

# THE MONSTERING OF HUMAN RIGHTS

Adam Wagner, 19 September 2014

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## Introduction

### **Monster / verb trans**

1. Make a monster of [...]
3. Depict as monstrous; defame, disparage<sup>2</sup>

Born as an idealistic response to atrocities of the Second World War, the European Convention on Human Rights (ECHR) is now seen by many to have betrayed the people it was designed to protect. The country's most popular newspaper calls human rights law a 'charter for criminals and parasites'; apparently, 75% of the British public agree.<sup>3</sup> As the 2015 General Election approaches, at least one of the major political parties will propose major reform of human rights law and perhaps withdrawal from the ECHR. How has this happened?

The current human rights system is relatively new, born only around 60 years ago. But some of the rights protected by the 1950 European Convention on Human Rights (ECHR) were long guaranteed under English common law, reaching back at least almost eight centuries to Magna Carta. This is no coincidence. The ECHR was largely drafted by British lawyers in an attempt to impose British democratic values upon the states it had defeated in the Second World War. That explains why the UK has until fairly recently been a strong supporter of the European Convention system. It also justifies some of the bewilderment when the European Court of Human Rights (ECtHR) has ruled against the UK. The ECtHR has transformed almost beyond recognition since its own modest beginnings, but, like an unruly teenager, it has also begun to rebel against its parent.

In October 2000 the UK experienced a constitutional revolution, bringing human rights firmly in to the popular consciousness. The Human Rights Act 1998 came into force. For the first time, public authorities were legally obliged to protect human rights

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<sup>1</sup> Talk to University of Liverpool *Conference on Human Rights in the UK Media: Representation and Reality*

<sup>2</sup> *Shorter Oxford English Dictionary, Sixth Edition*

<sup>3</sup> Human rights laws are a charter for criminals, say 75% of Britons', *Daily Mail*, 16 April 2012,

and, as importantly, individuals could bring a claim against those authorities at their local court for a breach of their human rights. This was a major shift in the balance of power between individuals and the state.

But now, only a few years later, human rights are under attack. Criticism is so constant and the debate so polarised that the UK may soon, with full public approval, repeal the Human Rights Act and withdraw from the longstanding international human rights system which it was instrumental in creating.

The press bears a significant portion of the blame. The right wing newspapers have enthusiastically promoted the narrative that the HRA is a charter for terrorists and criminals. Rather than a bulwark for ordinary people against the power of the state, the HRA is said to be a Trojan Horse which has brought terrorists to our shores and allowed convicted prisoners to live in luxury. Between 2000 and the present day, each new court success by a suspected terrorist or imprisoned criminal was eagerly reported and presenting as mounting evidence that the HRA was a dangerous menace which needed to be repealed.

But much of what the papers report is wrong. And other cases are either ignored or reported without mention of human rights. When Christopher Jeffries was wrongly implicated in the murder of 25-year-old Joanna Yeates in 2010, his solicitor said the stories were designed to “monster” his client. Human rights law has been monstered too. Human rights myths and fabrications have proliferated: the fleeing criminal suspect given takeaway fried chicken by police to protect his human rights; the prisoner granted access to hardcore pornography so as not to subject him to inhuman or degrading treatment; the illegal immigrant who avoided deportation because he had a pet cat; the ECtHR ruling against the UK in three out of four cases. There are many more.

This paper will explore some of the underlying dynamics behind poor press coverage of human rights. I do not seek to carry out an study of every story about human rights, but rather to present some of the worst examples and explore the common themes. Human rights misreporting is not entirely responsible for public antipathy towards human rights, perhaps not even *predominantly* responsible, but it is a serious problem and one which may have caused irreparable damage to human rights protections in the UK.

## **The Skewed Politics of Human Rights**

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<sup>4</sup> *Eight newspapers pay libel damages to Christopher Jefferies*, Roy Greenslade, The Guardian, 29 July 2011; <http://www.guardian.co.uk/media/greenslade/2011/jul/29/joanna-yeates-national-newspapers> (accessed 18 March 2013)

It is impossible to understand the media's approach to human rights without first understanding the political context. Opposition to human rights has become a familiar rallying call for politicians of every hue. The Prime Minister says it would make him 'physically ill' to implement a 2005 European Court of Human Rights judgment on prisoner votes;<sup>9</sup> the Home Secretary tells her party conference about the illegal immigrant who couldn't be deported because 'he had a pet cat', even though this is a description of a legal judgment so inaccurate that her (then) front bench colleague and Justice Secretary called it a 'complete nonsense example'.<sup>10</sup> Anti-human rights policies are so popular that the Conservative Party has promised to repeal the Human Rights Act ('HRA') 1998 if it obtains a majority at the 2015 election, and has threatened to withdraw from the ECHR.<sup>11</sup> Senior politicians war with judges for ruling in 'defiance of Parliament's wishes'<sup>12</sup> whilst top judges call their comments 'inappropriate, unhelpful and wrong'.<sup>13</sup>

