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HUMAN RIGHTS ACT REFORM: A MODERN BILL OF RIGHTS

The Catholic Union of Great Britain is a organisation representing the views of the Catholic laity. It was founded in 1870 and its current President is Sir Edward Leigh MP. It has consultative status with the Catholic Bishops' Conference of England and Wales.

SUMMARY

Catholics support human rights as universal, inviolable and inalienable because they reflect a concept of justice rooted in the inherent dignity of the human person. The fundamental character of human rights is linked to a core content of universally recognised rights. It is important to protect that core content and not to allow the concept of human rights to be diluted by a tendency to characterise other social policy preferences as human rights and to seek recognition for those preferences in international organisations or in international or national courts. The concept of rights is also inextricably linked with responsibilities.

Insofar as reform of the Human Rights Act would achieve better understanding of the nature of fundamental human rights then it is worth considering provided that it does not inhibit the ability to bring proper challenges to alleged breaches of those rights.

DETAIL

In the Compendium of the Social Doctrine of the Catholic Church (para. 153), it is said that “the roots of human rights are to be found in the dignity that belongs to every human being” and “the ultimate source of human rights is not found in the mere will of human beings, in the reality of the State, in public powers, but in man himself and in God his Creator”. Moreover these rights are described as “universal, inviolable and inalienable”. *Universal* because they are present in all human beings, without exception of time, place or subject. *Inviolable* insofar as “they are inherent in the human person and in human dignity”. *Inalienable* insofar as no one can legitimately deprive another person, whoever they may be, of these rights, since this would do violence to their nature.

Pope John Paul II defined the 1948 Universal Declaration of Human Rights as “a true milestone on the path of humanity’s moral progress” and that Declaration has inspired a large number of international and regional human rights treaties and national laws, sometimes with courts to interpret and enforce them. The international human rights movement has been an outstanding success and “human rights” has grown as the common language and the ethical substratum of international relations.

However, all of these statements depend for their truth on a common understanding of what human rights really consist of and there is a risk of undermining the value a right is intended to uphold when it is divorced from its fundamental basis. So it is of grave concern when ideologies of particular individuals attempt to rewrite human rights or create new ones. The very success of the concept of “human rights” has made it appear as a tempting vehicle on which to load a wide variety of preferences in social policy which, whatever their merits may be, do not constitute fundamental human rights. As Archbishop Caccia said on 1 October 2021 at the UN Third Committee, *“the Holy See is therefore deeply concerned over persistent efforts to assert novel concepts as rights that do*

The Catholic Union of Great Britain: The Voice of Catholics in Public Life

President: Sir Edward Leigh, MP

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not enjoy international consensus and often lack even common definitions. Such an approach does not advance human rights but politicises and dilutes them, privileging the strong over the weak and promoting ideology over the truth”.

We therefore share for the reasons set out above the concern expressed in the consultation paper about the expansion and inflation of human rights, especially an expansion which threatens to sever the link between human rights and human dignity. Examples of such threats include moral issues relating to the beginning and the end of life, and also the nature of marriage and family life.

We also share the understanding that corresponding to human rights are duties and responsibilities – to one another, to our families, and to the larger society. Discussion of “responsibilities” has a mixed history in human rights discourse but it is an integral part of the picture and can be relevant where the application of human rights law would lead to a manifestly unjust result.

The concerns outlined above apply to the way that both national and international courts interpret and apply human rights law. However there are factors which make the risk of expanding jurisdiction and of diluting the fundamental character of human rights a particular temptation for international bodies such as the European Court of Human Rights. These factors include the method of election, the wide variety of experience (not always judicial) of the judges and the tendency to interpret a widespread practice in national law as determining the content of a human rights norm. While courts have the legitimate task of interpreting the law, the proper process for changing a treaty such as the European Convention on Human Rights is through an amending protocol. Such protocols have added new rights over the years and a protocol could be the means of sorting out the complex series of problems relating to the extra-territorial application of the Convention and its interplay with other bodies of law.

This consultation focuses on possible reforms of the Human Rights Act 1998 and discusses the balance of authority between the Strasbourg Court and the UK Supreme Court. The concerns expressed above apply equally to the judicial philosophy and decisions of national courts as they do to international courts, and would apply whether we retain the Human Rights Act or enact a new Bill of Rights. Our concerns apply also whether or not the balance of power between the UK courts and Parliament is adjusted as discussed in the consultation. It remains crucial to distinguish between fundamental human rights and matters of political, social or economic policy. That distinction can be eroded in the parliamentary chamber just as easily as it can in adversarial legal proceedings.

None of the above should be taken as casting doubt on the importance of there being swift and effective remedies for alleged breaches of human rights law, indeed the right to an effective remedy is itself a human right (Article 13 ECHR). Any reform of the Human Rights Act which seeks to achieve the various policy aims set out in the consultation should not inhibit the ability to launch solidly based legal challenges to alleged breaches of the human rights protected by law.

We do not at this stage propose to make detailed responses to the particular questions posed in the consultation but reserve the right to do so as and when further proposals are published.

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