

**REGARDING “UNITED KINGDOM PRACTISE
ON THE EUROPEAN CONVENTION
ON HUMAN RIGHTS” BY LORD
SHAWCROSS (1965-II): BRITAIN, EUROPE
AND HUMAN RIGHTS — WHAT NEXT?**

BY

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To read Lord Shawcross on the European Convention on Human Rights is to return to a bygone age. His essay on the practise of the United Kingdom was published fifty years ago, fifteen years after the Convention was adopted before the United Kingdom had accepted the right of individual petition to the European Court of Human Rights. (1) The Strasbourg Court had only recently begun to function, and the first judgment against the United Kingdom would not come for another ten years. (2) More than three decades would pass before the European Convention on Human Rights would be incorporated into English law and “clothed by Parliamentary authority” (3) by the Human Rights Act, adopted in 1998. By then the European Commission was in the course of being phased out and the European Court of Human Rights established as the first (and only) port of call for individual applicants.

The ECHR system that Lord Shawcross knew and wrote about — and rightly identified as “a great step forward in the process of defining and safeguarding the position of the individual as such in international law” (4) — would not easily be recognisable to him today. No more recognisable to the reader of today, however, would be the diplomatic and political reality that imbued the beliefs that Shawcross trails across the pages of his essay. Personally involved in the decision by the United Kingdom to ratify the Convention, Shawcross explains that he had “no hesitation in informing the Parlia-

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(1) The acceptance was deposited on 14 January 1966: see A. LESTER, “U.K. acceptance of the Strasbourg jurisdiction: what really went on in Whitehall in 1965”, *Public Law*, 237-253 (1998).

(2) Application 4451/70, *Golder v United Kingdom*, judgment of 21 February 1975.

(3) L. SHAWCROSS, “United Kingdom Practise on the European Convention on Human Rights”, *RBDI* 1965/1, 297-305.

(4) SHAWCROSS, 298.

ment of the United Kingdom that our law already accorded all the human rights and liberties which the Convention protected”, and that experience in the years that followed did “not lead one to doubt the correctness of the opinion”. (5) Not a person imbued with self-doubt, Shawcross also perceived the situation in the United Kingdom as being in no way threatened by the Convention, since the “plain legal fact” was that the Convention “only served to define, sometime more narrowly, rights which were already fully recognised under English law”. (6) There was, he added, in his firm opinion, “no branch of English law or practise which is not in accord with, if not far in advance of” the requirements of the Convention. (7) He went even further in other assertions: for example, in relation to freedom of the press he proclaimed that “[t]here is no kind of censorship in the United Kingdom”, and that the laws on libel, obscenity, sedition and copyright could not be considered to be of a nature as to limit free expression in a manner contrary to the Convention. (8) Moreover, on his view of the world and the place of law, much of scope of the Convention touched on matters — for example racism, or “racial feeling as a factor influencing discrimination”, as he puts it — were matters “more for social conscience and manners than for legal sanction”, to be addressed by “individual action outside the reach of the law”. (9)

Read today this might be taken as quaint, or naïve. Much has changed to refute the views on which Shawcross has constructed his edifice of perfect Albion. Our sense of the place of law has evolved. Cases were brought against the United Kingdom and, remarkable as it might have seemed to Shawcross from the comfort of Britain, the European Commission and the Court found the practise of the United Kingdom to be wanting. Following the incorporation of the Convention into English law, which also allowed the English courts to “take account” of Strasbourg judgments (but not be bound by them), it turned out that English judges too were able to conclude, on occasion, that the Convention added individual protections that went beyond that which existed in English law, including the common law, and that those protections had been violated.

These developments have given rise to certain political concerns in the United Kingdom, largely focused on the perception that sovereignty has been eroded in a manner that was not intended, and is not acceptable. At the heart of these critiques is a concern about the role of the Strasbourg Court, a body that Shawcross writes was never intended to “act as a supreme court of appeal on the national law of the member countries”. (10)

(5) SHAWCROSS, 299.

(6) SHAWCROSS, 300.

(7) SHAWCROSS, 301.

(8) SHAWCROSS, 304.

(9) SHAWCROSS, 301.

(10) SHAWCROSS, 304.

Against this background, fifty years after the publication of Shawcross's essay, I was invited to deliver the *Elson Ethics Lecture*, at St. George's Chapel, Windsor Castle. Extracts from that lecture, which may be taken as a response to the vision of Shawcross, follow.

