

CHECK AGAINST DELIVERY

AHRC Conference - Redressing the Democratic Deficit in Human Rights

Wednesday 18 April 2012 in Portcullis House, Palace of Westminster

“Strengthening subsidiarity under the UK Chairmanship of the CoE”

Key note address by Lord McNally, Minister of State for Justice

It's always a pleasure to be introduced by Dr Francis.

I am a genuine admirer of the work of the Joint Committee on Human Rights and his shrewd chairmanship of it. It is an excellent example of how the Joint Committee system can cross-fertilise the experience and expertise in both Houses.

I would also like to thank the Arts and Humanities Research Council for organising such a worthwhile event. I have long been an admirer of your work and today's event could not have been better timed. The debate around human rights continues to burn furiously in this country – but it often gives off more heat than light.

This is where academic research is vital: to cut through the rhetoric and find the facts.

Some people question the value of academic work in the arts and humanities sector. It doesn't produce the same astonishing breakthroughs as science and technology. We don't get new inventions or new theories of the universe.

But we get something just as vital: evidence.

Evidence about our society and our culture. Evidence about our laws, and their effects. Evidence about our political system.

Evidence is essential.

It inspires debates, and it helps resolve disputes.

It underpins policies, and it challenges fallacies.

In short, research-based evidence is the life blood of politics and good government.

The debate around human rights is in desperate need of such evidence. Every day, I hear all sorts of wild assertions about human rights: what they mean, what they require, and what they prohibit.

If you learned everything you know about human rights from our newspapers, for example, you'd end up with some very strange ideas. It's no wonder that, in a recent poll, 45 per cent of people were prepared to agree strongly with the statement, “human rights have become a charter for criminals and the undeserving”. You can see how the evidence they receive leads them to that view.

In my role, I see the other side of the coin. I get to meet many great supporters and defenders of human rights. Some of them are here today. I count myself among their number. And the greatest challenge we face in the human rights debate is not the arguments, but the evidence. Reasonable people can disagree about how we protect human rights in this country – but the debate as it stands is unreasonable.

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This is why it is important that we have work such as the research that has been presented today. It is also why there's real value in deliberative bodies like the Commission on a Bill of Rights.

This is the key: less heat, more light.

I only wish I could join more of your discussions today, but as you might imagine, we're a little busy right now with only days to go to the Brighton Conference on the reform of the Strasbourg Court, which starts on Thursday.

We are now nearing the end of the United Kingdom Chairmanship of the Council of Europe. It has felt like a long six months – probably because, thanks to a quirk of the Strasbourg calendar, it will actually be nearer seven months in the end!

But I feel we have come a long way in that time. Last November, at a conference I attended at Wilton Park, I was impressed by the sheer range of ideas put forward, and the energy with which they were debated. The reform process may have been running for a decade and more, but it can still excite strong feelings.

The challenge since then has been to narrow down those ideas into a coherent and effective package of reforms. With the latest draft of the Brighton Declaration, I think we're pretty much there.

Throughout this process, I have been clear that our goal has been to strengthen the Convention and the Strasbourg Court. The Convention system is vital for the protection of the rights and freedoms of some 800 million people all across Europe. It may be 60 years now since it was drafted, but every Article is still fundamentally important.

I have also been clear that, more than anything, our goal is to ensure that those rights and freedoms are observed across Europe. Prevention is always better than cure, and it is far better to prevent breaches than to remedy them later.

For this reason, the draft Declaration on the table in Brighton starts with the national implementation of the Convention. And in Brighton tomorrow, after the usual round of national statements, the Attorney General will chair an exchange of views on precisely this theme.

The questions to inspire this discussion are very interesting. The document says, and I quote, "participants may wish to consider how the Convention can be implemented more effectively by the different aspects of the State, and in particular the executive, legislature and judiciary". The executive, legislative and judiciary. Not "or": "and".

For too long, the human rights debate has been bogged down in a rather ridiculous argument about which branch of the State is responsible for protecting human rights. The answer is simple and obvious, I would say: it's all of them – executive, Parliament and judiciary.

The draft Brighton Declaration certainly bears this out.

