# HUMAN RIGHTS

## Long in the making: the 'Gross Review' and Conservative Party Policy on the reform of human rights law

Steve Foster[*]

### Introduction

On 7 December 2020, the Justice Secretary, Mr Robert Buckland, announced that Sir Peter Gross, a former Lord Justice of Appeal, would chair a panel tasked with reviewing the operation of the Human Rights Act 1998.[1] The announcement was not unexpected: reform of human rights law having been included in the Conservatives' 2019 general election manifesto. The Ministry of Justice argued that given the body of case law now in existence, the review was needed to enable ministers to satisfy themselves that the UK's '…human rights framework…continues to meet the needs of the society it serves'.[2] Mr. Buckland subsequently raised eyebrows as he sought to reassure critics, by claiming that he was keeping an open mind on the review and any reforms it might recommend.

The critics themselves, however, were unconvinced, largely because of doubts over the Government's real intentions.[3] The review was perceived as 'pay back' for high profile Conservative defeats on the exercise of prerogative powers during the Brexit process.[4] It was also seen as part of the ongoing 'culture war' waged against progressive elements in British society. More worryingly, undermining the Human Rights Act is an obvious accompaniment to the smorgasbord of legislative provisions that currently threatens to reshape the constitution in a decidedly authoritarian direction.[5]

Yet, whatever the merits of such criticisms, it is undeniable that human rights law remains a highly contested subject. Further, the Conservatives have been consistent in their opposition to the Human Rights Act for some time; only the realities of coalition government and the 'fall out' over Brexit prevented them from introducing reforms at a much earlier point. Consequently, whilst the decision to review human rights law might be very well an exercise in political opportunism, it might be injudicious to conclude that it is no more than that.

### Conservative thinking on human rights: an overview

To reiterate, the Conservatives do indeed have sound *political* reasons for establishing the Gross Review. Under Boris Johnson, they have politicised popular resentment that Britain's national interest has been undermined by unrepresentative elites who have prioritised (undeserving) minorities, at the expense of 'everyday folk'. The Human Rights Act is vulnerable in this context, especially given the toxic nature of the media criticism to which it is routinely subjected. In addition, the very visible European connection, embedded in the language of the Convention and the Court it supports, offers the

---

[*] Assistant Head, Manchester Grammar School and author of *Political Communications*, Edinburgh University Press 2010.

[1] The other members being: Simon Davis, Baroness O'Loan, Sir Stephen Laws QC, Lisa Giovannetti QC, Professor Maria Cahill, Professor Tom Mullen and Alan Bates

[2] *Guidance - Independent Human Rights Act Review*, 7 December 2020: https://www.gov.uk/guidance/human-rights-act-review

[3] See for example Nicholas Reed Langen, 'What's really behind Boris Johnson's review of the Human Rights Act?', *The Justice Gap*, 11 December 2020

[4] Most obviously, *Miller v Secretary of State for Exiting the European Union* [2017] UKSC 5, and *R (Miller) v The Prime Minister* [2019] UKSC 41.

[5] The following are obvious candidates for inclusion the Elections Bill, Part 1; the Higher Education (Freedom of Speech) Bill; the Nationality and Borders Bill, Parts 2-3; the Police, Crime and Sentences Bill, Parts 3-4; the Covert Human Intelligence Sources Act 2021; and the Overseas Operations (Service Personnel and Veterans) Act 2021

collateral benefit of enabling the party to continue the politics of Brexit long after the UK has left the European Union.

Secondly, many of the Government's legislative proposals have profound implications for civil liberties.[6] On this point, critics will have taken note of the recent criticisms articulated by David Boyd, the UN special rapporteur for human rights and the environment.[7] The nature and content of these provisions suggests that human rights challenges are virtually inevitable. Anticipating these, ministers will no doubt wish to 'future proof' their legal position by fixing the rules governing the operation of the Human Rights Act in their favour.

However, one should not overlook that Conservatives have other, possibly more principled reasons for questioning human rights law. There exists a distinctive Conservative mind-set on constitutional matters, one that the Human Rights Act 1998 was always likely to challenge. Some Conservatives exhibit considerable scepticism over the very *concept* of human rights. On the one hand, it is so contested that a consensus depends on defining rights so broadly as to undermine their practical value. On the other, defining rights too specifically creates different problems: endless controversy and conflict. The inevitable conclusion they draw is that in a democracy, questions of human rights should be resolved politically by the current cohort of the people's elected representatives. They can be trusted to give appropriate protection to those *basic* freedoms – expression, equality before the law, the right to participate in elections, etc. – that reflect British traditions and hence retain mainstream support.