Labour has had an inconsistent relationship with human rights, despite passing the HRA in 1998. The party has not always supported arguably its major legislative achievement. The increased threat of terrorism extinguished early enthusiasm for human rights. The HRA was quickly seen by many as a terrorists' Trojan Horse, with the government constrained by judges over its anti-terror law plans. In particular, the courts sometimes prevented the deportation of suspected and actual terrorists and blocked detention without trial. Less than three years after it came into force, New Labour's Home Secretary David Blunkett was already 'fed up with having to deal with a situation where Parliament debates issues and judges overturn them.'<sup>14</sup> In the same year, Prime Minister Tony Blair said that he was considering 'fundamentally looking at the obligations we have under the convention of human rights'<sup>15</sup> in response to problems deporting failed asylum seekers. And, after the 2005 London terrorist bombings, he told

<sup>9</sup> *Hansard Official Report*, 3 November 2010; Vol. 517, c. 921

<sup>10</sup> Adam Wagner, 'What the first #catgate appeal judgment actually says', *UK Human Rights Blog*, 6 October 2011 (<http://ukhumanrightsblog.com/2011/10/06/what-the-first-catgate-appeal-judgment-actually-says/> accessed 9 March 2013)

<sup>11</sup> Nicholas Watt, 'Conservative conference badge Clarke 'regrets' accusing May of laughable attack on Human Rights Act', *Guardian.co.uk*, 6 October 2011 (<http://www.guardian.co.uk/politics/2011/oct/06/clarke-condemns-may-attack-human-rights-act> accessed March 2013)

<sup>12</sup> (<http://www.dailymail.co.uk/news/article-2287183/A-great-day-British-justice-Theresa-May-vows-UK-European-Court-Human-Rights.html> - accessed 13 April 2013)

<sup>13</sup> 'Judges 'sabotaged' MPs' bid to deport rapists and thugs... but Theresa May vows to crush judges' revolt by rushing through tough new laws', *Daily Mail*, 16 February 2013, (<http://www.dailymail.co.uk/news/article-2279842/Theresa-May-Home-Secretary-vows-crush-judges-revolt-rushing-tough-new-laws.html>); 'Theresa May: Tories to consider leaving European Convention on Human Rights', *Daily Mail*, 9 March 2013, <http://www.bbc.co.uk/news/uk-politics-21726612> (accessed 14.3.13)

<sup>14</sup> 'Britain's top judge attacks Theresa May's criticism of judiciary', *Daily Telegraph*, 4 March 2013 (<http://www.telegraph.co.uk/news/uknews/law-and-order/9908528/Britains-top-judge-attacks-Theresa-Mays-criticism-of-judiciary.html> - accessed 13 April 2013)

<sup>15</sup> 'Blunkett to fight extradition ruling', *BBC News website*, 20 February 2003; (<http://news.bbc.co.uk/1/hi/uk/2779343.stm> - accessed 13 April 2013)

<sup>16</sup> 'Prime Minister prepares for war', *BBC News Website*, 26 January 2003, [http://news.bbc.co.uk/1/hi/programmes/breakfast\\_with\\_frost/2695903.stm](http://news.bbc.co.uk/1/hi/programmes/breakfast_with_frost/2695903.stm)

the country that the ‘rules of the game are changing’ and that ‘should legal obstacles [to deportations] arise, we will legislate further including, if necessary, amending the Human Rights Act’.<sup>13</sup> Jack Straw, one of the HRA’s chief architects, now argues that the European judges have ‘exceeded the limits of their proper authority’<sup>14</sup>. However, despite these tough words, whilst in Government Labour resisted tinkering with the HRA and seems to have little appetite for doing so if it forms a government in 2015.

The Liberal Democrats have been the HRA’s most consistent supporters. Had the Conservatives won an outright majority in the 2010 election, the HRA is likely to have been repealed and replaced with a bill of rights, as the Conservatives have promised for some time.<sup>15</sup> Instead, the Coalition agreement resulted in a very uneasy freezing of the status quo.

