

“HUMAN RIGHTS UNDER ATTACK”

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1. I'd like to thank Dr Kate Malleson for her words and thank Professor Conor Gearty for inviting me to address you here today.
2. Obviously, I'm here first and foremost as the minister with responsibility for human rights and for the effective functioning of our human rights framework within Government. But I am also someone who studied at SOAS just across the road, who spent my summers volunteering for Amnesty International and Prisoners Abroad, working to defend the human rights of people in Jamaica and Thailand. And I am also here as the MP for Tottenham, which is one of the most disadvantaged communities in the country, and probably one of the most diverse constituencies in Europe. And in a sense, many of the questions raised when we think about Human Rights directly affect my constituents.
3. I should say that today's talk – and title – was arranged a long time ago, and certainly before the House of Lords decision. So the timing is purely coincidental, although even No10 couldn't have arranged for me to speak at a more important time! But I think the debate yesterday on the Prevention of Terrorism Bill, and its human rights aspect is precisely the right reference point for this speech today.
4. The title of this evening's lecture is “Human Rights Under Attack” and 2005 is a particularly appropriate vantage point from which to view this topic.
 - For it was sixty years ago this year that allied forces advancing across Poland liberated the death camp at Auschwitz where the Nazis had sent more than a million people to be murdered, setting in train the process that led to the United Nations Declaration on Human Rights, and later the European Convention on Human Rights which brought the values of the Declaration to Europe in a meaningful way.

- It was thirty years ago this year that four innocent people were sent to prison for bombing a pub in Guildford after the police investigating the case fabricated the evidence of their guilt, a miscarriage of justice on the part of the state and its agents which led to the Prime Minister's apology only last week.
 - It was ten years ago this year that the International Criminal Tribunal for Rwanda issued its first indictments covering the genocide of hundreds of thousands of men, women and children in that country for no reason other than that they were of Tutsi origin.
 - It was also ten years ago this year that Doreen and Neville Lawrence brought their own private prosecution against the suspected murderers of their son Stephen, after what would become known as the "institutional racism" of the Metropolitan Police and other agencies that had resulted in a chronic failure of the criminal justice system to bring the perpetrators to justice.
5. So from the historical vantage point of 2005, it seems that human rights have been under attack, in various ways and to varying extremes at home and abroad for much of the last century.
 6. But, of course, 2005 also marks 5 years since the Human Rights Act came into force. One of the most important pieces of constitutional legislation that any Government has introduced, It remains one of the government's proudest achievements.
 7. Yet if we are so proud of our record on human rights why, some of you will ask, why have we sought to distance ourselves from the Human Rights Act? Why have we not done more to push forward the new rights and the settlement it envisages?
 8. And if we are so proud of our record on human rights why do we not do more to defend it from its critics, from reactionary voices like the Daily Mail which wrote last weekend of:

“Lottery money given to prostitutes but not the Samaritans... Gypsies allowed to breach planning laws... Human rights madness is destroying common sense, decency and democracy itself”

9. And why, some of you may ask, if we are so proud of our record on human rights, do we seem through our response to the threat of terrorism so intent on undermining the very human rights culture we were instrumental in bringing about?
10. I have not come here to dodge these accusations, as serious and uncomfortable as they are. We need to tackle them head on – and I will before this night is out.

History

11. But before I get into the detail of these more topical issues I want to remind you of the journey that we have travelled in the past seven years. This is not simply to bang the Labour party's drum. But because I think it is essential that we see where we are today, and the difficult issues we face in light of our commitments to human rights and that we see that in a wider context.
12. It was this Government, after 50 years of the operation of the Convention in Strasbourg, that put the Human Rights Act on the statute book, enshrining in British law, through a framework of fundamental rights, the notion that all human beings should be treated with respect, equality and fairness.
13. We've heard all this so many times, I know, but it is easy to forget just how important this legislation was. Recall what the then Home Secretary, Jack Straw, said at the Bill's second reading. He said:

“This is the first major Bill on human rights for more than 300 years. It will strengthen representative and democratic government. It does so by enabling citizens to challenge more easily actions of the state if they fail to match the standards set by the European convention. The Bill will thus create a new and better relationship between the Government and the people.”