In addition, the Conservatives place great emphasis on 'strong government', whereby policy-making is dominated by the executive, subject to parliamentary debate and approval. The supremacy of statute law is central to this, as is the acceptance by governing party MPs on their very limited *de facto* freedom to vote against their own government. Democracy is preserved by two things: competitive elections using a system which gives voters the power to replace at a single stroke one party of government with another; and the willingness of governing parties to adhere to 'the rules of the game' and resist the temptation to legislate solely to perpetuate their rule. It follows that there is little if any room for extensive formal checks and balances, especially an entrenched written constitution supported by a constitutional court.

The Human Rights Act does not fatally wound this model; it does, however, subject it to a not inconsiderable 'stress test'. The Act was, of course, designed to reconcile the idea of constitutionally protected rights with the ruling principle of parliamentary sovereignty, thereby placing clear limits on the judicial role. Most obviously, Parliament is freed from the duty not to act in ways that are incompatible with Convention rights, whilst the courts cannot 'strike down' primary laws. More generally, it remains open to Parliament to legislate in order to counteract the effects of any court ruling of which it disapproves.[8] These are, by no means, inconsiderable concessions to constitutional tradition. However, over time they have not proved sufficient to retain Conservative support.

## The legal context

Concerns over developments in case law offer some help in explaining this. (Given the wealth of cases, selected examples will have to illustrate a more general point.) A starting point is the domestic courts' interpretation of their duties under s.2(1) to 'take into account' the jurisprudence of the European Court of Human Rights (ECtHR). This centres on Lord Bingham's judgment in *R (Ullah) v Secretary of State for the Home Department*,[9] though Lord Hoffmann's judgment in *AF v Secretary of State for the Home*

---

[6] See, for example, Steve Foster 'Travelers' rights, local authority duties and human rights' (2020) 25(2) *Coventry Law Journal* 114.

[7] Jo Griffin, 'UK introducing three laws that threaten human rights, says UN expert', *The Guardian*, 24 June 2021.

[8] Note that the effects of the Supreme Court's judgments in the Miller litigation (see footnote 4 above) were overcome by the enactment of the European Union (Notification of Withdrawal) Act 2017 and the Early Parliamentary General Election Act 2019 respectively

[9] [2004] UKHL 26

*Department and another*[10] also attracted comment (see below). According to Lord Bingham, domestic courts have a duty to 'keep pace with the Strasbourg jurisprudence' and should not therefore seek to dilute or weaken it without having a strong reason to do so'. This judgment, which has been interpreted to mean that domestic courts are obliged to follow Strasbourg, has been subject to much judicial as well as political criticism.[11]

Secondly, there is the toxic legacy of *Hirst v United Kingdom (No. 2)*,[12] where the ECtHR ruled that the blanket ban on the right of convicted prisoners to vote breached Article 3 of the First Protocol and fell outside any acceptable margin of appreciation.[13] Such was the level of ministerial disregard for the ruling that twelve years were to pass before ministers finally proposed a solution that met with the Committee of Minister's approval.[14] As the Commons debate in February 2011 indicates, *Hirst* graphically exposed the extent of cross-party opposition to how the human rights framework enables judges, including those sitting in a respected international court, to act contrary to the principle of parliamentary sovereignty on such an important domestic issue.

However, the one area of human rights law that has drawn more Conservative ire than any other is judicial restrictions on the government's power to detain and deport foreign nationals suspected of terrorism. This was specifically mentioned in their manifestoes of 2015 and 2019. Any number of important themes are covered by it: judicial overreach, the unacceptable narrowing of the margin of appreciation and judicial deference, conflict of rights, undermining Parliament and so on and so forth.

Three specific issues might be noted. The first of these concerned the right of ministers to detain foreign nationals without trial in lieu of deportation. In *A v Secretary of State for the Home Department,*[15] the House of Lords famously ruled that the detention regime authorised by Parliament in s.23 of the Anti-Terrorism, Crime and Security Act 2001 was both disproportionate and discriminatory. As a result, it was incompatible with both Articles 5 (liberty of the person) and 14 (right to enjoy Convention rights free from discrimination) of the Convention. That a domestic court was prepared to challenge the government (and Parliament) over an issue which involved 'core' executive functions attracted much adverse comment both then and since. The courts, however, were undeterred. Following the ECtHR's ruling in *A and others v United Kingdom*,[16] the House of Lords subsequently ruled that the closed material procedure adopted by the Special Immigration Appeals Commission (SIAC), which meant that the decision to impose control orders was taken using evidence that neither the suspects nor their lawyers were able to see, was a clear breach of Articles 5 and 6.[17] As mentioned above, this ruling is particularly important. Lord Hoffmann, whilst finding for the detainees, recorded his '… very considerable regret, because I think that the decision of the ECtHR was wrong and it may well destroy the system of control orders which is a significant part of this country's defences against terrorism'. He took this position because the House of Lords had no alternative than to accept the decisions of the ECtHR where they concerned the interpretation of the European Convention.

