



European
Institute

The implications of Brexit for fundamental rights protection in the UK

Report of the hearing held on 25th February 2016



LSE Commission on the Future of Britain in Europe

Rapporteurs:

Jo Murkens

Sarah Trotter

Foreword

This is the report of the sixth session of the LSE Commission on the Future of Britain in Europe, which took place on Thursday 25 February, from 16.30-19.00h.

The hearing drew together a number of politicians, academics, practitioners and activists to discuss the question of the implications of Brexit for fundamental rights protection in the UK. Dominic Grieve QC and Marina Wheeler QC presented opening remarks on the British Bill of Rights and the EU Charter of Fundamental Rights respectively, and a very rich discussion ensued. Participants presented perspectives on and analyses of the state and fate of fundamental rights protection in the UK, spanning the matters of the EU Charter of Fundamental Rights, the European Convention on Human Rights, British relations with the Strasbourg Court and the British Bill of Rights.

The report seeks to convey the breadth and depth of the very balanced debate that took place at this session. I would like to express my gratitude to the participants for their expert contributions as presented during the session itself and by way of additional papers. Many thanks are also due to Marion Osborne and David Spence for their excellent support and assistance in the organisation of the hearing. Any remaining errors in this report are my sole responsibility.

Dr Jo Murkens

Department of Law, LSE.

Contents

1. Introduction	4
2. Summary	5
3. The role and nature of the EU Charter of Fundamental Rights	6
4. The European Convention on Human Rights and British relations with the Strasbourg Court	8
5. The question of the British Bill of Rights	10
6. UK narratives and the choice of reference points	13
7. Conclusion	15
Participants list	16

1. Introduction

The subject of the sixth hearing of the LSE Commission on the Future of Britain in Europe related to the implications of a possible Brexit for fundamental rights protection in the UK. Currently, fundamental rights in the UK are protected by three interlinked regimes: EU law and the EU Charter of Fundamental Rights; the European Convention on Human Rights, whose effectiveness is enhanced by the Human Rights Act 1998; and domestic rights protection. The hearing drew together politicians, academics, practitioners and activists to discuss the state and fate of fundamental rights under these regimes in the light of the broader ongoing debate as to the UK's continuing membership of the European Union. The panel discussion of the question 'What would Brexit mean for the protection of fundamental rights in the UK?' was sub-divided into four key topics: the role and nature of the EU Charter of Fundamental Rights (Section 1); the European Convention on Human Rights and British relations with the Strasbourg Court (Section 2); the question of the British Bill of Rights (Section 3); and the UK narratives and choice of reference points (Section 4).

2. Summary

The conclusions reached during this hearing were as follows:

- The EU Charter of Fundamental Rights has become a prominent instrument. In the event of Brexit, the Charter would cease to apply, but it is likely to carry residual effects in domestic law.
- The prisoner voting issue, which has acquired political salience and commanded media attention, has put a strain both on British relations with the European Court of Human Rights and on the reputation of the UK as an upholder and promoter of fundamental rights. This, in turn, carries implications for the protection of fundamental rights in Europe and at the international level more generally, because the UK holds significant influence in this sphere.
- There is an important debate to be had about the British Bill of Rights in this context, and about whether it would entail a reduced level of fundamental rights protection in the UK. As it stands, the indications indeed are that it would amount to an 'ECHR-minus'.
- It is arguable that a British Bill of Rights would give rise to a sense of ownership. However, no coherent set of 'British values' exists that could inform a Bill of Rights. This would need to be addressed before such a Bill would work in practice.
- The ongoing discussion over the British Bill of Rights and the impending referendum on continued EU membership both stem from an attitude that favours the repatriation of laws and rights. Participants were divided in their views on the nature and implications of this attitude but it was agreed that the central question here is that of the location of reference points.
- Whilst Brexit would reduce the level of fundamental rights protection in the UK, the implications of a possible Brexit in this sphere would also be largely dependent on a number of variables, namely as to what would happen to the EUCFR in relation to domestic law, what would happen in relation to the ECHR and to British relations with the Strasbourg Court more generally, and what would happen to the British Bill of Rights and the commitment of the Conservative government to the realisation of this.