It is the Government – the executive – that has the greatest day-to-day ability to protect or violate people's rights. Every time a person encounters the machinery of the State, they carry their rights and freedoms as a shield against the State's far greater power. But better yet is for that shield to be unnecessary – for the State's

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policies to be made with rights in mind, and for every State official to understand and observe the State's obligations under the Convention.

But if this fails, it is the courts – the judicial branch of the State – that step in. The draft Brighton Declaration says that the States Parties will consider “the introduction if necessary of new domestic legal remedies, whether of a specific or general nature”. We may not all recognise the term “general domestic legal remedy”, but we have one in the United Kingdom nonetheless: the Human Rights Act. And wherever the Commission on a Bill of Rights ends up with its work, the Coalition Government has been clear that we will continue to have – in Strasbourg terms – a general remedy for the Convention rights.

But as a Parliamentarian, I happen to think that the third side of this triangle is just as important, if not more so. It is national parliaments that create the laws that the executive implements. It is national parliaments that create the legal remedies that the courts can grant. And it is national parliaments that, every day, are required to weigh up competing human rights implications in the legislative process.

I am therefore pleased to see, in the draft Declaration, the States undertaking to offer “to national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the Government”. This is another long way of describing something familiar to us here in the UK: the statement under section 19 of the Human Rights Act.

This statement, and the explanation that supports it, is the essential first step in Parliament's scrutiny of the human rights implications of legislation. It is the basis for the invaluable work of our Joint Committee on Human Rights. And it is the clearest symbol of Parliament's own responsibility to legislate with human rights in mind. I know, too, as a Minister that signing off the declaration of compatibility before a Bill is submitted to Parliament is a personal responsibility which is never taken lightly.

Even as recently as the 1990s, before the section 19 statement was introduced, it was rare to hear human rights raised in debate in Parliament. Now no-one would think twice about it. That is a culture change of tremendous importance, and is arguably one of the greatest achievements of the Human Rights Act.

The draft Declaration also encourages the State Parties “to facilitate the important role of national parliaments” in scrutinising the implementation of judgments of the Strasbourg Court. Without proper implementation, the judgments of the Court are just pieces of paper – but where implementation involves changing laws, national parliaments are the connection between the judicial process on the one hand, and the democratic process on the other.

But why is this national implementation all so important? Because the Strasbourg system alone cannot secure the rights and freedoms of those 800 million people. And, what's more, we should not ask it to try.

We have been talking for some years now about the Court's backlog of cases. Protocol 14 to the Convention – in force now for a little under two years – is starting to make real inroads into one part of this backlog, the inadmissible applications. The Court keeps finding new ways to dispose of more inadmissible applications, more quickly. The Court has also innovated to tackle the tens of thousands of repetitive violations before it, notably through the pilot judgment procedure.

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But washing this away has revealed a much tougher problem: in simple terms, the Court is still receiving far more admissible cases than it can handle. Each of these cases is a possible new violation: not a repetitive or hopeless case, but a potentially well-founded allegation.

The challenge for the Strasbourg Court, and for those of us who set the Convention rules under which it operates, is to focus on the cases that particularly require the attention of an international court: significant points of interpretation, or potential major violations. For the remainder, the goal is to ensure that they are properly addressed at national level, as part of the primary responsibility of States to implement the Convention.

That, to me, is what subsidiarity really means.

And the principle of subsidiarity runs through the draft Brighton Declaration like the letters through a stick of Brighton rock.

(I should say, by the way, that I'm allowed that cliché for once: not only is it a bit of local colour for tomorrow, but I understand that we actually have some Brighton rock at the Conference. For our guests from other countries unfamiliar with this particular sweet treat, I should probably advise you to bring your strongest dentures.)

Looking now at the draft Brighton Declaration, I am proud of what we, the States Parties, are going to achieve together.

It is a solid and balanced package of measures.

It tackles the Court's backlog, while preserving the right of individual petition.

And it emphasises that the ultimate goal is not for the Court to process ever more cases and deliver ever more judgments, but for the Convention rights to be protected and respected.

And also – importantly – it makes clear that the protection of human rights goes hand-in-hand with democracy and the role of national parliaments.

I wish you well for your discussions today, and I look forward to seeing some of you tomorrow by the seaside.

(I think I have time to take a few questions and comments.)