---

[10] [2009] UKHL 28.
[11] Hilaire Barnett, *Constitutional and Administrative Law*, 14th edition, Oxford? Routledge (2021), 476-78.
[12] (2006) 42 EHRR 41.
[13] This provision is made at s.3 of the Representation of the People Act 1983. The law, which is consistent with statute dating from the Forfeiture Act 1870, was amended by the Representation of the People Act 2000, which granted the franchise to remand prisoners and those detained under mental health law. However, this reform proved insufficient to convince ECtHR justices in *Hirst*
[14] Ironically, in light of public criticism of the judiciary, this was an issue on which ministers enjoyed considerable judicial support. A key ruling was made by the Court of Appeal in *R (Chester) v Secretary of State for Justice* [2013] UKSC 63, which held that any amendment to domestic law was a matter for Parliament not the courts.
[15] [2004] UKHL 56 (the 'Belmarsh case'). The government responded by arranging for the repeal of Part IV of the Act and its replacement with a new statutory regime under the Prevention of Terrorism Act 2005
[16] (2009) 49 EHRR 29.
[17] In *AF v Secretary of State for the Home Department* [2009] UKHL 28.

However, perhaps the most notorious case – legally and politically – concerns the third issue: the lawfulness of deportation orders carrying a real risk of torture in the receiving country. This formed the heart of the Abu Qatada saga, which began in February 2001 and did not conclude until July 2013 when twelve years after his first arrest, Abu Qatada finally left the UK. Several questions are wrapped up in this case, the first being the authority of the House of Lords' ruling that Abu Qatada could be lawfully deported.[18] He subsequently, appealed his case to the ECtHR. On 17 January 2012, in *Othman (Abu Qatada) v United Kingdom*,[19] the ECtHR contradicted the Lords' position and ruled that Abu Qatada's deportation to Jordan would be a violation of his right to a fair trial protected under Article 6. In an attempt to circumvent the ECtHR's judgment, the Home Secretary, Theresa May, obtained reassurances from the Jordanian government regarding his treatment and the nature of any criminal proceedings. However, on 12 November 2012 SIAC, to whom the case had been remitted, ruled that these reassurances were inadequate and that the deportation order against him should have been revoked, a ruling subsequently upheld by the Court of Appeal.[20]

In Conservative eyes, the effect of this line of cases was two-fold. First, in January 2012 an international court – the ECtHR - had overturned the ruling of the senior domestic court, even when it could be argued that the latter was far better placed to rule on the issues involved and the circumstances that applied in Britain at the time. Later, with the support of the Court of Appeal, a lesser *domestic* court – SIAC – had also effectively overturned the same ruling, with all that this implied for the doctrine of stare decisis. The second issue is one of wider application. This concerns the question of authority and the proper discretion the executive must be allowed to discharge its fundamental functions. Quite simply, are the courts properly equipped to rule on the nature of international agreements of the type negotiated by the British and Jordanian governments and whether these adequately balance competing needs of collective security and individual rights?

## Conservative Policy on human rights, 2005-12

It is not the purpose of this article to comment on the justice (or otherwise) of these and other criticisms of the case law. Instead, the key issue is the extent to which they aid our understanding of Conservative policy. In recent times, Conservative concerns over human rights law can be traced to a speech by David Cameron to the Centre for Policy Studies on 26 June 2006.[21] With hindsight, this speech seems remarkably nuanced. In particular, Mr. Cameron sought to claim rights-protection as a distinctively *Conservative* issue, emphasising that freedom '…is central to the British way of life' and '…a vital part of our history and our heritage'. In addition, he attacked the record of the Blair government, which he accused of being 'hyperactive' yet ineffective on the issue of security whilst increasingly authoritarian in its attitude towards liberty.[22]