14. 300 years to bring forward not just a better relationship, but an altogether new one. To usher in not a litigation culture but a human rights culture. Because by transforming the relationship between citizens and the state we can help to build a better country for people who live in it:
- reconnecting people and politics
 - improving our public services
 - nurturing the values of mutual respect for another's basic human dignity
 - promoting basic values we can all share, that will help bind us together as a nation.
15. I spent several years in the US in the mid-1990s studying and practising law, and developed a deep affection and envy for the way in which human rights as a tradition was embedded in that society. Jonathan Freedland's book *Bring Home the Revolution* really captured a new sense of why and how human rights was percolating down to a local level, and what a rights culture could mean for Britain and its citizens. I was therefore delighted that the same year it was published the Labour government also endorsed one of its core proposals by putting the Human Rights Act on the statute book.
16. The features of an effective human rights culture were neatly defined by the Parliamentary Joint Human Rights Committee, if you like, the watchdog for human rights in Parliament. They said this:
- "A culture of respect for human rights would exist when there was a widely-shared sense of*
- *entitlement to these rights, of*
 - *personal responsibility and of respect for the rights of others and when this*
 - *influenced all our institutional policies and practices."*
17. This is about much more than legal cases. It is about the whole apparatus of the State and how public authorities operate. It is more than just about individual rights.

Post HRA

18. So the Human Rights Act was a great achievement. But we've been accused by some of standing still since 1997. Of getting cold feet after '97, and even colder feet since 9/11.
19. If that's your view, then you have to consider some of the other work we've been doing since Labour were elected.
 - Consider the Disability Rights Commission we established, finally giving the fight against discrimination against disabled people the institutional force it deserves
 - Consider the Race Relations Act we amended, so that all public bodies and functions now have a duty not just avoid discrimination but actively to promote race equality
 - Consider the Sexual Offences (Amendment) Act 2000 in which we finally equalised the age of consent for gay men
 - Consider the positive duty on gender that we will shortly introduce which complements that on race.
20. Consider also that we are about to draw these and other strands together to establish the Commission on Equality and Human Rights. Not only bringing together the best practice from the existing equality commissions but introducing another four anti-discrimination strands on:
 - age
 - belief
 - sexual orientation and
 - religion.

21. And all of this in addition to the legislation now in force in respect of gender recognition, which I am pleased to have taken through the Commons last year.
22. But beyond equality, the new Commission will have particular responsibility for realising the agenda that underpins the Human Rights Act. This means that it will have responsibility for helping to reform our public services as an essential element in the pursuit of a 'human rights culture'. It has been given more power than anyone ever thought we would give it frankly, including the power to undertake inquiries into the protection or understanding of human rights by public authorities.
23. It is powers like these which will hopefully help the vulnerable. People like the tragic Victoria Climbié, the young girl from my constituency who was treated in the most horrific way by the relatives charged with looking after her, and whose human rights the local public authorities failed, desperately failed, to protect. It is powers like these which will hopefully help put an end to the shocking situations that exist in our society. Shocking situations where there are twice as many African Caribbean men in jail as there are on university campuses like these.
24. Consider these activities and I hope you will agree that this is not the record of a Government standing still on rights.
25. Let us not forget too, that this Government has put human rights at the very heart of our policy making process. Section 19 of the Human Rights Act requires Ministers, like me, to make a statement of compatibility with the Convention rights of any provisions that it brings before Parliament.
26. Believe me – and the many officials and lawyers in Government who wrestle with these benchmarks – that we take that task extremely seriously. No would-be Bill makes it past the scrutiny of the Ministerial Legislative Program Committee if it is not accompanied by a full ECHR assessment.
27. And let us also not forget that we also now, as I have said, have the Joint Committee on Human Rights. It scrutinises our legislation, is staffed by excellent

officials, a brilliant and highly regarded lawyer in Murray Hunt, and a dedicated group of Peers and Members. The Government takes its views very seriously.

