

Call for papers

**Euroscepticism and human rights in the UK: reflecting on past achievements
and future prospects, 20 years after the *Human Rights Act***

International Symposium

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CRINI/Alliance Europa – University of Nantes

The *Human Rights Act*, which incorporated the European Convention on Human Rights (ECHR) into British law from October 2000, is about to celebrate its twentieth anniversary in a very peculiar context. Although the Act has been denounced by the Conservative Party from the moment it came into force, it seems to have been given an unexpected reprieve: indeed, since the summer of 2016, the Conservative project of repealing the act and replacing it with a British Bill of Rights has been eclipsed by the more pressing issue of Brexit.

However, the question of the status of the ECHR and of “Brexit” are not as disconnected as they might appear at first glance. It is a fact that, as the ECHR emanates from the Council of Europe, the question of a possible repeal of the *Human Rights Act* or of an exit from the ECHR is theoretically not related to the UK leaving the EU. Still, the links between the Council of Europe and the European Union in terms of human rights protection have been reinforced since the Lisbon Treaty from 2009. Thus, by leaving the EU, the UK would free itself of the requirements of the treaty, which include in particular a commitment for the EU as a whole to join the ECHR. The UK would also get out of the EU Charter of Fundamental Rights, which includes most of the rights already protected by the ECHR and is enforced by the Court of Justice of the European Union. The UK had already negotiated an exception to the Charter, set out in a protocol of the Lisbon Treaty stipulating that the Court of Justice of the EU would have no power to override laws passed by the British Parliament. Therefore, even though the British government’s scepticism of European supranational institutions in the field of human rights had become apparent long before the “Brexit” referendum, leaving the EU would allow the UK government to consider getting out of other European treaties, such as the ECHR.

Vernon Bogdanor described the *Human Rights Act* as the 'cornerstone' of the new constitutional order instituted by Tony Blair's Labour government immediately after the 1997 general election. Since then, the *Human Rights Act* has been under constant attack from the Conservative Party, which denounces it as being incompatible with the sovereignty of Parliament, one of the founding principles of the British constitution. In the wake of the July 2005 terrorist attacks in London, in

particular, several Conservative politicians, then in opposition, argued that the *Human Rights Act* constituted a threat to national security, on the grounds that it made the extradition of foreign suspects of terrorism more difficult. Thus, they advocated a reform or even the repeal of the Act. This turned into a formal pledge to voters after David Cameron became the leader of the Conservative Party in December 2005, and indeed the party's 2010 general election manifesto promised to repeal the *Human Rights Act* and replace it with a *British Bill of Rights* as well as a *UK Sovereignty Bill* enshrining the sovereignty of Parliament. The commitment to repeal the *Human Rights Act* was subsequently renewed by the party in its 2015 general election manifesto.

Thus, it appears that the jurisdiction of the European Court of Human Rights and of the European Court of Justice are perceived by the Conservative Party as an intolerable encroachment upon the sovereignty of the British state, all the more so as the ECtHR has ruled that UK law was in breach of the Convention on several occasions (such as the right to vote for prisoners and the extradition of foreign nationals suspected of terrorism). Even in the months leading up to the EU referendum of 2016, much of the Conservative party's hostility was directed towards the ECHR, rather than the EU. Thus, in April 2016, Theresa May, then Home Secretary in David Cameron's government, made the following statement: "The ECHR can bind the hands of parliament, adds nothing to our prosperity, makes us less secure by preventing the deportation of dangerous foreign nationals [...]".

The prospect of a repeal of the *Human Rights Act* or of an exit from the ECHR, like Brexit, has created tensions between the British government and the devolved administrations in Scotland, Wales and Northern Ireland. In Scotland, the *Scotland Act 1998* gave the European Convention on Human Rights a status equivalent to that of European law; as a result, legislation voted by the Scottish Parliament can be set aside if it is judged to be incompatible with the Convention. This is precisely not the case in the UK, as the *Human Rights Act* contains no provision to invalidate any law passed by the UK Parliament that was found to be incompatible with the ECHR. Thus, one may wonder how a possible repeal of the *Human Rights Act* would impact the Scottish institutional framework. Besides, under what is known as the 'Sewel' convention, the British Parliament must not – theoretically - legislate without the assent of the Scottish Parliament in areas which have been devolved to the latter. Yet, although human rights law is a matter reserved to Westminster, the Scottish Parliament is responsible for "observing and implementing" obligations emanating from international treaties, including the ECHR. In this regard, not only has Nicola Sturgeon's government pledged to oppose any Bill aiming at repealing the HRA, but since September 2017 the protection of human rights has become a government priority, which means that this issue is likely to exacerbate tensions between the British and Scottish governments.

In fact, on June 3rd, 2015, the heads of the Scottish and Welsh governments, Nicola Sturgeon and Carwyn Jones, issued a joint declaration to voice their opposition to the project of repealing the *Human Rights Act*: "[...]UK Ministers have given absolutely no thought to the implications of such a move for devolved government in the UK, with human rights being embedded in the devolution settlements of Wales and Scotland and in the Good Friday Agreement. Both our governments are fundamentally opposed to this regressive move and will do everything we can to resist it."

In Northern Ireland, opposition to the repeal of the *Human Rights Act* is based to a large extent on the wish to protect the peace process and the Good Friday Agreement, which are already seen as being under threat from Brexit. In this part of the UK, the involvement of supranational institutions on sensitive questions such as human rights was essential to securing support for the Agreement among the nationalist community, in which many question the legitimacy of the British state. Should the *Human Rights Act* be replaced by a British Bill of Rights, free from the authority of European institutions, the supranational dimension would be removed.

The Conservative Party's desire to free the United Kingdom from the constraints of European human rights legislation thus raises questions of governance and of democracy. The debate on this issue has highlighted profound disagreements regarding how the institutions born of devolution operate. One may wonder to what extent have membership in the ECHR and the passing of the *Human Rights Act* strengthened human rights protection in the UK, and what could the impact of replacing the *Human Rights Act* with a British Bill of Rights be? Could disagreements over human rights issues turn out to be yet another threat to the Union between the four nations of the UK, in addition to the tensions already caused by Brexit?

Possible papers:

- Euroscepticism and the issue of parliamentary sovereignty in relation to European human rights law
- The political implications of the human rights debate in Scotland, in Northern Ireland, in Wales, or for the Union
- Eurosceptic discourse and the question of human rights
- The road to the *Human Rights Act*, its impact and its future prospects
- The possible impact of a British Bill of Rights on the Union and on human rights in the United Kingdom
- Decisions by the European Court of Human Rights (before and/or the *Human Rights Act*) and their impact on how the ECHR has been perceived in the United Kingdom
- The UK, the EU Charter of Fundamental Rights and/or the Court of Justice of the EU

Papers may be presented in English or in French. Please send a 500 word abstract of your proposal to Charlotte Barcat (charlotte.barcat@univ-nantes.fr) or Annie Thiec (annie.thiec@univ-nantes.fr) by 2nd December 2019.

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