Reimagining Dualism: The Potential of a British Bill of Rights

1. INTRODUCTION

The concept of dualism is an immediate point of contention when discussing the relationship between national and international law. This tension and its impact are perhaps best exemplified in the complex legal relationship between the United Kingdom (UK) and Europe, a relationship which has been marked by a perpetual balancing act between upholding domestic autonomy and conforming to international obligations.

Since the European Convention on Human Rights (ECHR) was incorporated into domestic law via the Human Rights Act 1998 (HRA), there has been a continual interplay between the legislation of the UK and that of European bodies. This interplay is framed by the principle of dualism, whereby international and domestic law are viewed as separate legal systems. While the UK recognises the ECHR, it maintains a 'dualist' system where international treaties do not have direct effect domestically unless implemented by national legislation. However, the 2016 Brexit referendum and the subsequent departure of the UK from the European Union has heightened these inherent tensions, revealing stark disparities in legal interpretations and protections between the two jurisdictions. The intricacies of this unique dynamic merit an exploration of the prospect of a British Bill of Rights, a legal instrument that has the potential to recalibrate and redefine this relationship.

This essay aims to critically examine the dualist underpinnings of the UK-European law relationship, while also exploring the prospect of British Bill of Rights as a potential conduit for reimagination and resolution. Whilst the British government has formally dropped the

British Bill of Rights Bill from its legislative agenda, it has remained in central discourse in British politics and featured in the Government's manifesto since 2010. Accordingly, the following will investigate whether this could present an innovative way to navigate the complex and often adversarial interaction between the domestic and international legal realms, ultimately considering if a British Bill of Rights could serve as a blueprint for a new model of dualism.

2. HISTORY OF DUALISM AND TENSION BETWEEN UK & EUROPE

The relationship between the United Kingdom and Europe has always been characterised by a distinct tension between the notions of sovereignty and interdependence. In the post-war era, a wave of idealism led to the establishment of the ECHR in 1950, aiming to prevent the atrocities of World War II from happening again by enshrining a set of fundamental human rights to be upheld by member states. As a signatory, the UK has been influenced by the ECHR, shaping its human rights jurisprudence. The HRA marked a significant milestone in this relationship, incorporating the rights from the ECHR into domestic law. This allowed UK citizens to bring cases related to these rights in domestic courts, rather than having to appeal to the ECtHR in Strasbourg. While this marks a significant incorporation of international law into the UK's legal system, it is also representative of the dualist structure. The UK courts are required to take into account ECHR jurisprudence but are not bound by it, reflecting the enduring separation between domestic and international law. However, the result of the Brexit referendum in 2016 marked a seismic shift in the relationship between UK and European law. The departure from the European Union meant that the UK disentangled itself from the direct jurisdiction of the Court of Justice of the European Union (CJEU), creating further

distance between UK law and European law. This monumental change amplified the existing tensions between these two legal systems and opened up new questions about the future of human rights protection in the UK, the role of the ECHR, and the possibility of a unique British Bill of Rights.

One of the most evident points of tension in the relationship between UK and European law is the fundamental distinction between the dualist legal system of the UK and the monist system followed by many European countries. As previously discussed, the UK maintains a strict separation between international law, including ECHR jurisprudence, and domestic law. It requires an Act of Parliament to incorporate international law into domestic law, and even then, UK courts are not bound by international law, but merely take it into account. This contrasts starkly with the monist approach; wherein international law is considered part of domestic law and directly enforceable in domestic courts.

Furthermore, the ECHR and the Strasbourg Court have been the epicentre of much contention. Critics argue that these bodies undermine UK sovereignty and impose an unwelcome form of legal colonialism. Controversial cases, such as the Abu Qatada case[1] where the ECtHR ruled against his deportation, have heightened the sense of the ECtHR as an interfering foreign body in domestic affairs. This fuels the argument for a British Bill of Rights that better reflects the country's unique legal traditions and cultural values.

[1] Othman (Abu Qatada) v. The United Kingdom. Application no. 8139/09. European Court of Human Rights, 2012.

The Brexit decision further complicated this relationship. Leaving the European Union means the UK is no longer subject to the direct jurisdiction of the CJEU. However, the Brexit agreement included various provisions for continued compliance with certain areas of European law, creating potential conflicts and uncertainties. These include areas such as workers' rights, environmental standards, and competition law, amongst others.