However, the main point of his address was to advertise his key reform proposal – the replacement of the Human Rights Act with the now famed (and fabled) 'British Bill of Rights'. This was included both in the 2010 general election manifesto and the Coalition Agreement, which committed the government to establish '…a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights'. The Commission commenced work on 18 March 2011 under the chairmanship of Sir Leigh Lewis. Its final report entitled *A UK Bill of Rights? - the Choice Before Us* was published on 18 December 2012 and since no

---

[18] [2010] 2 AC 110.
[19] (2012) 55 EHRR 1.
[20] [2012] 11 WLUK 301 (SIAC); [2013] EWCA Civ 277.
[21] David Cameron had replaced Michael Howard as Leader on 6 December 2005.
[22] The attack on New Labour's proved politically useful during the coalition negotiations with the Liberal Democrats. The issue of 'Civil Liberties' was covered in Section 3 of the Coalition Agreement, where the two parties committed themselves to reversing the erosion of the 'fundamental human freedoms and historic civil liberties', which they alleged had occurred since 1997. Privacy rights figured prominently. A 'Freedom Bill' was promised[22], along with specific pledges to scrap the planned arrangements for a national ID card, the National Identity register and the controversial ContactPoint database. In addition, and ironically in light of the current 'Kill the Bill' protests, the Agreement also promised to restore lost rights to non-violent protest.

unanimous recommendations were made, was aptly titled. On the central issue of whether a Bill was needed, the Commission divided 7-2 in favour of a new document. However, as one of the dissenters, Professor Philippe Sands, pointed out, the majority was also divided on the pivotal issues of the content of the Bill and whether or not it should be based on the European Convention. In light of this, Sadiq Khan's observation that the Commission had simply wasted £700,000 of taxpayers' money seems hard to dispute.[23] However, one should avoid being too hard on the Commission. Other than the chair, its membership was equally divided between Cameron and Clegg nominees. More importantly, as it carried out its work, opinion within the Coalition over rights-protection was both dividing and hardening.

## A hardening of attitudes…and a failure to reform

An indication of this can be seen in another Cameron speech, dated 25 January 2012, to mark the UK's chairmanship of the Council of Europe. This focused on failings of the European Court of Human Rights (ECtHR) rather than the Human Rights Act.[24] Equally, it was a clear indication that the Conservatives saw human rights law *per se* as a target that should and could be attacked more aggressively.

Where the Prime Minister led, his backbenchers followed. An entertaining example of this is Richard Bacon MP's speech on 4 December 2012, on a backbench motion seeking leave to introduce a Bill to repeal the Human Rights Act and resile from the Convention.[25] Whilst the motion failed to pass, the influence of Mr. Bacon and his fellow Conservative backbenchers was growing. This became apparent at the 2013 annual Conservative conference when Chris Grayling (Lord Chancellor and Justice Secretary) and Theresa May (Home Secretary) both made speeches condemning Britain's 'broken human rights system'. Mrs. May also took the opportunity to clarify her view that this fixing could involve the UK leaving the European Convention.

However, the key moment in the development of Conservative policy came on 3 October 2014, when Mr Grayling revealed *Protecting Rights in the UK.* Despite the passing of the years, this remains a significant document. The first section, 'The Case for Change', picked up and amplified many of the points made in Mr. Cameron's 2012 speech to the Council of Europe. The first major criticism focused on the jurisprudence of the ECtHR, which thanks to the 'living instrument' doctrine had extended the application of the Convention '…into new areas, and certainly beyond what (its) framers…had in mind when they signed up to it'[26] A second problem was self-inflicted. As interpreted by the courts, s.2 of the Human Rights Act had uncritically incorporated into domestic jurisprudence the alien doctrine of 'proportionality'.[27] This then led to two additional problems. One, domestic courts were dragged into essentially political issues, i.e. whether decisions of UK public authorities were proportionate to their objectives. Two, the inappropriate balance in ECtHR jurisprudence, which overplayed rights at the expense of responsibilities, had been replicated in domestic law.

The defects in s.3, by contrast, had undermined two vital principles of the UK constitution: parliamentary sovereignty and democratic accountability. This stemmed from the 'artificial lengths' to which domestic judges went to ensure the meaning of legislation complied with what the document

---

[23] British Bill of Rights commission fails to reach agreement - BBC News: https://www.bbc.co.uk/news/uk-politics-20757384

[24] Respectively, these were: a failure to prioritise, the recreation of the Court as a 'court of last instance' and the narrowing of the margin of appreciation accorded members states like the UK with otherwise strong records on human rights, something which the Prime Minister blamed for growing public disaffection with the Convention and a resulting loss of legitimacy.