3. The role and nature of the EU Charter of Fundamental Rights

The EU Charter of Fundamental Rights (EUCFR) was formally incorporated into EU law by the Lisbon Treaty, and it applies to the EU institutions and to the Member States when they are implementing, derogating from, or acting in the scope of EU law. It sets out a detailed catalogue of rights, including not only civil and political rights, but also economic and social rights. In practice, however, these two ‘generations’ of rights are not accorded equal effect within the vision of rights set out by the EUCFR, for the Charter distinguishes ‘rights’ (which are fully effective) and ‘principles’ (which are not). And, as Catherine Barnard pointed out, economic and social rights are mostly ‘principles’.

There was a general consensus among participants that the Charter has become a prominent instrument. Relatedly, the contribution of this instrument to the areas of data protection, workers’ rights and women’s rights was noted. But beyond this basic position as to the prominent role of the EUCFR, there was notably less agreement. Two points of disagreement surfaced in particular: one as to the necessity of the Charter and the other as to what would happen to it in relation to domestic law in the event of Brexit.

Marina Wheeler opened the debate on the necessity of the Charter, arguing that “the Charter is a human rights instrument too far”. Her thesis was based upon three propositions. First, the Charter is unnecessary. The European Convention on Human Rights (ECHR) already controls state conduct, and would be an adequate

instrument of holding EU institutions to account also, along with the general principles of EU law. Second, the Charter lacks democratic legitimacy in the UK. Although it was aimed at reaffirming rights, it has arguably gone further and created new rights. The UK never intended it to operate as a set of standards against which domestic legislation could be struck down. It follows, finally, that the Charter “is a recipe for incoherence”. It makes no sense as a parallel body of rights alongside the ECHR, and, moreover, erodes national sovereignty because of the impact of Charter cases on domestic law by virtue of the EU law supremacy doctrine. The “proper role” of the Charter, Wheeler argued, is that of “a guiding set of principles for the institutions, not something that creates justiciable rights”.

These concerns were shared and developed by others on the panel. Lee Rotherham noted that these are also pertinent issues when it comes to the ECHR, which also poses particular challenges for accountability and democracy. Michael Pinto-Duschinsky meanwhile picked up the point about the nature and power of the rights set out in the Charter itself, arguing that this instrument (and the Court of Justice of the EU with it) is both more broad and more powerful than the ECHR, and that, moreover, it gives rise to an overly-complicated three-limbed system of fundamental rights protection. It would be simpler, he suggested, to have – via Brexit – the ECHR regime and domestic rights protection alone.

For others, however, it is precisely the breadth of the Charter and the range of rights it includes that constitutes its greatest strength. Geoffrey Robertson spoke of the value, in particular, of the right to dignity in Article 1, which has been used in litigation before the Court of Justice.¹ The Charter differs from the ECHR in this respect, because dignity is not set out as an express right in itself in the ECHR, featuring only in the jurisprudence of the European Court of Human Rights as an underlying principle and value of the Convention more generally. On a similar note, Jackie Jones argued that as the European Court of Human Rights has taken a fairly restrictive interpretation of Article 12 of the ECHR (the right to marry and found a family), a right to same-sex marriage is more likely to emerge via the Charter than under the Convention. The Charter, Jones argued, is a twenty-first century instrument which sets forth an updated vision of rights, and this has been especially important in promoting LGBT rights, the rights of the child, and women's rights. To this Adam Wagner added the contribution of the Charter and EU law more generally to the protection of workers' rights. He suggested that EU law has likely contributed to a "more worker-focused" type of labour right in the UK. Brexit and a possible decoupling of domestic law from the underlying Directives that have given rise to these rights would cause these to "probably fluctuate".

The question as to what would happen to the Charter and the rights contained therein in the event of Brexit was the subject of much debate. Whilst some

participants, including Dominic Grieve and Marina Wheeler, took the position that upon Brexit, the Charter would cease to apply, Catherine Barnard argued that in practice the position would be more complicated. This would be so, she suggested, because there would likely be "residual effects" of EU human rights law.