Moreover, the departure from the EU has also raised questions about the future of human rights in the UK. Although Brexit does not directly affect the UK's relationship with the ECHR, it has rekindled discussions around the possibility of repealing the HRA or creating a separate British Bill of Rights. Proponents of these changes argue that it would allow the UK to assert its legal autonomy and craft human rights protections more tailored to its cultural and social context.

These points of tension all stem from the inherent dualism in the UK's legal system and its relationship with European law. They illustrate the complexity and challenges of navigating these two separate but intertwined legal systems, and the constant tug-of-war between upholding international commitments and preserving domestic legal sovereignty.

3. PROSPECT OF A BRITISH BILL OF RIGHTS

The concept of a British Bill of Rights isn't new, but the complexities and unique characteristics of the UK's legal system demand careful consideration. A thoughtful review of the British legal landscape reveals numerous cases which reflect the inherent tension between UK and European laws.

One of the most illustrative examples is the case of *Hirst v United Kingdom (No 2*[2]*)*. Here, the ECtHR ruled that the UK's blanket ban on prisoners voting was a violation of the ECHR. The UK government's resistance to implementing the ruling raised questions about the supremacy and legitimacy of the ECtHR in British law. In a British Bill of Rights, the UK could potentially address this contentious issue in a way that aligns with its societal norms and legal traditions. The *Hirst* case demonstrates that different countries have varied interpretations of rights, and a British Bill of Rights could provide a platform for the UK to articulate and protect its own understanding of fundamental rights. However, the creation of a British Bill of Rights is not without its challenges. The Belmarsh case[3] can be used to illustrate potential pitfalls. In this case, the UK's highest court relied on the HRA to rule that indefinite detention without trial was incompatible with the ECHR. This demonstrates how the HRA can provide a powerful tool for upholding human rights, and any new bill of rights would need to provide at least an equivalent level of protection to prevent a dilution of rights. Further complexities arise when considering the devolved nations. *The AXA General Insurance* case[4] is pertinent here, in which the Supreme Court found that acts of the Scottish Parliament could be reviewed for their compatibility with ECHR rights. This reflects the nuanced interplay between UK-wide and devolved human rights protections, which would need careful navigation in the creation of a British Bill of Rights.

On the 27th of June 2023, the UK government announced that it had formally withdrawn the Bill of Rights Bill. Notwithstanding, the governments published report in response the Human

[2] Hirst v United Kingdom (No 2). Application no. 74025/01. European Court of Human Rights, 2005.
[3] A and others v Secretary of State for the Home Department [2004] UKHL 56.
[4] AXA General Insurance Ltd and others v The Lord Advocate & others [2011] UKSC 46.

Rights Committee elucidates the arguments pursued by successive Conservative governments in furthering the prospects of a British Bill of Rights. The following analysis will consider the prospect of a British Bill of Rights Bill and the potential in addressing the tension inextricable with the dualist system.

4. REASSESSING THE "MARGIN OF APPRECIATION

In advocating for an overhaul of the human rights framework, the Government underscored the need for renewed scrutiny. However, it is vital to acknowledge that the ECtHR has consistently accommodated the particularities of each member country's context in its verdicts, as demonstrated through precedent-setting cases. The landmark case of *Handyside v. United Kingdom*[5] demonstrated such, wherein Richard Handyside, a publisher, was indicted under the UK's Obscene Publications Act 1959 for the distribution of a contentious schoolbook classified as an "obscene article." In defending himself, Handyside cited an infringement on his Article 10 right to freedom of expression under the ECHR. Contrary to Handyside's argument, the ECtHR ruled that there was no contravention of Article 10. The Court delineated that the freedom of expression granted by Article 10 is not without its "duties and responsibilities," and it can be lawfully restricted provided such constraints are "prescribed by law and are necessary in a democratic society.". Of utmost importance in this verdict was the Court's endorsement of the "margin of appreciation" doctrine, acknowledging that signatory states have a certain degree of discretion in interpreting and implementing the Convention in alignment with their specific local contexts, societal norms, and values. By desiring to re-evaluate the human rights framework, the Government presupposes that the current system, inclusive of ECtHR jurisprudence, fails to take into account national peculiarities. Yet, the Handyside case, along