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Tucked away in the Conservative manifesto for the 2015 General Election was a commitment that few — including, one suspects, Mr Cameron — assumed would require action: to “scrap the Human Rights Act” and “curtail the role of the European Court of Human Rights”. (11) After the surprise of his election with a majority, Mr Cameron handed this unexpected chalice to Michael Gove, the new Justice Secretary, who was probably unaware of how poisonous were the contents of the cup passed into his hands.

Adopted in 1998, the Human Rights Act incorporated into British law the European Convention on Human Rights, one of the great international legal instruments of the 20th century, along with the United Nations Charter. Reflecting Winston Churchill's Second World War aim of achieving the “enthronement of human rights”, it aims to hold to account the governments of 47 European countries who are members of the Council of Europe, offering rights and protections against governmental excess to individuals: freedom of expression, fair trials and the prohibition of torture are amongst the many rights enshrined. The UK was the first country to ratify the Convention.

Significantly, when it came into force in 2000, the 1998 Act allowed the courts of the United Kingdom, for the first time, to interpret and apply the Convention, requiring them to “take account” of judgments of the European Court of Human Rights in Strasbourg. Before then the Convention was an unincorporated treaty that produced no legal effects, as such, in the UK law, and courts could not take into account judgments of the Strasbourg Court. Even now, the courts are not bound by judgments from Strasbourg, as they are by judgments of the entirely different EU Court of Justice in Luxembourg. They are required only to take them into account. (12)

For reasons that are varied and sometimes not fully substantiated, the 1998 Act and the European Convention have come to be detested by some prominent members of the Government. They had sufficient support — and that of the Prime Minister — to lead to the removal from office (last year) of a distinguished Attorney General, Dominic Grieve QC, whose hanging offence was a desire to defend the Convention and the UK's commitment to the rule of law. Its opponents would like to get rid of the Act as well as the Strasbourg Court, although quite what they would replace them with is unstated. They

(11) *Conservative Party Manifesto* (May 2015), www.conservatives.com/manifesto, 58.

(12) Human Rights Act, 1998, section 2(1)(a) (“A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any (...) (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights”).

have proposed something called a British Bill of Rights, but we are not told what such an instrument would contain (as its proponents seem not to know), how it might work, and how — if at all — it would relate to the European Convention. What we do know is that the proponents of change wish that foreign criminals could “be more easily deported from Britain”, and that our Supreme Court will be the “ultimate arbiter of human rights matters in the UK”. (13)

Mr Cameron has said that one recent Strasbourg judgment — which ruled that the UK’s blanket ban on any prisoner having a right to vote — caused him to feel “physically sick”. (14) The case is *Hirst v United Kingdom*: the Applicant, who had been convicted for manslaughter, was barred by section 3 of the Representation of the People Act 1983 from voting in parliamentary or local elections, and claimed that he had been disenfranchised, in violation of Article 3 of the Convention’s Protocol No. 1, which provides for “free elections (...) under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” The Court ruled that the blanket ban on voting violated the right of the individual to vote, because the measure was disproportionate to the aim it sought to achieve. (15)

The judgment is reasonable, adopting an approach taken by rather conservative courts in Hong Kong and Australia, is premised on the recognition that despotic governments tend to imprison people to deprive them of the right to vote. The Strasbourg judgment makes clear that a blanket ban on prisoner voting — which drawn no distinction between a minor offence (such as shoplifting) and a grave offence (murder) — is incompatible with the Convention. The shrill objection from some of our politicians and media is that the judgment goes against the will of Parliament.

Relatedly, the Human Rights Act is now totemically denounced as an undemocratic fetter on a sovereign British state and its Parliament, and a threat to the fabric of our unwritten constitution. This portrayal has underpinned a growing movement that seeks the repeal of the Act and — let us not run from the reality — a desire by some to reappraise the UK’s relationship with the European Court of Human Rights. Remarkably, withdrawal is on the agenda, a path that the Prime Minister has pointedly refused to exclude. (16) Mr Gove will shortly announce a consultation on the Manifesto

(13) *Conservative Party Manifesto*, 60.

(14) *Daily Express*, 4 November 2010.

(15) *Hirst v United Kingdom*, European Court of Human Rights, Judgment 6 October 2005, at paras. 71 and 82.

