

FUTURE GOALS FOR A NEW LABOUR GOVERNMENT

Leading human rights barrister **Jamie Burton KC** argues that the new Labour government needs to embed social rights in the constitution

The Labour Party understandably defends its legacy. It proclaims on its website that it ‘has always been about people. It was formed to give working people a voice and has sought power in order to improve their lives.’ It highlights its unparalleled achievements as creating the welfare state, social security and the NHS, banning capital punishment, building over a million council houses and, more recently, enacting the Equality, Climate Change and Human Rights Acts. It proudly states that ‘Labour has changed Britain for the better, through the most progressive governments in our country’s history.’

Importantly, these progressive changes have survived despite Labour being out of power for most of the time since. Consecutive governments may have persistently underfunded the welfare state, but none have dared to ask for a mandate to dismantle it, and despite factions of the media and politicians seeking to capitalise on anti-human rights propaganda, there is no public interest in repealing the 1998 Act, or any of Labour’s other big reforms. This is important because it demonstrates that the Labour Party can and has created lasting positive change when it is bold and leads with purpose and principle.

As Labour takes the reins anew, questions have naturally been raised, at times critically, about what Labour intends to do this time. In this state of apparent perma-crisis, how will Labour improve our country? What are the big societal interventions for which Keir Starmer’s Labour will be remembered?

Serious thought should be given to extending the protection of human rights to include socio-economic rights, such as the right to adequate housing, food and social security, education, work, and the highest obtainable standard of health. Whether in the form of amendments to the Human Rights Act (HRA), or a genuine British Bill of Rights (unlike the imposter proposed by Dominic Rabb), enshrining these rights would certainly meet the criteria of serious structural reform that favours ‘working people’.

The precise form and content of such an enactment would obviously require careful deliberation, but its fundamental effect would be to reduce the rates of destabilising inequality and persistent poverty (to which we risk becoming inured) by guaranteeing everyone the basic material conditions of a flourishing life. The principal mechanism of achieving this would not be litigation, as many critics suggest, but the making of governments and public authorities directly accountable to the substantive and procedural standards embedded in the rights, with the means of meeting those standards remaining a political choice. Rights would inhibit if not prevent blatantly regressive or ineffective

ballot box-friendly policies and stop the scapegoating of groups who are less likely to or cannot vote, including those on low incomes or many immigrants and asylum seekers.

In its 2022 report Gordon Brown's Commission on the Future of the UK advocated for 'new, constitutionally protected social rights relating to health, schooling, poverty and housing that reflect the current shared understanding of the minimum standards and public services that a British citizen should be guaranteed.' In fact, when enacted, the HRA was intended to be a stepping stone towards a comprehensive human rights instrument that placed all human rights, including Brown's social rights, on an equal legal footing, in recognition of their inherent indivisibility and interdependence. And, of course, on the international plane, the UK has long since subscribed to the UN covenants on both civil and political and social, economic and cultural rights.

Doubtless Keir Starmer, a renowned human rights lawyer, recognises socio-economic rights as a force for good. There are at least five reasons why now is the right time to incorporate them.

First and foremost, as with all its other achievements, it is the right thing for Labour to do. As I have argued elsewhere¹, the last two decades have seen the creation of a new class, the 'rights vulnerable', a cohort that shouldered the heaviest burden through the financial crisis and the austerity that followed it, then the pandemic and after that the cost of living crisis. As a result, very many people, including millions of children, are not enjoying as they should an adequate standard of living, including food, travel and housing, the highest obtainable standard of physical and mental health or just and favourable conditions of work. This should not have been allowed to happen and must never be repeated. It is morally right that everyone should be protected in law against such unnecessary deprivation.

Second, the enactment of social rights would give meaningful substance to Labour's constitutional reform agenda. There is legitimate concern about cronyism, and the House of Lords doubtless needs serious reform if not replacement, but nobody is seriously contending that the constitutional changes currently being proposed by the new government will significantly improve the lived experience of the rights vulnerable, or bind the country together behind a progressive ideal based on a coherent set of values. Gordon Brown's Commission understood this: 'The rights which British people enjoy to key social provisions, most notably free healthcare and education, are also very highly valued, and may more often be more to the front of people's minds when they think of being a citizen of the UK.' For younger generations who don't believe that their lives will be even as good, never mind better than that of their parents, a commitment to legally protect their socio-economic rights, including a healthy environment, would be very attractive.

Third, it is time for the new government to regain the initiative on human rights. Labour's reluctance to defend human rights is rooted in an archaic fear of being seen on the side of unpopular groups. This has boxed Labour into a corner from which no obvious advantage has been gained. Instead, Labour comes across as confused about its identity and weak on issues of principle of which it ought to be proud and will remain associated with in any event. The Party must not fight the battles of the past but instead trust in its core values and longstanding support of human rights. Besides, the objective

¹ 'Three times failed: Why we need enforceable socio-economic rights' authored by Jamie Burton KC for Legal Action Group, January 2023

evidence² suggests that socio-economic rights, which have everyday significance for everyday lives, are extremely popular, especially with younger voters. Labour should embrace this and banish cynicism about human rights in politics, forever.

Fourth, enacting socio-economic rights would be both practically feasible and relatively commonplace. Indeed, the UK, or at least England and Wales, is at risk of falling significantly behind other liberal democracies. In 2018 sixty-five countries globally had enshrined economic, social and cultural rights in their constitutions, twelve in Europe.³ Closest to home, the Scottish government has concrete plans for a new Human Rights Bill that would see full incorporation in relation to devolved matters. The failure to protect these rights is an anomaly that Labour should fix.

Finally, not only would it be morally right and in accordance with Labour's history and principles, popular with large parts of the electorate and eminently feasible, a commitment to enshrine all human rights would put clear water between Labour and the other parties. And as history shows, it is when Labour stands behind its principles and trusts its convictions that real tangible improvements in our society materialise. Labour will inevitably lose power again in the future and, just like last time, some hard-fought gains (like the reduction in child poverty) may be lost. As the Brown Commission again realised, the great value of 'embedding' social rights in the constitution is that it would 'entrench them against future threats of removal'. That opportunity must not be missed.

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The views expressed in this essay are the author's own and not those of Amnesty International UK or Labour Campaign for Human Rights

² 'What Do the Public Think About Economic and Social Rights? Research Report to Inform the Debate About a Bill of Rights and a Written Constitution' by Polly Vizard, LSE, June 2010

³ 'Models of Incorporation and Justiciability for Economic, Social and Cultural Rights'. Authored by Dr Katie Boyle for the Scottish Human Rights Commission, November 2018