[25] Richard Bacon has been the Conservative MP for South Suffolk since 2001.

[26] The parallels with the debate between US strict and loose constructionists, shortly to reignite following the US Supreme Court's ruling in *Obergefell v Hodges* (526 U.S. 644 (2015)) , are all too apparent.

[27] Though it might be added that domestic courts were already reappraising the value of the '*Wednesbury'* unreasonableness test long before the Human Rights Act became operational; *R v Ministry of Defence ex parte Smith* [1996] Q.B. 517 being a useful example

tellingly referred to as *their own* interpretation of the Convention. Further, that consistency with the Convention had been achieved at the expense of inconsistency with Parliament's intentions, with all that implied for the latter's sovereignty, and was something that appeared to have passed judges by. Finally, in giving statutory protection to certain Convention rights (but without also creating a constitutional safeguard akin to Germany's 'Basic Law'), the Human Rights Act had exposed all domestic laws - including those passed by clear parliamentary majorities on the initiative of governments with equally clear electoral mandates - to the risk of being overridden by or at the behest of the ECtHR.

The proposed British Bill of Rights, which continued to form the centrepiece of Conservative reforms, would nullify these and other defects. Firstly, by '…remain(ing) faithful to the basic principles of human rights set out in the 1950 Rome Convention', it would continue to protect '…'basic rights', like the right to a fair trial…which are an essential part of a modern democratic society'. At the same time, it would reverse the 'mission creep' that has seen the Act used for a range of purposes for which the 1950 Convention had not been intended. Instead, the promised Bill would adopt a 'common sense' approach, one that would also give proper regard to 'the rights of wider society'. In the process, it would ensure that the UK Supreme Court would be the court of last instance in interpreting and applying human rights law and, further, that a legal arrangement would be put in place which would make it easy for Parliament '…to introduce additional limitations on where and how human rights can be applied' as it saw fit.

This critique was reflected in the party's 2015 manifesto. However, there was one important point of difference. *Protecting Rights* had recognised what it called 'The International implications' and accepted that unless the agreement of the Council of Europe to the Conservatives' proposals could be secured, the UK would be forced to withdraw from the European Convention. The manifesto, by contrast, was silent on this point.

As events transpired, however, it was another constitutional issue – Brexit - that put paid to any immediate prospect of change. This was acknowledged by the Conservatives in their 2017 manifesto. Although they remained committed to reform, this would have to await the conclusion of the Brexit process. The specific pledge to repeal the Human Rights Act was also omitted. There was, however, one point of interest; namely, an implied threat to withdraw the United Kingdom's signature from the Convention was included. This was hidden, none too subtly, in the statement that the UK will remain a signatory 'for the duration of the next Parliament', which at the time meant June 2022.

## The Conservatives' 2019 General Election Manifesto and the Independent Human Rights Act Review (the 'Gross review')

Compared to their 2015 equivalent, the proposals in the Conservatives' 2019 manifesto might appear as rather modest. In particular, the pledge to repeal the Human Rights Act was replaced by a commitment merely to 'update' it. In addition, and unlike the situation in 2017, the implied threat to remove the UK's signature to the European Convention was also missing. More generally, the manifesto pledged to draw on independent advice before proceeding with any reforms.[28] The source of this is, of course, the Gross Review, whose official launch (as one might expect) was accompanied by 'flag-flying' and not a little triumphalism:

> 'Her Majesty's Government is committed to upholding the UK's stature on human rights; the UK's contribution to human rights law is immense and founded in the common law tradition. We shall continue to champion human rights both at home and abroad.'

[28] The actual commitment was to create a 'Constitution, Democracy and Rights Commission'. However, it is clear that this is no longer the Government's approach, which now favours allocating this work to smaller, more bespoke bodies

The review's terms of reference focus on 'the framework of the Human Rights Act, how it is operating in practice and whether any change is required'. The first 'framework issue', as it might be called, concerns the domestic courts' interpretation of s.2 and the implications this has for their wider relationship with the ECtHR. In particular, Sir Peter is asked to consider:

- The manner in which domestic courts have applied their duty to 'take into account' relevant ECtHR jurisprudence;
- When discharging this duty, how domestic courts have approached issues falling within the 'margin of appreciation' allowed under the Convention;
- The current arrangements whereby domestic courts raise with the ECtHR their concerns over the regard the latter's jurisprudence has for the UK's particular circumstances.