(16) N. WATT, “Cameron refuses to rule out leaving European convention on human rights”, *Guardian*, 3 June 2015 (“Now our plans, set out in our manifesto, don’t involve us leaving the European convention on human rights. But let’s be absolutely clear. If we can’t achieve what we need — and I’m very clear about that when we’ve got these foreign criminals committing offence after offence and we can’t send them home because of their right to a family life — that needs to change. And I rule out absolutely nothing in getting that done.”).

commitment. (17) What will follow may have profound consequences for the future of human rights in the United Kingdom, for the United Kingdom's engagement with Europe, and for the European Convention and international law itself.

In this lecture I want to explore, amongst other matters, where we are, and where we are heading. It is appropriate to say something about where we have come from. In today's 21st century Europe it is easy to forget that the idea of holding a state accountable under international law for the actions of its government and other public is a new development. We forget that in the 1930s Nazi Germany and Communist Soviet Union were, as a matter of international law, free to treat their own citizens largely as they wished. In 1935 Hans Frank, whose life I have been researching for a book I will publish next year (18) told the German Academy of Law, of which he was the President, that there would be no individual rights in the new Germany, part of a policy of a total opposition to the "individualistic, liberalistic atomizing tendencies of the egoism of the individual" (19) ("Complete equality, absolute submission, absolute loss of individuality", the writer Friedrich Reck recorded in his diary, drawing from Dostoevsky's *The Possessed* in reflecting on ideas of Frank's kind). (20) The position was no different for the United Kingdom, as a colonial power in respect of individuals in those colonies, or indeed beyond: in 1919, Britain objected to the idea of a League of Nations that would protect the rights of minorities in all countries — as opposed to the vanquished, as the organisation would have "the right to protect the Chinese in Liverpool, the Roman Catholics in France, the French in Canada, quite apart from more serious problems, such as the Irish". (21) Britain objected to any depletion of sovereignty — the right to treat others as it wished — or international oversight. It took this position even if the price was more "injustice and oppression". (22)

Today many take it for granted that the limits of sovereignty are fettered by international law, that external constraints are a normal feature of our lives. They should not do so, for it was not always thus. The emergence of modern international human rights law — the idea that every human being has basic, irreducible human rights — represented a hard fought struggle,

(17) M. FOUZDER, "British bill of rights plan to be unveiled 'this autumn'", *Law Society Gazette*, 8 September 2015.

(18) : use, ber 2015. Castlehics Lecture delivered at St. George'ights')ountries"ner that was not intended or unacceptable. at Convn Philippe SANDS, East West Street: On the Origins of Crimes against Humanity and Genocide, Weidenfeld and Nicolson, May 2016.

(19) *East West Street*, 215.

(20) FR. RECK, *Diary of a Man in Despair*, New York Review of Books, 2012, tr. Paul Rubens, 42.

(21) *East West Street*, 88.

(22) C. FINK, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection*. New York (Cambridge University Press, 2004), 154, n. 36.

and a paradigm shift in an international legal order that had always favoured the state over the individual.

I. — WHERE WE ARE

I turn to where we are. The European Convention was adopted in 1950, ratified by the UK in 1951, and came into force in September 1953. It was not incorporated into our domestic law, which meant that it could not be invoked before our domestic courts. An aggrieved citizen or inhabitant of the United Kingdom would have to take claims under the Convention to Strasbourg, where the Council of Europe has its home. In 1966 the UK opted to accept the right of individual complaint to the European Commission of Human Rights. Individuals began to petition the Court directly. In its first decades there were relatively few decisions handed down against the UK, although some judgments were significant, not least the findings that the UK had engaged in cruel, inhuman and degrading treatment in Northern Ireland, and violated the right to life in killing three suspected IRA terrorists in Gibraltar. Such claims were handled by the nascent Convention organs, with what has been described as considerable “legal diplomacy”. (23)

In 1998 Parliament passed the Human Rights Act. This implemented a Labour Party manifesto pledge to allow rights set out in the Convention to be enforced before the UK courts. The Act requires UK courts and tribunals to interpret legislation as far as possible in a way that is compatible with the rights enshrined in the Convention. Public authorities must not act incompatibly with Convention rights, and may be liable to pay damages or provide other remedies if they do. The UK courts must “take into account” such judgments, but they are not bound to follow them. Contrary to popular misconception, the courts have no power to “strike down” an Act of Parliament. The response is a matter for Parliament, which remains legally sovereign.