Barnard suggested that there are three possibilities for dealing with existing domestic legislation already implementing EU law: to leave domestic law as it is, with parliamentary intervention on a case-by-case basis and selected repeal of unwanted legislation; a constitutional convention to review implementing legislation and to selectively repeal unwanted legislation; or, a repeal of all EU-origin legislation and, possibly, its replacement with UK-origin equivalents. Barnard argued that the third option was not feasible, and that the more likely scenario would be a combination of the first two possibilities – that is, a mechanism by which legislation is reviewed selectively and repealed selectively. But the issue, she indicated, is that domestic statutory instruments already implementing EU law have already been interpreted in the light of EU fundamental rights law,² and here the residual effects of this body of law would consequently be seen. Moreover, even in the case of the European Economic Area states, which are not bound by the EUCFR, EU fundamental rights law is relevant in practice, because the EFTA Court has held that the provisions of the EEA Agreement are to be interpreted in the light of fundamental rights.³

¹ C-411/10 and C-493/10, *N.S. v Secretary of State for the Home Department* ECLI:EU:C:2011:865.

² E.g. C-426/11, *Alemo-Herron and Others v Parkwood Leisure Ltd.* ECLI:EU:C:2013:521; C-13/94, *P v S and Cornwall County Council* ECLI:EU:C:1996:170.

³ E-12/10 *ESA v Iceland* [2011] EFTA Ct. Rep. 117, para.60 ; E-2/03, *Ákærvaldið v Ásgeir Logi Ásgeirsson et al.* [2003] EFTA Ct. Rep. 18, para. 23.

4. The European Convention on Human Rights and British relations with the Strasbourg Court

In terms of the EUCFR, then, the panel were agreed that it has become a prominent instrument with an important role, although there was disagreement both as to the necessity of the Charter in practice and as to its likely future in relation to domestic law in the event of Brexit. As to the specific question of the implications of a possible Brexit for fundamental rights protection in the UK, however, the discussion focused more upon the ECHR and on British relations with the European Court of Human Rights.

These relations have, it was suggested, been especially strained in recent years by the prisoner voting issue and the UK's failure to comply effectively with the judgment of the European Court of Human Rights on the matter.⁴ There are internal and external dimensions to this. In terms of the internal aspect, Alice Donald described the prisoner voting issue as having become "so toxic as to be unable to be handled by any party". Ed Bates pointed out that the non-compliance with the judgment is despite the establishment of a Parliamentary Joint Committee which ultimately supported a change in domestic law in this area; Dominic Grieve, meanwhile, drew attention to the lack of pressure that was put on the then-Coalition government when the issue was debated in Parliament. Much of the panel discussion, however, focused on the external aspect: on relations between Britain and the European Court of Human Rights over the prisoner voting matter.

Dominic Grieve sensed "a slight measure of embarrassment about the original

judgment" on the part of the Court – a judgment which, he added, represented "a high point of activism". He suggested that against a backdrop of fears of straining relations between Britain and the Strasbourg Court further, the Committee of Ministers (the body charged with supervising the execution of judgments of the European Court of Human Rights) is also, by now, "soft-peddalling because it sees the dangers that would come from forcing the issue". Piers Gardner, on the other hand, offered a different interpretation of the situation. He argued that in fact, for the Committee of Ministers there is simply "no point in talking to the UK delegation, because they are completely stymied as to their voice" and are now less well-positioned to criticise other jurisdictions (such as Russia, where a directly comparable situation to the British prisoner voting has arisen⁵) in the light of the UK's non-compliance with the judgment issued against it. On this analysis, what is at stake in instances of non-compliance or deferred compliance – be it with respect to prisoner voting or, as Brian Gormally raised, the Northern Irish group of cases as to unresolved deaths during the conflict and the investigative obligation under the Convention⁶ – is also the reputation of the UK as an upholder and promoter of fundamental rights. This also, Gardner argued, entails implications for the protection of fundamental rights in Europe and at the international level more generally, because the UK carries significant influence in this sphere.

⁴ Appl. No. 74025/01, *Hirst v UK* (No. 2) (2005).

⁵ Appls. Nos. 11157/04 and 15162/05, *Anchugov and Gladkov v Russia* (2013) and its aftermath in Russia.

⁶ Appl. No. 28883/95, *McKerr v UK* (2001).

