

## A brief history of civil liberties in the United Kingdom

Civil liberties in the United Kingdom have a long and formative history. This is usually considered to have begun with the English legal charter the Magna Carta of 1215, following its predecessor the English Charter of Liberties, a landmark document in English legal history. Judicial development of civil liberties in the English common law peaked in 17th and 18th centuries, while two revolutions secured Parliamentary sovereignty over the King and judges. During the 19th century, working class people struggled to win the right to vote and join trade unions. Parliament responded and judicial attitudes to universal suffrage and liberties altered with the onset of the first and second world wars. Since then, the United Kingdom's relationship to civil liberties has been mediated through its membership of the European Convention on Human Rights which became directly applicable in UK law with the enactment of the Human Rights Act 1998.

The relationship between human rights and civil liberties is often seen as two sides of the same coin. A right is something you may demand of someone, while a liberty is freedom from interference by another in your presumed rights. However, human rights are broader. In the numerous documents around the world, they involve more substantive moral assertions on what is necessary, for instance, for "life, liberty and the pursuit of happiness", "to develop one's personality to the fullest potential" or "protect inviolable dignity". "Civil liberties" are certainly that, but they are distinctly *civil*, and relate to participation in public life. As Professor Conor Gearty writes,

"civil liberties is another name for the political freedoms that we must have available to us all if it to be true to say of us that we live in a society that adheres to the principle of representative, or democratic, government."

In other words, civil liberties are the "rights" or "freedoms" which underpin democracy. This usually means the right to vote, the right to life, the prohibition on torture, security of the person, the right to personal liberty and due process of law, freedom of expression and freedom of association.



The Bill of Rights 1689 secured the sovereignty of Parliament over the King and courts, laying the foundations of representative democracy.

- Magna Carta of 1215, asserting the writ of habeas corpus, trial by one's peers, representation of nobility for taxation and a ban on retroactive punishment.
- *Dr. Bonham's Case* (1610) per Coke CJ that the judiciary could strike down Acts of Parliament, according to "common right and reason". This is effectively what the Americans followed in their Constitution with a case called *Marbury v. Madison* (1803)..
- Habeas Corpus Act 1679 → *fair trial*
- Bill of Rights 1689, the result of the Glorious Revolution securing Parliamentary Sovereignty over the King and Courts

- *Ashby v White* (1703) 1 Sm LC (13th Edn) 253 right to vote cannot be interfered with by a public official
- *Entick v Carrington* (1765) right against arbitrary search and seizure;
- *R v Knowles, ex parte Somersett* (1772) 20 State Tr 1; (1772) Lofft 1, abolition of slavery, for "the air of England has long been too pure for a slave, and every man is free who breathes it."
- Slave Trade Act 1807, abolished slave trade in British Empire, following William Wilberforce led Parliamentary campaign
- Great Reform Act of 1832, enfranchising slightly more property holders, rationalising the borough and county seat system.
- Second Reform Act of 1867, loosening the property qualification, extending the franchise to around a third of men.
- Conspiracy and Protection of Property Act 1875, decriminalising trade union activity (freedom of association).
- Trade Disputes Act 1906, removing liability in tort for trade unions going on strike, after the House of Lords in a series of cases invented ways to bankrupt unions for any action
- Representation of the People Act 1918, allowing universal male suffrage for over 21s, and the vote for women over 30.
- Representation of the People Act 1928, universal suffrage over 21.
- The European Convention on Human Rights was drafted by Sir David Maxwell-Fyfe, at the time, their Chairman of the Council of Europe's legal and administrative division. Clement Attlee's accession to the Convention in 1950.
- The last instance of capital punishment in the United Kingdom was carried out in 1964. It was formally abolished under the Human Rights Act 1998.

## Conservatives

Police and Criminal Evidence Act 1984, allowed four days detention without trial (previously it was 24 hours).

- *CCSU v Minister for the Civil Service* [1985] AC 374, where GCHQ members were banned by Margaret Thatcher (also the Minister for the Civil Service) from belonging to unions. The House of Lords held that the Royal prerogative was subject to judicial review. Banning unions was within the discretion of the Minister.
- *Malone v United Kingdom* (1984) 7 EHRR 14, said that UK allowing the phone tapping is in breach of its obligations under the ECHR, because there was no law that did 'indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities.'
- Interception of Communications Act 1985, the government's response to the ruling, allowing any phone tapping.

Trade union rights ~~lessen~~ Thatcher's ability to impose economic ~~power~~ policy - privatisation.

European Court of Human Rights  
NOT PART of the EU.