It is striking how few MPs now openly support human rights, and how many of them misrepresent human rights judgments. I have already mentioned the example used by Theresa May at the 2011 Conservative Party Conference – there are plenty of others. Human rights law protects everyone, including unpopular groups which are vulnerable at the hands of the state: immigrants, asylum seekers, criminals, benefits claimants, terrorists and sex offenders. The most notorious human rights judgments have been about those groups, and it is therefore no surprise that politicians are fond of attacking the judges who decided the cases, as well as the act of Parliament which required them to do so. Although the major attacks on human rights law are confined to a relatively small minority, there is also a silent majority who refuse to speak up in response. Few MPs wish to be tarnished as a human rights defender, a label which has become as toxic here as ‘Liberal’ has in the United States.<sup>16</sup>

To some extent judges it is true that judges have moved their tanks onto Parliament’s lawn, although Parliament invited them to do so by passing the HRA.<sup>17</sup> It is therefore unsurprising that Government ministers feel increasingly threatened by lawyers. They seem to ‘attend every Whitehall meeting’, reported Frances Gibb of *The Times*. She was

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<sup>13</sup> ‘Blair to curb human rights in war on terror’, *The Telegraph*, 6 August 2005

(<http://www.telegraph.co.uk/news/uknews/1495605/Blair-to-curb-human-rights-in-war-on-terror.html>)

<sup>14</sup> Specifically over prisoner votes: David Davis and Jack Straw, ‘We must defy Strasbourg on prisoner votes’, *The Telegraph*, 24 May 2012 (<http://www.telegraph.co.uk/news/uknews/law-and-order/9287633/We-must-defy-Strasbourg-on-prisoner-votes.html> - accessed 13 April 2013)

<sup>15</sup> ‘... to protect our freedoms from state encroachment and encourage greater social responsibility, we will replace the Human Rights Act with a UK Bill of Rights’ *Invitation to Join the Government of Britain*, Conservative Party Election Manifesto 2010

(<http://www.conservatives.com/~media/Files/Activist%20Centre/Press%20and%20Policy/Manifestos/Manifesto2010> - accessed 14 April 2013)

<sup>16</sup> See e.g. Hendrick Hertzberg, ‘Walking the Walk’, *The New Yorker*, 4 February 2013: ‘A quadrennial feature of the past half century has been the spectacle of some liberal grandee indignantly denying that he is anything of the kind.’ ([http://www.newyorker.com/talk/comment/2013/02/04/130204taco\\_talk\\_hertzberg#ixzz2PihNv4hn](http://www.newyorker.com/talk/comment/2013/02/04/130204taco_talk_hertzberg#ixzz2PihNv4hn) - accessed 13 April 2013)

<sup>17</sup> Lord Donaldson, then Master of the Rolls, warned the Government to ‘get your tanks off my lawn’ in a debate over reforms to the legal profession in 1989: Richard L Abel, *English Lawyers Between Market and State: The Politics of Professionalism*, p.33

told by one special advisor that s/he felt 'like all I do is talk to lawyers who tell you what the problems are'.<sup>18</sup> Recent Government efforts to limit Judicial Review cite concern that legal challenges are making public authorities 'overly cautious in the way they make decisions'.<sup>19</sup> It is no shock that those in government want to make decisions without fear of legal challenge. But one person's red tape is another's due process of law. We must be cautious of proposals to restrict human rights and judicial review coming from the same individuals most likely to benefit from those restrictions.

Attacking judges can also serve the narrower purpose of deflecting attention away from a mistake made by a minister or their department. It is 'not difficult to see' says the head of the Court of Appeal Lord Dyson 'why a politician who suffers a reverse in the courts in a human rights case may blame the human rights law rather than himself or his department for his defeat'.<sup>20</sup> And because judges are wary of overstepping their constitutional role, they very rarely respond to attacks, making them as weak and defenseless in the public arena as they are powerful in their court rooms. Lawyers who speak up in support of human rights are branded as part of the 'human rights lobby' who are more interested in protecting their supposedly fat paychecks than their clients.

There is another reason that politicians may be set against the HRA. One of the most visible effects of human rights law, alongside the development of Judicial Review since the 1970s, has been that actions of the executive, security services and military have been opened up to scrutiny as never before. Thanks to the rise of Judicial Review, a process by which courts examine the legality of the decisions of public authorities, judges have become accustomed to acting as overseers ensuring that officials do not overstep their powers. Arguably, the HRA turbocharged judicial powers. For an illustration of how things have changed, compare the following two passage from two judgments involving national security, 27 years apart. First, one of the most famous judges of the last century, Lord Denning, in 1977:<sup>21</sup>

There is a conflict between the interests of national security on the one hand and the freedom of the individual on the other. The balance between these two is not for a court of law. It is for the Home Secretary ... In some parts of the world national security has on occasions been used as an excuse for all sorts of infringements of individual liberty. But not in England.