Myths abound about the role of the Strasbourg Court. What are the facts? In 2014 the Strasbourg Court addressed 1,997 applications against the United Kingdom. (24) The overwhelming majority of those claims were declared inadmissible or struck out at an early stage. In the same year the Court delivered 14 judgments in cases brought against the UK — of these, four found a violation by the UK, while ten ruled in the government’s favour. (25) Despite this modest number of adverse findings, the Court attracts signifi-

(23) M. R. MADSEN, “*Legal Diplomacy*” — *Law, Politics and the Genesis of Postwar European Human Rights in Human Rights in the Twentieth Century* (CUP, 2011).

(24) Press country profile of the United Kingdom produced by the European Court of Human Rights (July 2015), available at: www.echr.coe.int/Documents/CP_United_Kingdom_ENG.pdf Cite.

(25) *Ibid.*

cant ire from detractors in the UK. There are three principal complaints, none of which is particularly well-founded.

First, it is said that the Strasbourg Court has acted improperly in interpreting the Convention as a living instrument, straining the language of the Convention so as to invent rights that the Convention's drafters never intended or imagined. The Court stands accused of judicial activism and gone beyond the black letter of the written law, or original intent. (The same accusation is often made of our domestic judges.) Allegations of activism resonate strongly with those concerned with the allocation of powers between elected lawmakers, on the one hand, and unelected judges, on the other.

Certainly the Strasbourg Court has been called upon to apply the Convention to circumstances that its drafters are unlikely to have envisaged. Yet one is bound to ask: is that a problem of judicial activism, or a reflection of a world and values that have evolved since the drafting of the Convention in the late 1940s. Applying old documents to new scenarios is a challenge for any court. In the United States, for example, the courts must grapple with the constitutional protection found in the Eighth Amendment, ratified in 1791 to prohibit cruel and unusual punishment at a time when flogging, whipping and branding were widely perceived as acceptable punishments. Yet the Supreme Court has stated that the right must be interpreted by reference to "the evolving standards of a maturing society". (26) On that basis, it has outlawed a panoply of punishments that would have found few opponents in the late eighteenth century. An ability to move with the times, and to adapt to changed understandings of respect and dignity, is surely a hallmark of an effective, legitimate court, recognising that reasonable people will often disagree as to where a particular line is to be drawn.

One well-known human rights case illustrates the point. Jeffrey Dudgeon was a shipping clerk in Belfast who, in 1976, brought a case against the UK to the Strasbourg Court. Mr Dudgeon happened to be gay, and in Northern Ireland this was a problem: legislation dating back to the middle of the 19th century made it a criminal offence for consenting adult males to engage in sexual contact. Mr Dudgeon challenged those laws, which he said caused him fear, suffering and distress. The UK Government defended them on the grounds that they were necessary for "the protection of morals" and for "the protection of the rights and freedoms of others" in Northern Ireland. Across the Irish Sea, in England and Wales, the laws restricting homosexual conduct had since been relaxed, but the UK government argued that restrictions were needed in Northern Ireland to avoid damaging the moral fabric of Northern Irish society.

The argument put by the UK Government obtained the support of the Irish Judge, Judge Walsh, in a judgment given in 1981. "The fact that a

(26) *Trop v Dulles*, 356 I.S. 86 (1958), per Warren CJ.

person consents to take part in the commission of homosexual acts is not proof that such person is sexually orientated by nature in that direction”, he wrote. That is one view, I suppose, but it was not the view that prevailed. The majority of the Strasbourg Court disagreed with the UK Government, observing that in the “great majority” of European States it was no longer considered appropriate to treat homosexual conduct as a matter for the criminal law. (27) The Court ruled that the law applicable in Northern Ireland breached Mr Dudgeon’s right to respect for private life under Article 8 of the Convention.