This point was further emphasised by Alice Donald, who stated that the other Council of Europe States – and particularly those with high levels of non-compliance with judgments of the European Court of Human Rights – “are watching what is happening in the UK”, such that even talk of withdrawal from the ECHR “has been and will be immensely damaging as long as it continues”. Donald decried, in particular, “the very intemperate rhetoric and discourse which has surrounded the Convention in recent years”, not least in media portrayal. And yet, she added, the issue should not be distorted; although such cases as the prisoner voting issue acquire political salience and command media attention, the UK has, in general, a very strong record in complying with judgments of the European Court of Human Rights, and in statistical fact, “a very healthy functional relationship” obtains between Britain and the Strasbourg Court. This reality is obscured and problematized by the contrary portrayal of the relationship by the media, and, moreover, the issue is coupled with the Brexit debate in public and media perception more generally.

This is not least, Diana Wallis added, because many hold the view that ‘Europe’ – with no distinction between the Strasbourg and Luxembourg courts – is “a source of rights”. And so although, she argued, support for non-domestic rights may be fragile as a result of the prisoner voting issue, there is still a strong sense that ‘Europe’ is “a port of last resort” in some way, such that taking away the

rights ‘it’ protects would provoke outrage. Moreover, Drew Smith added, such talk of taking away ECHR rights is inherently problematic in itself, not least due to devolution and the interaction between the Scotland Act and the Human Rights Act (which gives further effect to the rights and freedoms set out in the ECHR in domestic law). The Scottish Parliament would have to consent to repeal of the Human Rights Act, and “there is no prospect whatsoever” of that.

As to The European Convention on Human Rights and British relations with the Strasbourg Court, strains in recent years due to the prisoner voting issue make it “so toxic as to be unable to be handled by any party”.

5. The question of the British Bill of Rights

With the bulk of the debate about the ECHR and British relations with the Strasbourg Court centring on concerns relating to the UK's reputation and influence in this sphere, the discussion moved on to the related question of the British Bill of Rights. Adam Wagner briefly outlined for the panel a history of the commitment of the Conservative government to such a Bill. He emphasised in particular the role of the earlier Bill of Rights Commission, and the support of the majority of that Commission for a Bill of Rights partly on the grounds that it would (so it was perceived) "[restore] the reputation of human rights in the UK". Referring to a piece which was later written by Helena Kennedy and Philippe Sands,⁷ Wagner noted a further possible underlying narrative which may have been formative in the workings of the Commission: an apparent desire, on the part of some of its members, for the UK to withdraw from the ECHR. He traced the influence of this notion to the Grayling paper of 2014, in which it was proposed, *inter alia*, that judgments of the European Court of Human Rights would be advisory rather than binding, with the proviso that if the Strasbourg Court disagreed with this approach, then the UK would leave the ECHR. In this, Wagner argued, the Strasbourg Court was essentially being 'set up'. How could it not disagree with such an approach, and, furthermore, with the reduced and likely ECHR non-compliant standards that were being proposed for a British Bill of Rights?

The Bill of Rights that was then drafted, Wagner stated, was "a radical recasting of the European Convention rights" with, essentially, fewer rights for fewer people and an overall undermining of rights protection. Following the General Election of 2015, in which the Conservatives won only by a very narrow majority (with the radical draft of the Bill of Rights being consequently politically unfeasible), Michael Gove, as the Lord Chancellor, finds himself in a difficult situation. On the one hand, the Conservative party manifesto is committed to a British Bill of Rights and a decoupling from the European Court of Human Rights. On the other hand, Ministers need to avoid "a collision path with Strasbourg". This, Wagner argued, is quite simply "an unwinnable political fight". According to Dominic Grieve, it is, moreover an increasingly failing one. Grieve argued that the political vision which developed during the autumn of 2015, in which the Bill of Rights was transformed into a Bill intended to curb the activities of both the Strasbourg and Luxembourg Courts, was never a clear nor an effective proposal. Its only consequence, he suggested, has been that the Bill itself has, for now, "disappeared off the radar screen", likely to resurface only after the referendum.