[5] Handyside v. United Kingdom (1976) 1 EHRR 737

with others such as *Leyla Sahin v. Turkey*[6] and *Dudgeon v. United Kingdom*[7], emphatically demonstrates the ECtHR's keen understanding of, and adaptability to, the unique circumstances, traditions, and cultures of each nation in its jurisprudence. Such denotes that the UK's distinctive values and legal principles are already integral to the adjudication of human rights cases involving the country at the ECtHR. Consequently, the "fresh look" that the Government urged in its consultation and response to the Human Rights Committee[8] could result in an unwarranted duplication of existing mechanisms, rather than offering an innovative or better-suited solution for the perceived inadequacies within the existing human rights framework.

5. INDIVIDUAL RIGHTS, NATIONAL SECURITY, AND GOVERNANCE

Advocates of a British Bill of Rights often argue that it could help restore a "common sense" equilibrium to the justice system, striking an appropriate balance between individual rights, national security, and effective governance. Such is exemplified in the Belmarsh case, where the House of Lords ruled that detaining foreign terror suspects indefinitely, without trial, was incongruous with the ECHR. This detention protocol was enacted under the Anti-terrorism, Crime and Security Act 2001, a legislative response to the September 11 terrorist attacks. The Law Lords determined that the indefinite detention of foreigners, but not British citizens, constituted a violation of the right to liberty (Article 5) and the right to non-discrimination

[6] *Şahin v Turkey, Admissibility and Merits, App No 44774/98, ECHR 2005-XI, [2005] ECHR 819, (2007) 44 EHRR 5, (2006) 45 ILM 436, [2006] ELR 73, 19 BHRC 590, IHRL 3279 (ECHR 2005), 10th November 2005, European Court of Human Rights [ECHR]; Grand Chamber [ECHR].*

[7] *Dudgeon v. United Kingdom, Appl. No. 7525/76, Council of Europe: European Court of Human Rights, 22 October 1981.*

[8] https://www.gov.uk/government/publications/response-to-the-jchrs-bill-of-rights-bill-report/government-response-to-the-joint-committee-on-human-rights-legislative-scrutiny-bill-of-rights-bill

(Article 14). While acknowledging the state's duty to uphold national security, they stressed the importance of doing so in a manner respectful of the rule of law and fundamental human rights. This case underscores the current human rights framework's capacity to balance individual rights with national security considerations. The judiciary, acting under the Human Rights Act, can ensure that the executive does not infringe upon individual liberties, even in the interest of national security. The suggestion that a Bill of Rights would "restore common sense" to the justice system implies a deficit of practical judgment under the current Human Rights Act. Yet, the UK courts' jurisprudence in human rights cases reflects a thoughtful and pragmatic approach, taking into account societal context, the rights at stake, and the necessity of any restrictions on these rights.

Another useful case is *R (on the application of Begum) v Headteacher and Governors of Denbigh High School (2006)*[9]. Here, the House of Lords ruled that a school's decision to prevent a student from wearing a certain form of Islamic dress did not infringe upon her right to freedom of religion (Article 9 of the ECHR). In reaching this decision, the court balanced the student's religious expression rights against the school's commitment to fostering inclusion and cohesion, arriving at a pragmatic solution emblematic of a sensible application of human rights.

Considering such, the existing human rights framework, as interpreted by UK courts, already strikes a thoughtful and "common sense" balance between individual rights and societal necessities, including the imperatives of national security and effective governance.

[9] [2006] UKHL 15.

Accordingly, the contention that a British Bill of Rights is needed to re-establish such balance may not be as substantiated as the Government contends.