The second issue focuses on a possible constitutional imbalance resulting from the Act; most obviously, that it has led to the 'over-judicialising' of the work of public bodies and drawn the judiciary into taking policy decisions. The panel is tasked with taking a view on whether the entire framework established by ss.3-4 requires change. This is especially so in respect of s.3 where the panel is required to consider whether outright repeal is needed, along with the implications this will have for legislative interpretations adopted before this takes effect.

A number of additional matters are also identified, including the remedies available to the courts following challenges to designated derogation orders, how courts have dealt with subordinate legislation, and the future of the remedial order process. However, the most politically significant is the application of the Act to public authorities operating overseas. This issue – territorial scope – has generated considerable concern among Conservatives, their resentment being fuelled by high profile legal actions against British service personnel serving in Afghanistan and Iraq.

The Government has promised to publish both the review's findings - which are due to be submitted to ministers this summer - and its response in due course.

## Conclusion: What Next?

Inevitably, the gravity of the issues being considered by the Gross Review will ensure that the Government's response attracts considerable attention. Observers will no doubt also look to see whether, if he feels any recommendations do not go far enough, Mr Buckland's repeats what he did to the report of the Faulks review of administrative justice, i.e. grade it as 'C-' and order the work to be undertaken again; not by the panel but by any other interested parties.

In addition, however, given the evolution of Conservative policy since 2005, when the Government's final response is published it will be interesting to see the extent to which it is consistent with the more 'hard-line' reform proposals contained in *Protecting Rights in the UK*. In this respect, the following list highlights some of the questions that might guide Mr. Buckland in his thinking. All are drawn from Section 2 of *Protecting Rights*: 'The Plan for Change'.

- Will s.2 be amended to remove the domestic courts' duty to take ECtHR rulings into account?
- Will an amendment be enough, or will the government be even more prescriptive? One possibility, for example, is that the courts might be required to follow the approach of the Supreme Court in *R v Horncastle and others*.[29]
- Will legislation create new rules that the courts must follow when interpreting Convention rights? One possibility is that the *meaning* of at least certain Convention rights will be clarified in statute, in the words of *Protecting Rights* in order '…to ensure that they are applied in accordance with the original intentions of the Convention and *the mainstream understanding of rights*' (emphasis added).

[29] [2009] UKSC 14

- Examples given in the document include: clarifying and narrowing the meaning of 'degrading treatment or punishment' and that a foreign national who takes the life of another will be prevented from relying on the right to a family life in order to prevent her or his deportation
- On a similar theme, might legislation direct domestic courts to give the words in statutes their ordinary meaning, in order to express the intention of Parliament?
- Possibly running counter to the instructions given to the Gross Review, might the idea of a 'threshold' be revived, below which Convention rights '…will not be engaged'? In *Protecting Rights*, Conservative policy was that 'The use of…(human rights) law will be limited to cases that involve criminal law and the liberty of the individual, the right to property and similar serious matters'
- Finally, will the rules governing territorial application be amended by statute to ensure that British Armed Forces operating overseas are no longer subject to the Human Rights Act?

At the same time, howsoever Mr. Buckland responds, there remains a sense that at some point, he will have to acknowledge the 'elephant in the room'. This refers to the limited terms on which the review has been conducted. These excluded two inter-related issues (the 'elephant') of obvious constitutional and political significance: i.e. the scope of the rights set down in Schedule 1 of the Human Rights Act '…and the operation of the Convention or European Court of Human Rights'. If critics are right and that its main purpose is to 'soften' public opinion before the launch of a full-scale, frontal assault on both the Act and the Convention, the Gross review could merely be the first skirmish in a much longer war.

At the time of writing, nervousness among human rights-interested organisations over the eventual findings of the Gross review and the likely Government response is growing. This is evident in the reaction of a broad coalition of charities and other bodies, originally brought together by Humanists UK in February 2020, to the publication of the Judicial Review and Courts Bill on 21st July 2021.[30] Whilst acknowledging that this Bill does not extend to coverage of the Human Rights Act, the coalition is concerned that the ministerial attack on judicial review will be eventually replicated in an assault on the Act itself. Humanists UK, in particular, are fearful that despite the limited nature of the Gross review, the Government will at some future point look to repeal the Act, which it describes as proportionate and well-balanced, diluting its protections with a British Bill of Rights. In the meantime, the Joint Committee on Human Rights is continuing with its own short inquiry into human rights reform, which is running in parallel with the Gross review.

[30] Haroon Siddique, 'More than 220 groups criticise the UK review of the Human Rights Act', *The Guardian*, 22 July 2021.