A second common complaint concerns the supposedly subordinate relationship between UK Courts and the Strasbourg court that is newly established by the 1998 Act. Yet the Human Rights Act does *not* compel the UK courts to blindly follow the Strasbourg court, and the UK courts have not taken it upon themselves to act in such a manner. Indeed, the UK courts have not hesitated to tell Strasbourg when they think it has fallen into error. Two recent cases about hearsay evidence demonstrate the point. In 2009 the European Court of Human Rights ruled that the right to a fair trial is invariably breached whenever a criminal conviction is based solely or decisively on hearsay evidence. (28) The UK courts disagreed. The Court of Appeal and then the Supreme Court delivered robust judgments that challenged the reasoning of the Strasbourg Court. (29) The Grand Chamber re-examined the case and took heed of the UK courts’ critique. The President of the Strasbourg Court at the time was Sir Nicholas Bratza, a highly respected UK judge. Amongst those on the Strasbourg Court who were persuaded to change their minds, his judgment heralded the case as “a good example of the judicial dialogue between national courts and the European Court”. (30)

A third criticism of the Strasbourg Court takes issue with the very notion of human rights law, as though it taints the purity of the common law, a complex and constantly evolving body of rights and rules created over centuries by the English courts. Insofar as this is used to attack the Human Rights Act, the objection overlooks the fact that the English common law has a rich history of protecting certain fundamental rights.

The common law has long proved to be a bountiful source of fundamental rights. Freedom of expression, the right to silence and privilege against self-incrimination, the right to a fair hearing before an unbiased tribunal, freedom from arbitrary arrest and warrantless searches, legal professional privilege, open justice and access to court — all are originally creations of the common law. In a 2012 judgment Lord Justice Toulson emphasised that: “The

(27) *Dudgeon v United Kingdom* (1982) 4 EHRR 149, para. 60.

(28) *Al-Khawaja v United Kingdom* (2009) 49 EHRR 1.

(29) *R v Horncastle* [2009] 2 Cr. App. R. 15; [2010] 2 A.C. 373.

(30) *Al-Khawaja v United Kingdom* (2012) 54 EHRR 23, concurring opinion of Judge Bratza, para. 2.

development of the common law did not come to an end with the passing of the Human Rights Act.” (31) Far from neutering the common law, the Human Rights Act has contributed to the evolution of common law rights by bringing an increased focus on fundamental rights and supplying a source of inspiration for the development of long-standing common law doctrines. As a unanimous Supreme Court recently observed: “under the stimulus of the Human Rights Act 1998, the courts have become increasingly conscious of the extent to which the common law reflects fundamental values”. (32)

II. — WHERE WE ARE GOING

I turn to where we are going, a matter on which I have first hand experience. In 2010 the Coalition Government set up a Commission on a Bill of Rights, on which I served until January 2013. I was one of the eight members, four each appointed by the Prime Minister and the then Deputy Prime Minister. The Commission was intended to provide a solution to a split within the coalition government about the future of the Human Rights Act. The Conservatives had given a clear commitment to tearing up the Human Rights Act while their coalition partners, the Liberal Democrats, were strong supporters of the Act.

We didn’t reach a consensus on anything much, beyond the notion that it was best to refer to a UK Bill of Rights, not a British Bill (the “B” word was toxic in various parts of the UK, we learned) and that the subject raised sensitivities, should be addressed gradually, and ought to be addressed in a forum such as a Constitutional Convention that also addressed wider constitutional issues, including devolution. (33) A majority of the Commission supported the idea of a UK Bill of Rights, largely on the grounds that it might foster a greater sense of public ownership. They could not, however, agree on what might be in it, or how such an instrument might relate to the European Convention, on which they were split.

Baroness Kennedy and I were unable to go along with the majority, and wrote a minority report, that was published in full in the *London Review of Books*. (34) We offered three reasons why the Act should remain in force, without tinkering or change.

A first compelling reason for keeping the Human Rights Act is found in the clear response of the British public to the Commission’s consultations (we held two consultations, as our Conservative friends were not happy with

(31) *R (Guardian News and Media Ltd) v City of Westminster Magistrates’ Court* [2013] QB 618.

(32) *Montgomery v Lanarkshire Health Board* [2015] 2 WLR 768.

(33) Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before US*, Vol. 1, paras. 71-77 (2012).

(34) Ph. SANDS and H. KENNEDY, “In Defence of Rights”, *London Review of Books*, 3 January 2013.

the first, but the second the same results). The Commission posed a simple question: “retain or repeal the HRA?” Some 88 per cent of respondents elected to retain. The figure was higher still in response to the question of whether Convention rights should continue to be incorporated in British law — 98 per cent answered yes to this question. The public meetings we held confirmed these results were no aberration. We did not discover a problem with ownership of the Human Rights Act or any sense that it was, as some of our colleagues told us, un-British. There was no support for withdrawal from the Convention, and no groundswell of objection to the Strasbourg Court.