6. MECHANISMS FOR DEMOCRATIC DECISION-MAKING

The existing human rights framework in the UK, encompassing the HRA and the ECHR, already substantively contributes to the democratic process. It fosters an essential dialogue between domestic courts, the Parliament, and the ECtHR), thereby promoting democratic decision-making. The Hirst case[10] is a key example, in which the ECtHR's judgement on the UK's blanket ban on prisoner voting rights instigated extensive domestic dialogue and eventual policy change. Yet, it also highlighted Parliament's sovereign right to make decisions according to its discretion, underlining the balance between international obligations and domestic prerogative. The case of *R (Nicklinson) v Ministry of Justice (2014)*[11] further showcased this dynamic interplay between the judiciary and the legislature. Although the UK Supreme Court upheld existing law, it explicitly emphasised its "constitutional authority" to declare a law incompatible with the ECHR should the Parliament fail to consider the issue adequately. This articulates the judiciary's role in prompting legislative reconsideration on human rights issues, demonstrating the effective communication facilitated by the current framework. R (on the application of UNISON) v Lord Chancellor (2017)[12] provides yet another instance of this synergy in action. Using both domestic common law principles and the ECHR, the UK Supreme Court struck down employment tribunal fees as they restricted access to justice. This

[10] Hirst v United Kingdom (No 2) [2005] ECHR 681
[11] [2014] UKSC 38
[12] [2017] UKSC 51

underscores the courts' capacity to hold the government accountable and protect fundamental rights using the existing ECHR provisions.

These cases illuminate the significant role the current human rights framework plays in bolstering democratic decision-making. Therefore, any changes proposed in the new Bill of Rights must be scrutinised to ensure they do not undermine these established and effective mechanisms. The potential of a British Bill of Rights serves to compromise the intricate balance between international human rights obligations and domestic democratic decision-making.

7. PROPOSED PERMISSION STAGE

The government suggested the introduction of a permission stage before a human rights claim can be heard in court, broadly mirroring the Strasbourg Court's own admissibility criteria. This phase would require claimants to prove they have suffered a 'significant disadvantage' to proceed with their case. However, the idea of what constitutes a 'significant disadvantage' is somewhat nebulous. In the Strasbourg Court's context, the concept of 'significant disadvantage' has been a subject of debate in the jurisprudence of the European Court of Human Rights, as illustrated by the case of *Ezeh and Connors v the United Kingdom*[13]. The court in this case interpreted 'significant disadvantage' under Article 35(3)(b) of the ECHR as implying a minimum level of severity, measured in light of factors such as the intensity and duration of the suffering or harm. Given this ruling, there are concerns about how this term, if used domestically, could lead to subjective interpretations and inconsistencies in legal

[13] [2003] 36 EHRR 2

decisions. From the perspective of access to justice, scholars like Legg in 'The Margin of Appreciation in International Human Rights Law'[14] argue that the introduction of an additional permission stage may inadvertently raise the bar for human rights claimants, effectively limiting access to justice for some individuals. This view aligns with the criticisms presented by Professor Merris Amos in 'Human Rights Law'[15], who suggests that this could be a barrier for those with legitimate, but not immediately apparent or severe, claims.

Furthermore, academic literature also highlights the risk of a potential chilling effect. Shklar's 'Legalism' highlights that one of the potential drawbacks of making litigation harder to initiate is that it can deter individuals from bringing forward genuine human rights claims. Thus, it is feared that the introduction of the permission stage may not just screen out 'trivial' cases, but could also unintentionally discourage potential claimants from seeking redress. Another concern is that this permission stage might potentially contradict the principle of 'effective remedy' entrenched in Article 13 of the European Convention on Human Rights (ECHR). Case law such as Klass and Others v Germany (1978)[16] establishes the importance of accessible and effective remedies in national law. If the proposed permission stage makes it unduly difficult for individuals to bring a claim, this could be seen as violating the principle of effective remedy.

To conclude, while the intention of the government to avoid undermining public confidence in human rights is noteworthy, the addition of a permission stage is fraught with complications

[14] Legg, A. (2012). 'The Margin of Appreciation in International Human Rights Law: Deference and Proportionality'. Oxford: Oxford University Press.
[15] Amos, M. (2021). 'Human Rights Law'. Hart Publishing
[16] [1978] ECHR 5 (06 September 1978).

and potential negative consequences. The interpretation of 'significant disadvantage', issues of access to justice, potential chilling effects, and concerns about the principle of 'effective remedy' all contribute to the critique of this proposal.