Yet when the Bill of Rights does eventually resurface, there are, evidently, a number of questions as to its desirability, necessity, and content, and against the broader background of the history and current position of the Bill, the panel discussed these in detail. The British Bill of Rights was largely cast in negative terms. It was

⁷ P. Sands and H. Kennedy, 'In Defence of Rights' (2013) *London Review of Books* 35(1), 19-22.

generally characterised, in Dominic Grieve's term, as an "ECHR-minus" entailing a reduced level of fundamental rights protection in the UK. Of course, it would be a different debate entirely, Brian Gormally pointed out, if the Bill of Rights project were to enhance rights protection or develop particular areas of weakness in the ECHR (namely pertaining to social and economic rights): "if you ever heard anything of that nature, then you could say that British exceptionalism might be a progressive thing"! But in reality, the project, as Angela Patrick put it, was one of "circumscribing ECHR rights". And this, located in a broader context of negative signalling from the government about the EU and ECHR which leans towards "retrenchment from international cooperation" is, Patrick argued, inherently problematic.

There was, then, something of a consensus among participants as to the problematic quality of the political vision of the British Bill of Rights as it stands. But on the question of the very notion of a British Bill of Rights more generally, there was notable disagreement. Geoffrey Robertson, in particular, advocated retention and enhancement of the current multi-layered and interlinked system of fundamental rights protection: "I'm one who believes the more human rights, the merrier. And I don't see why we can't have it all: why we can't have the Charter, the British Bill of Rights, and the European Convention on Human Rights." His principal argument in favour of a British Bill of Rights was that the British public "have no sense of ownership" of the ECHR, whereas a British Bill could

set out "rights that are dear to us", namely the right to trial by jury. So, "for our own sense of history and pride", and given that other European countries have their own Bills of Rights, he advocated the creation of a British Bill of Rights and the retention of the ECHR "as a back-stop". Robertson emphasised, however, the importance of this back-stop, which, he argued, was not least due to how the ECHR has enhanced fundamental rights protection domestically ("we'd still be caning children in schools if it wasn't for Strasbourg...") and because of the check it places on "countries that would never be allowed into Europe" – a check which would be weakened if the UK, with all its influence, were to withdraw from the ECHR.



For other participants, however, it is precisely these appeals to “ownership” and “our own sense of history and pride” that create a further issue with respect to the notion of a British Bill of Rights. This is because, as Drew Smith, Jackie Jones, and Simon Hoffman alluded to, there are different justice systems, public attitudes, and traditions within Britain today, and there is no one coherent set of ‘British values’ that could be drawn on in formulating a Bill of Rights. This, it was indicated, is a fundamental issue which has to be addressed before even contemplating how such a Bill would work in practice.

On that latter aspect, as to how a British Bill of Rights might work, Gavin Phillipson picked up on two points in particular: Geoffrey Robertson’s argument in favour of a British Bill of Rights with the retention of the ECHR as “a back-stop” and a point made by Angela Patrick concerning the perceived undermining of rights protection brought about by UK-specific narratives of repatriation of laws and rights and her scepticism as to such a ‘British’ take on rights. Phillipson argued that although the bad version of any local variant on rights would be that they become a purely internal matter, defined by national interest, there is also “a more benevolent

version”. On this model, “there is a minimum of international agreement and there is reasonable scope for local colour on rights at the national level”. Such a model, Phillipson pointed out, obtains in a number of other countries, many of which “would find it very puzzling having an international court that in quite some detail dictates to them the content of fundamental rights” as does the European Court of Human Rights in relation to the UK.

This special – unusual – quality of the European system needs to be recognised, Phillipson suggested, because it is consequently “not unreasonable in principle to object to some extent” and “to say actually we would like a little more national determination with these matters”. And yet, he noted, there is a fundamental question as to how such a Bill of Rights would operate, and whether it would simply amount to a rebranding of the Human Rights Act – albeit a rebranding which could contain rhetorically crafted statements regarding parliamentary sovereignty or the domestic superiority of the UK Supreme Court. Whilst Geoffrey Robertson and Adam Wagner argued that in theory, a Bill of Rights could contribute to public education and culture (“a real fantastic project of getting people involved, using our democratic ideals to come up with a truly... British Bill of Rights”, suggested Wagner), the general concern was that in practice, a Bill of Rights would speak primarily to politicians, presenting rights as disposable, dispensable and diminished.