28. The human rights story of the Civil Contingencies Act is worth mentioning in this general context. It is an example of when the Government has had to wrestle with the human rights issues of emergency planning in the face of a very real security threat this country faces. The story is, I think, fairly well known to people here. But it is a good one. The point is that significant alterations and amendments were made as a result of consultation with human rights organisations, like Liberty and Justice. To give two examples, the Bill now contains a provision on its face putting it beyond doubt that any emergency regulations must be proportionate - and the provision made requiring the Minister in charge to give the House his view about how the regulations fit with human rights.
29. This isn't demanded by the Human Rights Act – it goes beyond what is needed by the Act.

Attacks from the right

30. There are, of course, some people who attack rights from a different side. There are those who criticise us not for standing still on rights but for going far too far, and the views of these people litter the op-ed pages of the newspapers and the policy pronouncements of the opposition.
31. They suggest that, far from uphold people's rights, the Human Rights Act curtails them. Valuing the rights of some individuals over others. And turning us into a compensation culture society. Ultimately, they suggest that we should repeal the Human Rights Act.
32. Although these generalised attacks can seem a little ridiculous, even a parody of themselves, they can be dangerous. They can undermine the confidence of the people we are trying to protect. They are serious threats.
33. So let me turn to some of the specific attacks themselves.

Compensation Culture

34. Last summer, human rights suddenly became synonymous with those dirty words: 'compensation culture'. The official opposition decided that human rights were delivering a raft of spurious and ridiculous compensation.
35. Let me be absolutely clear. The Human Rights Act has not altered the law of negligence. The law is clear - where there is wrong-doing which causes loss, people are entitled to compensation from the wrongdoer. That's common sense. It's rational.
36. It may be convenient to say the Human Rights Act has changed this, but that wouldn't be true. The courts are not extending liability - and nor are they being flooded with new claims.
37. In fact, a recent report by the Better Regulation Task Force tells the real story. In 2003, the last year for which we have figures, the number of registered personal injury claims fell, in fact.
38. But I am not saying that litigation hasn't got a part to play in a culture of respect for human rights. First and foremost, we need litigation to assure compliance. We also need litigation to challenge ways of thinking. And things sometimes need to be looked at in a new light. And we brought in the Human Rights Act in to help people seek a remedy from the courts. It has been used very effectively in Judicial Review.
39. Assuring compliance is central. It is the fairness guarantee the public need and want in order for their confidence and trust in our public services. And you can't get very far in building a culture of respect for human rights without the ability to go to law.
40. But, lets remember the most important factor about the 'fairness guarantee'. It's not needed often. We always said, by and large, this country does comply with

fundamental human rights. Like many constitutional rights provisions, the Act is rather like the promise of compensation reputable manufacturers feel they are able to offer to consumers.

41. If you find any faults of this kind in our products please tell us, we want to know, to put it right. But, actually, we don't expect to make mistakes of that kind. That's the whole point.
42. Guarantees like that do help create confidence, even if they do not need to be taken up very much. Very broadly, I think that has been borne out over the first few years of the Human Rights Act being in force.
43. Of course, there have been successful challenges. Not least of all the Law Lords judgment last year. And laws have been changed as a result. There will be more I am quite sure. And that is right. We should all be mature enough to look again when the courts conclude that there is a real problem.
44. That is precisely what has been going on – we can thank the Human Rights Act for the Diane Blood case and rights for deceased fathers; for Bellinger and Bellinger and better recognition of gender; R v McR concerning Criminal Justice in Northern Ireland; and R (on the application of FM) v SofS for Health) for a fresh look at appointing nearest relatives under the Mental Health Act. These are just some examples in which the HRA has helped us.
45. However, serious problems have been rare indeed, and the courts have exercised a considerable measure of judicial discretion in favour of the democratic authorities, when reviewing the judgements that Governments have made when looking at proportionality and balancing rights.
46. It is true, in my view, that the claims management industry and the media have fuelled a *claims* culture. They suggest that there is a lot of cash to be made as compensation for very minor mishaps and people have become more willing to have a go, if something happens to you.