8. CONSIDERATION OF CLAIMANT'S BEHAVIOUR

The government's proposal under the British Bill of Rights for courts to consider the behaviour of the claimant in human rights damages claims raises significant concerns that undermine the universal and inviolable nature of human rights. This approach, as outlined in the government's response to JCHR recommendations, implies a shift towards a contingent understanding of rights, implying that they exist alongside responsibilities, an approach that could potentially compromise the universality of human rights. As Donnelly suggests in 'Universal Human Rights in Theory and Practice'[17], the principle of universality is fundamental to human rights. Moreover, Professor Gearty, in 'Can Human Rights Survive?'[18], reiterates the view that human rights, unlike civil rights, cannot be forfeited by behaviour. In effect, the government's proposal appears to blur the line between civil and human rights. For example, the European Court of Human Rights, in Saadi v Italy (2008)[19], affirmed the inviolability of rights, regardless of an individual's behaviour, even in the context of national security.

Furthermore, the proposed provision's emphasis on the claimant's behaviour overlooks the complexity of victimhood. As Conaghan discusses in 'Law and Gender'[20], behaviours that may

[17] Donnelly, J. (2013). 'Universal Human Rights in Theory and Practice'. Ithaca: Cornell University Press
[18] Gearty, C. (2006). 'Can Human Rights Survive?'. Cambridge: Cambridge University Press.

[19] [2008] ECHR 179 (28 February 2008).
[20] Conaghan, J. (2013). 'Law and Gender'. Oxford: Oxford University Press.

be viewed as negative are often coping mechanisms developed by victims of severe human rights abuses. Consequently, this perspective may inadvertently penalise victims reacting to trauma or duress. Another problematic aspect is the risk of bias and discrimination, as Aileen McColgan observes in 'Justifying Discrimination Law'. Evaluating 'behaviour' is a subjective process that could easily be influenced by societal prejudices, thus possibly discriminating against certain groups[21].

Thus, the proposed British Bill of Rights, with its provision for the consideration of claimant behaviour in determining damages, reveals a fundamental tension with the traditional understanding of human rights as universal and inviolable. This dissonance reinforces the adversarial dynamic between the UK and the broader European human rights framework, underscoring the need for a more nuanced approach that better respects the foundational principles of human rights law.

9. INTERPLAY WITH THE STRASBOURG COURT

The proposed British Bill of Rights, in attempting to define and confine the role of the Strasbourg Court within UK jurisprudence, underscores the complex interaction between the domestic and international legal orders. The UK government seeks to 'rebalance' this relationship, evidenced by their intent to limit the influence of Strasbourg's interim measures under Clause 24. However, this position, as Professor Amos contends in 'The Relationship Between the UK Courts and Strasbourg'[22], risks undermining the complementary nature of the two jurisdictions. Under the principle of subsidiarity, the Strasbourg Court, as outlined in

[21] McColgan, A. (2022). 'Justifying Discrimination Law'. Oxford: Oxford University Press
[22] Amos, M. (2021). 'Human Rights Law'. Hart Publishing.

cases such as *Bosphorus v. Ireland (2005)*[23], typically gives considerable latitude to domestic authorities to interpret and apply Convention rights. This cooperative relationship, as observed by Lord Neuberger in his lecture 'Who are the Masters Now?'[24], constitutes a 'dialogue' rather than a hierarchical relationship. As such, the proposed legislation's move to distance the UK courts from Strasbourg challenges this harmonious interaction and threatens to disrupt the delicate balance of the dualistic system.

Professor Helen Fenwick, in her work 'Civil Liberties & Human Rights', emphasises that the domestic courts' ability to consider the Strasbourg Court's judgments is a critical element of the current dualistic system under the Human Rights Act 1998. For instance, in the landmark case of *R (Ullah) v Special Adjudicator (2004)*, Lord Bingham declared that UK courts should follow any clear and constant jurisprudence of the Strasbourg Court. This illustrates the symbiotic relationship between UK courts and the Strasbourg Court, which is integral to maintaining consistency in human rights jurisprudence across Europe. The government's intent to diminish the influence of the Strasbourg Court could risk alienating the UK from the broader European human rights framework. It also raises questions about the effective protection of human rights within the UK and the integrity of the European system itself. As such, the government's approach could potentially exacerbate the already complex dualistic dynamic rather than resolving it, again reflecting the tension inherent in the UK-European law relationship.

