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A British Bill of Rights? [1]

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I received an interesting pamphlet yesterday from the Society of Conservative Lawyers [3]. Entitled *A Modern Bill of Rights*, it contains extracts from the work of various Conservative lawyers on whether Britain should have a 'Bill of Rights' to replace the Human Rights Act (something David Cameron has pledged to do) and on what form such a bill should take.

The problems with the Human Rights Act (HRA), which incorporated the European Convention on Human Rights into UK law, are encapsulated rather well by Jonathan Fisher QC in the pamphlet's preface:

> *In some instances the recognition of the Convention rights had led to absurd outcomes, whilst in other cases the Convention showed itself to be an inadequate protection against the anti-libertarian tendencies of an authoritarian government.*

In a subsequent section, Martin Howe QC elaborates on the Convention's deficiencies. Since it is based on very broadly defined rights and exceptions, he says, with some rights conflicting with others (like privacy with freedom of expression), the Convention requires British courts to make political value judgements. This is anti-democratic (political judgements should be left to elected officials), and also threatens to politicize the judiciary, eroding its neutrality.

They build a good case against the HRA. But how should its replacement, the British Bill of Rights, be drafted? A written codification of our traditional liberties and common law rights (habeas corpus, trial by jury, etc.) would probably be the best option. As Dominic Grieve MP suggests, it should be exempted from the Parliament Acts, so that both Houses' approval would be needed to change it. All legislation would be have to be interpreted in accordance with it. Unavoidably incompatible secondary legislation would automatically be struck down, while primary legislation would be subject to judicial 'declarations of incompatibility' (as is currently the case under the HRA).

Such a system would protect liberty far more effectively than the present arrangement. And because those traditional liberties are so clear, well established and understood in English law, the courts would no longer be forced to make political judgements or encouraged to deliver perverse outcomes. That would be a definite improvement.

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