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## **Bill of Rights? There'll need to be nifty footwork**

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The Conservative Party has announced the six wise men on its Bill of Rights Commission. Dominic Grieve, the Shadow Attorney-General, heralded the move, saying: "This is a major enterprise which will not be rushed." His caution is well judged. The idea of a British Bill of Rights raises complex and fundamental issues.

David Cameron announced the commission last June when he denounced the Human Rights Act as impeding the fight against crime. Confusingly, however, Bills of Rights are traditionally sought by those wanting to extend rights, not to reduce them. Thus, Cameron found himself supported by human rights activists not usually among his supporters. The committee will need nifty footwork to meet Grieve's expectation that it "achieve consensus about what a Bill of Rights should contain".

In truth, content is only one of several tricky issues for the commission — but one that is hard enough. Both Cameron and Grieve have made it clear that there is no question of undermining the European Convention on Human Rights. Yet siren voices urge that the Convention and decisions of the European Court of Human Rights can be evaded by creating a domestic set of rights that are different and, in material ways, lower. They point to the court's doctrine of giving flexibility to national authorities in implementing the Convention — what it calls a "margin of appreciation". But that doctrine is a long way from allowing states a pick'n'mix attitude to Convention rights, far less outright evasion— that would be too convenient for countries such as Russia that have struggled to comply with its material provisions.

The European Convention represents the values, largely of its British authors, half a century ago. It could undoubtedly be updated but the perils of modernising are great. Extra rights tend to look either weak, as in a right to a clean environment, or contentious, as in a right to jury trial — widely accepted but now the subject of another attack by government.

What is more, there is a real difficulty of language. The one recent attempt to modernise the Convention was widely ridiculed in the UK both as a political and legal document. As a result, no one talks much of the EU Charter of Fundamental Rights and Freedoms these days. But it was a brave attempt to set down rights in a readable form that could be widely understood. Cameron's commission could do worse than start here — although this may be somewhat far from its expectations.

The European Convention binds us because it is an international treaty agreed by the UK. Entrenching domestic legislation to anything like the same extent presents a nightmare in the face of the doctrine of Parliamentary Sovereignty. It would take some ingenuity to draft legislation that can bind a successor and not just be amended at will.

As for enforcement, it is difficult to see any substantially weaker form appropriate to a Bill of Rights than the structure of the Human Rights Act — which allows a court to advise that legislation is incompatible with the Convention but does not allow judges to strike it down. Giving judges stronger powers of enforcement, as floated by Cameron in a reference to Germany where judges can strike down legislation in breach of "basic law", will decidedly not appeal to those already unhappy with the Human Rights Act.

Finally, the whole exercise depends, as Grieve honestly admits, on consensus. A statute consciously calling itself a British Bill of Rights implies a degree of cross-party and public support. The Australian state of Victoria passed its equivalent after state-wide consultation. We would need something similar for set of rights to be generally accepted.

The problems are so great that the aim seems unrealistic — particularly if some of those engaged want to use the idea covertly to attack our current level of rights, far less increase them. But if it could be done, we would be on the way to an infinitely more thoughtful approach to democracy and significantly closer to a written constitution — as Gordon Brown wishes to explore. That would be an excellent, if somewhat paradoxical, result.

A more realistic goal may be a greater understanding of the Human Rights Act and the Convention. Alternatively, Grieve's advocacy of no haste could end up with a difficult, if not confused, idea kicked into the long grass.

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**A British Bill of Rights will be debated at the Law Society on March 29 at 6pm by Professors Vernon Bogdanor and Francesca Klug, Lord Lester of Herne Hill, QC, and the author. To book a place, e-mail your name and address to: [events@justice.org.uk](mailto:events@justice.org.uk). Electronic copies of a Justice interim report on a Bill of Rights: [admin@justice.org.uk](mailto:admin@justice.org.uk)**