47. But this cannot be laid at human rights' door. Firstly, the Act introduced no new rights.
48. Secondly, sure, the need for compliance is relevant. The Act is more than salutary in that respect – you have only to look at the human rights duty on all public authorities in section 6. But Lord Hoffman was right¹: though the Human Rights Act culture is certainly about the rule of law, it isn't about the rule of lawyers.

More rights than others

49. The Human Rights Act has also been accused of placing more value on the rights of some groups than others. But that is exactly what it does not do.
50. Critically, these rights are for everybody. Nobody is more entitled to them than anybody else. They do not depend on popularity, or on background, or social class, or place of birth. You have only to be in this country to qualify for human rights protection under the Act. To add other qualifications is to claim that one person is more human than another – something akin to the evils we fought in the Second World War and fight against today.
51. The Act is not a prisoners' charter as some have suggested, any more than it is a victims' charter. It applies as much to an asylum seeker as it does to a shadow Home Secretary.
52. But we do need to remember the words of the former Lord Chancellor from the 2R of the Bill in the House of Lords:

“in a democracy it is right that the majority should govern. But that is precisely why it is also right that the human rights of individuals and minorities should be protected by law.”

¹ New Law Journal 18 May 2001, 713

53. Sometimes the decisions of the Act are unpopular. But that is why it is so important. The calling card of a truly strong state is not the reach or effectiveness of its coercive power but the space it creates for dissenting voices.
54. Far from destroying the rights and freedoms of the majority, the Act protects vulnerable people: the elderly, disabled people, children, and people who belong to unpopular minorities. They give a voice and redress to those who need it most.
55. Everyone is equal before the Human Rights Act; it is just that some people need it more than others.

Travellers

56. One group the Act has recently been accused of favouring are gypsies and travellers.
57. Last Autumn, there was a spate of attacks on the courts for judgements given, though sometimes misreported, in planning matters associated with travellers. You will remember the stories I'm sure. Travellers buying fields from farmers and driving on to them, setting up apparently permanent camps without planning permission. Much to the annoyance of the local settled population and the apparent glee of the press who promptly blamed the Human Rights Act and the courts.
58. But the Act grants nobody, travellers included, immunity from general laws. The Human Rights Act cannot be invoked to protect illegal settlements. Any other test would encourage the continuation of illegal activity.
59. The Human Rights Act will not overrule a properly followed legal process. It will test a planning decision and if it is properly arrived at, it will not be overruled. It does not contradict the planning process.

Liberal judges

60. Another criticism is that 'human rights' depend on the opinions and prejudices of the judges which interpret them, and which are somehow inherently weighted against the mainstream majority.
61. Yet again we have a case of the oft-repeated myth that the judges are out of touch with the majority. So consider a case chosen at random, of a human rights application alleging breach of Article 8 rights:
62. 3 recipients of Anti Social Behaviour Orders found themselves at the centre of an advertising campaign carried out by their local authority and the Metropolitan Police, who issued leaflets and other material carrying the claimants photographs, names and ages and the details of the orders made against them. The claimants alleged breach of their Article 8 rights.
63. The court considered carefully questions of proportionality and the legality of the intended outcome and concluded, robustly, that the publicity was an essential component of the ASBOs. Thus helping to ensure that the rights of the majority to quiet enjoyment of their homes was properly enforced. I can see no credible evidence that the judges are turning the Act into a criminals' charter.

Terrorism

64. So we have faced attacks from the hard left for not going far enough on human rights and attacks from the right for going too far. I hope I have shown that neither of these criticisms really stand up to scrutiny.
65. But by far the most serious accusation we face as a government, and the accusation which I suspect is closest to the hearts and consciences of the company I'm in today, is not about how far we have travelled down the human rights path but about whether we have strayed from it altogether.