10. BALANCING PUBLIC INTEREST AND INDIVIDUAL RIGHTS

[23] [2005] ECHR 526 (30 June 2005).
[24] Neuberger, D. (2015). 'Who are the Masters Now?'. Speech given at the Administrative Law Bar Association Annual Lecture.

The proposed British Bill of Rights seeks to reframe the balance between individual rights and the public interest. Notably, the government's response to JCHR's recommendations indicates a robust lean towards public safety, particularly seen in Clauses 4, 6, 7, and 20. This underscores the dualist tension that the proposed legislation seeks to navigate, with its distinctively UK-oriented perspective potentially coming into conflict with the broader European human rights framework. In Clause 6, for instance, the government emphasises the importance of public protection in the context of prisoner rights, aiming to strengthen parole reforms and de-radicalisation efforts in prisons. While public safety is undeniably crucial, Lazarus, in her work 'Contours of Criminal Justice', warns against overemphasising the risk narrative at the expense of individuals' rights. She advocates for a balanced approach that respects human rights while appropriately considering public safety concerns. Indeed, the European Court of Human Rights, in the case of *Vinter v. UK (2013)*[25], stressed the importance of striking a balance between the individual's rights and public safety, rather than unduly privileging the latter.

Similarly, Clauses 4, 7, and 20 appear to reflect a potential 'tilt' towards public interest considerations. Notably, Clause 7 is designed to protect elected lawmakers' ability to balance individual rights with the wider public interest. This, however, could arguably undermine the role of judicial review as a check on governmental power. As Professor Mark Elliott points out in his work 'Public Law', judicial review constitutes an essential aspect of the rule of law, ensuring that public authorities respect individual rights and act within their legal powers. As demonstrated in the case of *R (Miller) v Secretary of State for Exiting the EU (2017)*[26], judicial

[25] Vinter and Others v. The United Kingdom, 66069/09 130/10 3896/10 [2013] ECHR 645 (09 July 2013).
[26] [2017] UKSC 5 (24 January 2017).

oversight helps maintain the balance of powers, ensuring both the protection of individual rights and the proper functioning of democracy.

By striving to adjust the balance between individual rights and the public interest in this way, the proposed British Bill of Rights introduces a significant shift in the UK's approach to human rights, again highlighting the complex and often adversarial dynamic between domestic and international legal realms. As such, it invites critical examination of how this shift aligns with the foundational principles of human rights law and the broader European framework.

11. DEVOLUTION CONCERNS

The interplay of the proposed British Bill of Rights and the devolved settlements in Scotland, Wales, and Northern Ireland warrants a critical examination. The Joint Committee on Human Rights recommended that the UK Government should not pursue reform of the HRA without the consent of the Scottish Parliament, the Welsh Senedd, and the Northern Ireland Assembly. The Government, in response, assures that their proposals respect the devolution settlements and the UK's obligations under the Belfast (Good Friday) Agreement. They underscore the commitment to the incorporation of the ECHR into Northern Irish law, as per the Agreement, while expressing intent to work with devolved governments.

Legal academics have underscored the potential issues that could arise from such a unilateral approach to human rights reform in the context of devolved powers and any major changes to human rights legislation would likely have significant implications for these relationships.

In particular, Northern Ireland presents a unique set of challenges due to the role of the ECHR in the Good Friday Agreement. Professor McCrudden, in 'Northern Ireland and the Brexit Challenge', explains that removing or limiting ECHR protections could potentially infringe on the Good Friday Agreement and destabilise the peace process. Moreover, the Scottish and Welsh Governments have indicated their opposition to the proposed changes, with the Welsh Senedd passing the Continuity Act 2020, to ensure continued alignment with EU law, including the Charter of Fundamental Rights. As Professor Stephen Tierney notes in 'Constitutional Law and National Pluralism', the devolution settlements were designed with the HRA and ECHR as foundational, which means that any changes to human rights laws should respect these complex constitutional arrangements.

In conclusion, the British Bill of Rights could significantly impact the devolution arrangements, underlining the need for careful navigation of the domestic and international legal realms in a way that respects the unique legal and political context of the UK's devolved nations.