- Public Order Act 1986, passed in the context of widespread industrial disputes, particularly the Miners' Strike, Part II limited public processions and demonstrations by requiring 6 days advance notice to be given to the police.
- The Brighton Hotel Bombing by the Provisional Irish Republican Army to coincide with the Conservative Party conference preceded a sterner approach to security
- R v Secretary of State for the Home Department ex parte Brind* [1991] 1 AC 696 concerning the dubbing of voices by any IRA members on television. Anthony Lester QC argued that implied in the Home Secretary's discretion must be an adherence to the ECHR's norms on free expression. This was squarely rejected by the House of Lords (Lord Ackner leading the judgment), and on appeal
- Trade Union and Labour Relations (Consolidation) Act 1992, codified the many restrictions and formalities placed on trade union activity and the right to strike. The Intelligence Services Act 1994 and the Police Act 1997, included powers to intercept communications

## New Labour

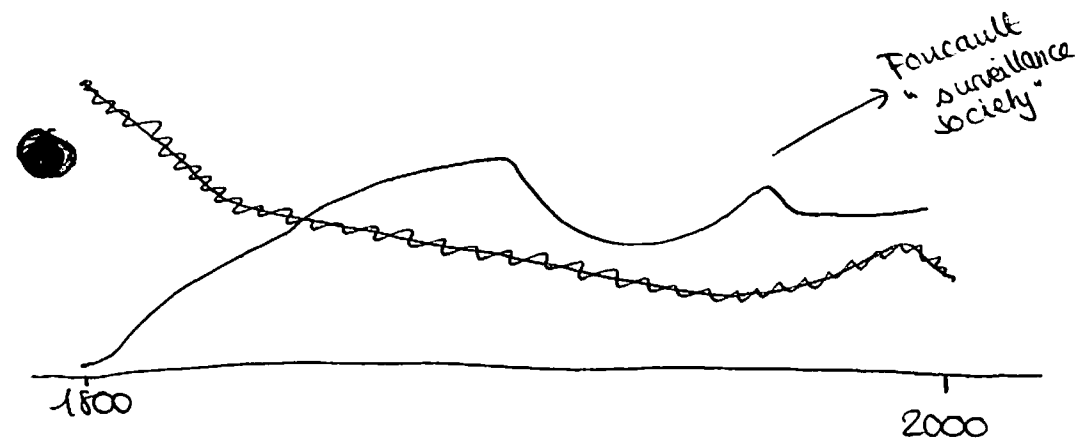
- Human Rights Act 1998, for the first time this allowed direct appeal in British courts to be made on the basis of the European Convention on Human Rights. It preserves Parliamentary sovereignty, because courts may not strike down democratically decided laws, they can only issue a "declaration of incompatibility" *Labour move to the right...*
- Terrorism Act 2000, extended the limit to 7 days detention without charge for terrorist suspects. It also allows terrorist organisations to be banned. Sixty groups have to date been outlawed.
- Regulation of Investigatory Powers Act 2000, allows the government full surveillance powers of all kinds of communication. The current rate is 30 warrants being issued a week. In the 15 months from July 2005 to October 2006, 2407 warrants were issued.
- Serious Organised Crime and Police Act 2005, created an offence of inciting religious hatred, an advanced notification scheme for protests up to 1 kilometre from Parliament. cf *Blum v Director for Public Prosecutions*.
- Anti-Terrorism Crime and Security Act 2001, in response to the destruction of the NYC World Trade Center on 9/11, the government passed legislation allowing indefinite detention without trial for non-British nationals suspected of committing terrorist offences, but without enough evidence for an actual trial (cf. Magna Carta, Habeas Corpus Act 1679).
- Criminal Justice Act 2003, abrogated double jeopardy in cases with "new and compelling evidence".
- A and Others v Secretary of State for the Home Department* [2004] UKHL 17, the majority of the House of Lords decided that the detention without trial under the ATCSA 2001 was discriminatory to non-British nationals, and therefore incompatible under Art.14 ECHR. A declaration of incompatibility was issued under s.4
- Prevention of Terrorism Act 2005, the government in response to A's case passed this allows the Home Secretary to impose control orders on any British citizen. Anybody suspected of terrorist related activities by the Home Secretary, but without any kind of trial,

can be electronically tagged, monitored, be restricted from making phone calls, using the internet, be banned from certain kinds of work, can be restricted from going certain places, have one's passport revoked and be under a duty to report to the police. The control order system was held disproportionate in *Secretary of State for the Home Department v JJ* [2007] UKHL 45. The system was declared incompatible, because there was no derogation. However Lord Brown stated that if a suspect was left with eight hours' liberty a day, then it would have been acceptable.

- Terrorism Act 2006, following the bombings in London on the 7th of July, this legislation allows for people suspected of terrorist offences to be detained without charge for up to 28 days. The Criminal Justice Act 2003 had extended the time to 14 days. The government had initially proposed a limit of 90 days, saying this was on the recommendation of the police, and citing support from opinion polls. Opposition among MPs saw the first defeat for the Blair government; the Conservative amendment of 28 days detention without charge being accepted. The act also created a new offence of "glorifying terrorism".
- Austin v Metropolitan Police Commissioner* [2007] EWCA Civ 989, Court of Appeal rejects a charge of false imprisonment and an Art.5 ECHR claim for police holding May Day protestors in Oxford Circus in 2001.

## Questions

- What have been the trends in the extension or reversal of civil liberties in the UK? (give examples) *freedom with help to be free (welfare state etc)* *complete absence of rules*
- What caused changes in direction (give examples)



Greater the number of statute laws, less power for judges to protect our civil liberties.