among those. But if the government does not understand or respect those rights or that system, the risks of doing irreparable damage are high.

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Going for Growth: The Best Course for a Sustained Recovery
Norbert Hoekstra, Ludger Schuknecht and Holger Zemanek

As the parties prepare for the 2015 general election, the future of the Human Rights Act 1998 is in doubt. If returned to power, the Conservative Party intends to replace it with a British bill of rights. The proposal, though popular, has been criticised across the political divide.

In *What's the Point of the Human Rights Act? The Common Law, the Convention and the English Constitution,* **Dinah Rose QC**, one of the country's leading human rights barristers, examines the role played in the English constitution by both the European Convention on Human Rights and the Human Rights Act. Do we need them at all? Or are the common law and the Supreme Court a better source of protection for our civil liberties?

She explains that most fundamental rights are part of common law. The Human Rights Act provides the mechanism to protect these and, in so doing, the health of the British Constitution. The author proposes that further safeguards must be found if the British Constitution is to remain in good health, with or without the Human Rights Act. Parliament, the judiciary and the executive must respect the role which each plays and seek to maintain the proper balance. In particular, parliament, no less than the government, must pay respect to the role and functions of the courts and to the rule of law.