There is no coherent set of British values to formulate a British Bill of Rights.

5. UK narratives and the choice of reference points

For some participants in the hearing, both the challenge posed to fundamental rights protection in the UK by the very prospect – let alone the realisation – of the British Bill of Rights and the holding of a referendum over continuing EU membership are rooted in the same source and attitude: a turn inwards, towards the repatriation of laws and rights. This is an attitude towards “external oversight” which is in itself, Brian Gormally suggested, “inimical to human rights protection”. Angela Patrick developed this point further, expressing concern about the nature and implications of negative signalling from the government, and arguing that it runs counter to the ethos of the concept of post-war sovereignty, whereby some sovereignty is given up for the greater good. Alice Donald emphasised not only that the domestic debate is somewhat narrow in focus given that the problems facing Europe (such as terrorism and the refugee crisis) are entirely cross-border in nature, but also that it would be very much worth pushing the debate further and thinking about the meaning of democracy and citizenship. Although this aspect of the debate has been stunted by the “rather tired” domestic framing of the discussion in terms of the English tradition of parliamentary sovereignty, there is a very rich discussion, she argued, that is to be had not only about citizenship but “about how belonging to a supranational human rights regime actually then in turn reinforces democracy at the domestic level”.

Not all participants agreed either with this framing of the UK narrative or with the notion of transnational democracy presented. Michael Pinto-Duschinsky, in particular, cast the question of Brexit more broadly in terms of “the right to democratic government”. Whilst supporting the general principle of “an international long-stop on rights”, he suggested that the central issue at stake is that of “who judges” and “who has the last say”, and argued that democracy is overly-complicated and undermined by “the quasi-sovereignty or shared sovereignty system” at present. Brexit, he indicated, would secure a directly responsible and accountable government, and would realise an entirely domestic vision of democracy.

Mary Honeyball, meanwhile argued that a great deal would be lost by the UK in the event of Brexit; the very debate about Brexit is in itself “extraordinary”, she argued, not least given the long history of the UK in the EU and the nature of globalisation. Honeyball further suggested that one of the primary benefits of pooling sovereignty and “having external reference points to issues in general but particularly to human rights issues” in the context of the British parliamentary system is the power that the elected government has. External reference points, she suggested, constitute a check on this power, and two areas where the workings of this European influence have been seen are workers’ rights and equality measures (particularly in terms of women’s rights). It is, therefore, a question of where Britain wants to be.

Her argument would be “that we should stay within the European Union, that we should stay within the set-up of human rights, because that gives guarantees, and external reference points and external ports in a way that I don’t think we could match within this country”.

Diana Wallis further developed this point on the choice facing Britain as to where it wants to be, adding that there needs to be consideration of the role that the UK has played in creating “an international or a European space for law and rights”. The right to free movement, which the EU has advocated that people take up, has been actively exercised by British people. It is a problematic and uncomfortable position to “suddenly package law back into its national box”. It is not only a question of noting the value of the external reference point, but also acknowledging that this has been fully engaged with and depended upon; “our lives are lived on the basis that we can move around and we can live, study and work elsewhere”. The issue, Wallis argued, is that the UK lacks a legal framework which suits this common European space, and rather than pushing towards a repatriation of laws and rights, we should focus on that.

Whilst there was something of a consensus, then, that the issue of reference points is both necessary and central, there was greater disagreement as to where to locate the reference point itself. Concern was expressed on both sides of the debate, and the dominant narrative that emerged across the panel was one of an urgent

need to think and rethink very carefully the positions that are being advocated and the UK narratives either emerging or are being inferred from various government actions or attitudes. Those arguing in favour of Brexit and the repatriation of laws and rights were urged to be aware of the damaging message this could send out with respect to Britain’s commitment to international cooperation and international standards of rights protection. Those advocating that Britain remain within the EU were urged to think of the bureaucratic credentials of the EU and the purportedly questionable necessity of the Charter. Those harbouring the view that Brexit would entail liberation from the Charter were urged to be mindful of its likely legacy effect in domestic law. And, finally, those arguing in favour of a British Bill of Rights were advised to consider the implications of its amounting to an “ECHR-minus”.