12. REJECTION OF TITLE CHANGE

The final point of contention relates to the title of the Bill. The Joint Committee on Human Rights suggested that the short title should be amended to 'European Convention on Human Rights (Domestic Application) Act' as this better reflects the main aim of the Bill: to determine how the Convention is interpreted and applied in domestic law. However, the Government has opted to maintain the 'Bill of Rights' title. This decision can be seen as a symbolic

indication of the desire to emphasize a uniquely 'British' conceptualization of human rights, independent from the Convention.

Analysing this issue, academic commentary sheds light on the significance of the title and what it represents. As Professor Gearty observes in his work 'Can Human Rights Survive?'[27], the use of the term 'Bill of Rights' has deep historical connotations, connecting this legislation to Magna Carta and the Bill of Rights 1689, traditional bedrocks of British liberties. In this sense, the choice of title could be seen as an attempt to 'reclaim' human rights as a distinctively British concept, as opposed to a European or international one.

Nevertheless, as Dr. Mark Elliott points out in 'The Constitutional Foundations of Judicial Review', the title can be misleading[28]. The primary aim of the Bill is not to generate a novel 'Bill of Rights', but to modify the way in which an existing international legal instrument - the European Convention on Human Rights - is incorporated into domestic law. In this sense, the naming dispute points to deeper issues: it is not just about nomenclature, but about framing and the larger narrative surrounding human rights in the UK. It raises a question on how far the UK Government's wish for a domestic-focused 'Bill of Rights' might steer clear of European influence, potentially leading to a 'dualistic' interaction with international legal norms. Hence, the proposed title may inadvertently contribute to reinforcing the very dualism that the proposed legislation purports to address.

[27] Gearty, C. (2006). 'Can Human Rights Survive?'. Cambridge: Cambridge University Press.

[28] Elliott, M. (2001). 'The Constitutional Foundations of Judicial Review'. Oxford: Hart Publishing.

13. CONCLUSION:

In conclusion, it must be stated from the outset, having analysed the previous cases, that the ECHR and the HRA have played an invaluable role in the protection and promotion of human rights in the UK, having a profound and transformative influence on the architecture of public law. This impact, seen in the rise of the principles of proportionality and the margin of appreciation and their significant influence on legislative interpretation, is irrefutable. These legal instruments have prompted a heightened level of accountability and responsiveness among public authorities and reoriented the very dynamics of public law. While successive Conservative governments have consistently argued that the ECHR and HRA may constrain state autonomy or inadvertently perpetuate inequalities, it is essential to recognise that the implementation of any legal framework is not without its challenges. The ability to interpret, adapt, and apply these laws in a fair and equitable manner lies at the core of their effectiveness. The ongoing debates surrounding the UK's relationship with the ECHR and HRA, especially post-Brexit, exemplify the delicate balance public law strives to achieve between national sovereignty, public interest, and the protection of individual rights. In this context, the decision to drop the proposal for a new British Bill of Rights can be seen as a judicious choice. The proposed bill, by distancing the UK from the well-established and internationally recognised principles of the ECHR, risked compromising the universal and inviolable nature of human rights. Moreover, the government's proposed shift towards a more contingent understanding of rights, with a problematic focus on claimants' behaviour, risked undermining the balance between public interest and individual rights that the current framework strives to maintain.

Rather than necessitating a complete rewrite, the criticisms and challenges surrounding the ECHR and HRA present an opportunity for incremental improvements and more nuanced interpretations, as part of the continuing dialogue between human rights and public law. It is thus a relief that the government recognised this and chose not to pursue the Bill of Rights. The decision reaffirms the UK's commitment to the universal principles of human rights and signals a willingness to improve and work within existing frameworks rather than upending them. Moving forward, this decision sets the stage for a continued focus on refining the UK's approach to human rights, always striving for a fairer and more equitable society.

TABLE OF CASES:

1. *Hirst v United Kingdom (No 2) [2005] ECHR 681.*
2. *A and others v Secretary of State for the Home Department [2004] UKHL 56.*
3. *R (on the application of Begum) v Headteacher and Governors of Denbigh High School [2006] UKHL 15.*
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14. *R (Ullah) v Special Adjudicator [2004] UKHL 26 (17 June 2004).*
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