OUT OF THE WILDERNESS

Francesca Klug, visiting professor at LSE Human Rights, asks if we stand at a watershed moment for human rights in the UK.

In an era when the UK struggles to claim front–runner status in many spheres, it is fast achieving a reputation for leading an assault on international human rights by democracies which once proclaimed them.

It may seem hard to imagine now, but it is only a blink of an eye since Britain took pride in trailblazing human rights norms across the world, beginning with embracing the post–war 1948 *Universal Declaration of Human Rights (UDHR)* and its progeny in Europe. Winston Churchill famously championed the latter, sending senior British lawyers and politicians to play a major role in drafting the *European Convention on Human Rights (ECHR*). It was Clem Atlee's Labour Government which ratified it in 1953 and Harold Wilson's government which introduced the right of individuals to take cases to the European Court of Human Rights (ECtHR) in 1966. But UK residents still couldn't claim these basic rights at home and Britain was one of the world's only democracies without a written constitution or rights charter. After years of all–party debate about the merits, or otherwise, of adopting a domestic bill of rights based on the ECHR, Tony Blair's government passed *the Human Rights Act (HRA)* in 1998**,** retaining parliamentary sovereignty by preventing courts from overturning acts of parliament. On this basis senior members of the Conservative opposition wished the measure well.

Of course, all governments can resent the requirement to comply with a set of legally enforceable common standards – whether national or international – which are intended to stymie their freedom to act when the norms of liberal democracies are threatened, from free speech to privacy, protest to inhuman treatment. That is to be expected. But in past times the UK, like most democracies around the world, voluntarily chose to accept some checks on absolute sovereignty to enable states to hold each other to account through a combination of national and international courts, committees, and commissions. This multilateral system is sometimes labelled the rules–based international order.

The origin of Britain's commitment to human rights is often traced to the medieval *Magna Carta***.** Whilst most of this ancient document is no longer in force, and little of it has any bearing on modern life, it has acted as a symbol of Britain's commitment to the rule of law; the principle that the same law applies equally to everyone, and that state authority must be governed by law rather than the arbitrary exercise of power. But it was the brutality and genocidal slaughter of World War Two that drove a concerted attempt to inject a set of shared ethical principles into *international* law, deemed necessary for the stability of all societies everywhere and for global peace and justice. So ingrained was the sense that Britain had been at the forefront of this ambition that prime drafter Eleanor Roosevelt dubbed the iconic UDHR 'A Magna Carta for all Humanity'

So when the HRA came into force in 2000 it was seen as the next vital step in this tradition. A new human rights zeitgeist appeared to be spreading across the globe, typified by the series of 'velvet revolutions' in central and eastern Europe. One by one they ratified the ECHR as a manifestation of their commitment to democracy and human rights, often incorporating these rights into domestic law. As the first UK Bill of Rights based on the same norms, with the ECtHR continuing to act as a back stop, the HRA complemented these developments. This was prior to governments of any political persuasion routinely consulting opinion polls before determining their support for human rights. Alongside the HRA, the Joint Committee on Human Rights and the Equality and Human Rights Commission were established by the then Labour government to promote compliance with human rights standards, within parliament and among wider public authorities.

Although, in the early days, the headlines were sometimes dominated by suspects and offenders claiming rights under the HRA – often unsuccessfully – there are now so many people whose everyday lives have benefited from claims that were made achievable by the act, that it is no longer possible to keep track of them all. Among many thousands are victims of crime and survivors of rape and domestic violence seeking justice, families demanding answers about how their loved ones died, members of the armed forces issued with inadequate equipment, people with mental and physical disabilities seeking procedural fairness and dignified treatment as well as residents of care homes. Some of these citizens' gains were achieved without the courts, not least during the pandemic when NGOs like *Care Rights UK* used the HRA to successfully challenge the disproportionate isolation of elderly people and the government revised its guidance to stress the need for individual assessments to meet the right to a family life under the HRA.

Yet over the last 14 years there has been an astonishing reversal of direction, leading the UK to become a credible leader in a global retreat from domestic and international human rights norms. At times the hostility to the treaties that past governments have willingly ratified, including the Refugee Convention and the ECHR, has been so vociferous, and the breaches of their terms so flagrant, that doubt has been cast over the UK's once enviable reputation for complying with the rule of law, threatening the UK's international standing and its reliability as a trading partner.

This reverse process was kicked off under the coalition government, despite resistance from Lib Dem ministers. This culminated in the 2014 policy document, *Protecting Human Rights,* which was aimed at doing precisely the opposite, as former Conservative Attorney General, Dominic Grieve, pointed out. Acting as a decoy from growing demands to quit the EU, the rhetoric against both the HRA and the ECHR was ratcheted up. Distorted claims that the former tied the government's hands from protecting citizens from crime were challenged by the former DPP, Keir Starmer, who demonstrated that it was in fact the *victims* of crime who had been major beneficiaries of the HRA.

Each new administration over the last 14 years has brought renewed threats to overturn the HRA or withdraw from the ECHR. Dominic Raab's misleadingly–named and legally confusing Bill of Rights to replace the HRA was eventually withdrawn after failing to persuade MPs of all parties that it would either add new rights or prevent the reinstatement of the pre–HRA era, where far more violations were found by the Strasbourg court than now.

In 2023 only one UK case was lost at the ECtHR! Yet post–Brexit, the ECHR has become the stand–in target for dissatisfied Eurosceptics, despite being unconnected to the EU. The *Safety of Rwanda (Asylum and Immigration) Act*, and the Illegal Migration Act 2023 which preceded it, which ousts sections of domestic and international human rights law completely, allows ministers to decide if they will comply with emergency Rule 39 injunctions from the ECtHR that temporarily halt deportations before an applicant's case is heard. This potential breach of international law, established by ECHR case law, sets a dangerous precedent, as Gordon Brown recently warned. Using the same powers, in 2022 the ECtHR ordered Russia to ensure that a death penalty sentence was not carried out on two Britons captured fighting for Ukraine.

The prime minister, Rishi Sunak, has repeatedly flagged the possibility of withdrawing from the ECHR entirely, notwithstanding the catastrophic implications for the both the *Good Friday Agreement* and the *UK–EU Trade and Cooperation Agreement* governing our post–Brexit relationship with the EU. If this threat is contained in the Conservative party's election manifesto, it will potentially put the UK in the company of only Belarus and Russia, an astonishing set of bedfellows.

The UK's newfound ambivalence – sometimes open hostility – towards international human rights law comes at a time of widely recognised strain on the future of liberal democracies everywhere. Democratic states cannot flourish in a climate of international lawlessness and domestic uncertainty about the human rights norms which are fundamental to the citizen's stake in the democratic process.

The post–war vision of a world where governments respect the humanitarian laws of war, and the human rights norms of peace, has not faced such peril in 75 years. Amid ever–growing accusations of double standards and hypocrisy from the global South, Britain cannot

hope to retain any credible moral authority to condemn flagrant human rights abuses, such as those we have witnessed in Gaza or Ukraine, while repeatedly claiming that international human rights norms from 'a foreign court' do not apply to the UK. In this context, the pending election represents a watershed moment.

Will a new government work with other democracies to spearhead a global reset on human rights compliance and promotion, or will it join a growing number of populist regimes for whom international protections are no more than a last century encumbrance? This is a moment for the UK to head out of the wilderness and recover the capacity to lead.

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