Our second major concern related to devolution. It is not widely known that the Human Rights Act is embedded into the devolution arrangements for Scotland and Wales, or that the Good Friday agreement contains an explicit guarantee that Britain will incorporate the Convention into the law of Northern Ireland. Repealing the Act would unwind those delicate constitutional arrangements, and might create a situation in which different levels of human rights protection would have to be applied in the four nations that make up the United Kingdom. The fundamental rights you have would therefore depend on which part of the United Kingdom you happen to live in.

Our third reason for coming down strongly in favour of keeping the Act concerns the UK’s continued membership of the Convention itself. Repealing the Human Rights Act would not in itself free the UK from its obligations under the Convention: it would merely disempower the UK courts from enforcing those rights. Aggrieved individuals would still have a right to petition the Strasbourg court, with all the additional expense and delay that entails. Judgments of the Strasbourg Court would continue to bind the UK in exactly the same way as they have done since 1953, although the possibility for UK judges to interpret and apply the Convention would go, and with it their ability to influence judgments in Strasbourg.

It seems there is another agenda, and it is UK withdrawal from the Convention. When asked last June to offer a confirmation that the UK would definitively remain a party to the Convention, Mr Cameron conspicuously declined to do so. As with EU membership, he plays with fire. What would the leavers of the ECHR give us instead? What would a British Bill of Rights actually contain? What rights set forth in the Convention would be removed or replaced? We have no idea. We are left to speculate, but not entirely without a basis.

In our work on the Commission one member prepared a draft UK Bill, offering an insight into the kind of approach he has in mind. I refer you to its draft Article 26, which is entitled “Application of the Bill of Rights as regards persons”. Essentially it divides human beings into three categories: Category 1 comprises citizens of the UK, who would enjoy all the rights and freedoms set forth in the Bill; Category 2, citizens of other members of the EU, would only be entitled to those rights to the extent provided

by EU law ; and Category 3, non-UK or EU citizens would only have some rights, although which these were Mr Howe, the drafter, did not feel able to specify. (35)

The proposal speaks for itself. If human rights meant anything, when its modern international formulation emerged in 1945, it was that every human being would have certain minimum irreducible rights, irrespective of his or her origins or background. When draft Article 26 was unveiled I could not help but think back to another period, to a speech given by Hans Frank in 1935 and to the reaction by the diarist Friedrich Reck. I appreciate that it was not the intention, but it will be the consequence, if not in this country then elsewhere.

CONCLUSION

Where then are we ? I fear that the Government is playing a dangerous game. This generation of politicians and newspaper editors has no actual experience of whence we came, and apparently no great sense of history either. One has the sense that many in our government would like to take us back to the perceived idyll of the 1930s, an isolated UK that is stripped of its connections to the continent of Europe, that leaves its own people deprived of rights or the means to enforce them before our courts, that fawns to the “golden era” of cash injections from a country that has scant regard for the rights of individuals.

The European Convention reflected a deal, a compact between countries that claim to share a sense of values as to the liberty and dignity of the human person. Maxwell Fyfe called it “a simple and safe insurance policy”. (36) In return for the shedding of some sovereignty, we obtain the right to hold others to account. The price paid in this country has not been a great one. Our common law has retained its essential vibrancy and values, the essence of which is exported through the Convention and its interpretation by our courts. There has been no avalanche of cases, no transformation of a cherished approach, no implosion of essential parliamentary sovereignty, no dictatorship of the judges. Where Strasbourg has spoken against the UK, it has generally been right to do so.

Talk about repeal of the HRA and withdrawal from the Convention fuel the discontent of others, and undermines the UK’s international standing and its influence on the European stage. Talk of repeal and withdrawal offers succor to regimes with poor human rights records, for whom the Convention provides one of the few meaningful external constraints and effective accountability mechanisms. It threatens profound consequences for the pro-

(35) M. HOWE QC, “A UK Bill of Rights”, *ibid.*, 192 at 214.

(36) *The Memoirs of Earl Kilmuir*, Weidenfeld and Nicolson, 1964, 180.

tection of human rights in this country, for the United Kingdom's engagement with Europe, for the United Kingdom, and for international law itself, which is only at the early stages of reinventing itself into a system that can look after the needs of individuals not states.