The urgent need is to rethink very carefully the positions advocated and the UK narratives emerging.

7. Conclusion

What this hearing of the LSE Commission on the Future of Britain in Europe ultimately revealed was that the nature of the interlinked regimes of fundamental rights protection in the UK makes the question ‘What would Brexit mean for the protection of fundamental rights in the UK?’ especially difficult to answer. This is not least due to the difficulty of isolating this question from the context of changes and developments in fundamental rights protection in the UK more generally, including, for example, debates pertaining to British relations with the European Court of Human Rights and the prospect of a British Bill of Rights. The panel indicated that whilst Brexit would reduce the level of fundamental rights protection in the UK, the implications of a possible Brexit in this sphere would also be largely dependent also on a number of variables, namely as to what would happen to the EUCFR in relation to domestic law, what would happen in relation to the ECHR and to British relations with the Strasbourg Court more generally, and what would happen to the British Bill of Rights and the commitment of the Conservative government to the realisation of this.

For now, it seems, the principal effect of even the very prospect of Brexit for fundamental rights protection in the UK is that it changes the nature of the debate. Whether this change is conceived of in terms of challenging current reference points or raising the possibility of alternative reference points, it sets the stage for various and competing narratives which may, or may not be,

ultimately conducive to fundamental rights protection in the UK. It is over these narratives, the panel urged, that there needs to be caution. Ultimately, the panel agreed, the implications of both Brexit and broader shifts in fundamental rights protection in the UK depend on what we are trying to achieve: internal or external reference points. And that, in turn, is not a question limited to that of the future of fundamental rights. It is a question of the collective vision of national and European society upon which the debate over fundamental rights merely casts light.

Participants List

First	Surname	Title
Catherine	Barnard	Professor of European Union Law, Trinity College, Cambridge
Ed	Bates	Senior Lecturer, Leicester Law School, University of Leicester
Alice	Donald	Senior Lecturer, Department of Law and Politics, School of Law, Middlesex University
Piers	Gardner	Barrister, Monckton Chambers; UK delegate to the Permanent Delegation of the CCBE to the European Court of Human Rights; former Director of the British Institute of International and Comparative Law
Brian	Gormally	Director, Committee on the Administration of Justice (CAJ)
Dominic	Grieve	Rt Hon Dominic Grieve QC MP; Member of Parliament for Beaconsfield; Former Attorney General for England and Wales
Simon	Hoffman	Associate Professor, College of Law and Criminology, Swansea University; Co-Director, Wales Observatory on Human Rights of Children and Young People
Mary	Honeyball	Member of the European Parliament for London, Group of the Progressive Alliance of Socialists and Democrats; Member of the Committee on Legal Affairs and Committee on Women's Rights and Gender Equality
Jackie	Jones	Professor of Feminist Legal Studies, University of the West of England; Barrister; President of the European Women Lawyers Association
Angela	Patrick	Barrister; Director of Human Rights Policy, JUSTICE; former Assistant Legal Adviser to the UK Parliament's Joint Committee on Human Rights

First	Surname	Title
Gavin	Phillipson	Professor in Durham Law School and Member of the Human Rights Centre, University of Durham
Michael	Pinto-Duschinsky	Senior Consultant on Constitutional Affairs to Policy Exchange
Geoffrey	Robertson	QC, Founder and Head of Doughty Street Chambers; formerly first President of the UN Special Court for Sierra Leone; former Distinguished Jurist Member, United Nations Internal Justice Council
Lee	Rotherham	Director of Special Projects, Vote Leave
Drew	Smith	Member of the Scottish Parliament for Glasgow, Member of the Equal Opportunities Committee; former Spokesperson on the Constitution, Scottish Labour Party
Adam	Wagner	Barrister, One Crown Office Row; General Editor of UK Human Rights Blog
Diana	Wallis	Senior Fellow in Law, University of Hull
Marina	Wheeler	QC, One Crown Office Row; Member of the Attorney General's A Panel of Counsel



European
Institute

Contact us with any questions

European Institute
Cowdray House
London School of Economics and Political Science
Houghton Street
WC2A 2AE

General Enquiries

Email: europeaninstitute@lse.ac.uk
Telephone: +44 (0) 20 7955 6839