66. For those that make this accusation, the Law Lords judgment in *A and Others* is a fundamental indictment of our human rights position, and our response to it further evidence of our inherently illiberal instincts.
67. Let me offer a different view.
68. As the Home Secretary's statement on Tuesday and the Bill's second reading yesterday showed, we have accepted the Law Lords judgment in entirety. No equivocation, no complaining, no dragging our feet. We have been swift in bringing forward legislation to meet the discriminatory and disproportionate findings of that judgment.
69. We've said that where we suspect someone is engaged in terrorist activity, prosecution is always the Government's preferred way forward when dealing with suspected terrorists. But we must recognise that there are circumstances in which it is not possible to use the material available.
70. One of my frustrations with the current controversy is the extent to which it has come to be dominated by the debate about intercept evidence. I am afraid that it is not just a question of 'admit the intercept evidence and everything will be fine'. Just bug people and use it in court. If it were that easy, believe me, we would do it. But in the meantime there are a few seriously dangerous people in this country, right now, some of whom are UK nationals. We need to deal with this threat, and quickly.
71. The problem for the government in trying to make this case, of course, is that we are suffering from a trust deficit because people do not think we told the truth about Iraq. They think that the assurances from the security services were problematic, were just a smokescreen. They think we are playing politics with fear and that freedom is paying the price.
72. For government this presents a dilemma that is nearly impossible to solve, frankly: torn between a fundamental duty to protect citizens in the face of compelling evidence of threats to their lives and livelihood, and concern to do our duty by the Human Rights Act we brought into force.

73. We know that democracy is impossible without security. But we also know that absolute security is impossible with democracy. This is the dilemma this Government faces.
74. But the point is that it is precisely in order to help us through this kind of dilemma that we introduced the Human Rights Act in the first place. The Act provides us with a moral compass that does not necessarily give us the direction of travel but certainly helps us if we stray off course.
75. The proposals the Government is putting forward for control orders address the issues highlighted by the Law Lords head-on:
- in relation to proportionality, we will have a tailored set of measures; and
 - in relation to discrimination, the laws will apply to British citizens as well as foreign nationals.
76. Up until a few days ago, the press would have had you believe that we were putting every national suspected of terrorist activity under house arrest. And clearly, that is not what we are doing or proposing.
77. Doing that might have undermined our human rights commitments. Just as standing still would have been shirking them.
78. The interplay of terrorism and individual human rights is undoubtedly one of the hardest issues this Government or any Government faces. International Terrorism is an attack on the people of the UK, our rule of law and our values. The decisions we've had to make since 9/11 have been extremely difficult. But it is wrong to portray our response to terrorism as akin to internment during the Second World War, when 27,000 people were detained without trial in this country.
79. Our Bill is a proportionate response to the threat, and the Human Rights Act has provided a framework to ensure its measures are consistent with the values we are

defending. The rule of law and the Human Rights Act ensure that the Government is held to account for its decisions.

80. The Law Lords judgment, far from undermining our human rights record, shows us, in practice, just how well the Human Rights Act actually has worked. And our response proves that we are taking our commitments seriously.

Conclusion

81. The work of the Human Rights Act is unfinished business, because human rights work is never designed to prop up the status quo. Our democracy is dynamic and moving forward, and Human Rights is our key compass.
82. I began by talking about Auschwitz. I want to end with the words of Pastor Martin Niehmoller, because I think that even many years later and in a completely different global context they still capture the fear that all of us who believe in human rights feel.

He said:

First they came for the communists,
and I did not speak out,
Because I was not a communist.

Then they came for the Jews,
and I did not speak out,
Because I was not a Jew.

Then they came for the Trade Unionists,
and I did not speak out,
Because I was not a Trade Unionist.

Next they came for the Catholics,

and I did not speak out,
Because I was not a Catholic.

Then they came for me,
and there was no one left,
To speak out for me.

83. The thought of a major terrorist attack on this country's soil, which our security services believe is almost inevitable, occasionally gives me, certainly, sleepless nights. But not nearly as many as I would have as if there were not people to speak up for me and if human rights hadn't brought it home in such a different way.

Thank you for listening.