Then Lord Bingham in 2004, in a case about anti-terrorism powers:<sup>22</sup>

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<sup>18</sup> Frances Gibb, 'Ministers warned over attempt to curb legal challenges', *The Times*, 16 January 2013 (<http://www.thetimes.co.uk/tto/news/politics/article3658830.ece> - accessed 17 April 2013)

<sup>19</sup> *Judicial Review: proposals for reform*, December 2012, paragraph 35

<sup>20</sup> *What is wrong with human rights?* Lord Dyson, Speech at Hertfordshire University, 3 November 2011

<sup>21</sup> *R v SSHD ex p Hosenball* [1977] 1 WLR 766 at 783

<sup>22</sup> The 'Belmarsh' case: *A and Others v Secretary of State for the Home Department* [2004] UKHL 56 at 42: this comparison was made by Alex Bailin QC in a lecture to the Administrative Law Bar Association on 5 October

... the function of independent judges charged to interpret and apply the law is universally recognised as a cardinal feature of the modern democratic state, a cornerstone of the rule of law itself.

From 'the balance... is not for a court of law' (1977) to judicial interpretation being 'a cornerstone of the rule of law itself' (2004). A remarkable shift. Moving to the present day, in an era where the threat of terrorism has resulted in state-sanctioned torture at Guantanamo Bay and elsewhere, and the erosion of civil liberties in the name of security, it is unsurprising that the same politicians who in 1998 – a heady post-Cold War but pre-9/11 moment – supported the HRA, may now regret handing even more power to judges. Put simply, increasing human rights protections has made it harder for culpable officials to get away with past abuses.

The judiciary have taken up their enhanced scrutinising role with gusto. Lord Denning's cry of 'not in England' is now in serious doubt after the comments of Lord Neuberger, current president of the Supreme Court,<sup>23</sup> in a 2010 judgment about allegations of torture complicity by the UK's security services. The litigation would probably not have been possible without the HRA, which in a section that was so sensitive that it was initially removed from the judgment and then reinstated (with some judicial embarrassment), Neuberger said that some MI5 and MI6 officials had a 'dubious record relating to actual involvement – and frankness about any involvement' with the torture of a terror suspect.<sup>24</sup> The true extent of officials' involvement in rendition and torture is yet to be determined,<sup>25</sup> but the HRA has been a vital cog in the machinery of accountability which claimants and lawyers have used – and are still using – to expose state misdemeanors. Human rights make it easier to bring officials to book, so it is no shock that those same officials may be keen to diminish them.

### Media Misrepresentation

One of the reasons politicians find it so easy to criticise human rights is that the popular press have laid the groundwork for them to do so. Like residents of a city with two football teams, the media has split into rival 'pro' and 'anti' camps over human rights. The battle lines are set, and few dare venture from their fiercely defended

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2010 (<http://adam1cor.files.wordpress.com/2010/10/alba-hr-talk-2010-alex-bailin-qc.pdf> - accessed 8 April 2013)

<sup>23</sup> Lord Neuberger (then Master of the Roles, i.e. the head of the Court of Appeal)

<sup>24</sup> *Mohamed, R (on the application of) v Secretary of State for Foreign & Commonwealth Affairs* [2010] EWCA Civ 65 at paragraph 168

<sup>25</sup> An independent inquiry to be led by Sir Peter Gibson was scrapped in early 2012, apparently to be reinstated once criminal investigations are concluded.

bunkers. The failings of press and politicians to present the full picture means that human rights myths have an almost unstoppable momentum.

The right-of-centre newspapers regularly report tales of human rights gone wrong, in which criminals, terrorists and other undesirables appear to supplant the rights of ordinary Britons. The Sun<sup>28</sup> and the Daily Express<sup>29</sup> refer to the UK's major human rights law as the 'Hated Human Rights Act'. The Daily Mail calls it a 'charter for criminals and parasites'<sup>30</sup> and states that 75% of Britons' believe the same<sup>31</sup>. The left-of-centre press usually takes the opposite line, presenting human rights uncritically and without any of the complexity which is typical of the judgments themselves.

Some concerns over human rights law are justified. But media portrayals of human rights cases often contain serious errors and misrepresentations which, when pointed out, remain uncorrected. The media-created myths are enthusiastically deployed by politicians to justify unjustifiable positions and policies.

Human rights myths spread easily and quickly become entrenched. I have already mentioned the Home Secretary's speech about the 'The illegal immigrant who cannot be deported because – and I am not making this up – he had pet a cat.' This is an excellent example of the danger posed by entrenched human rights myths. The original judgment was released in 2008 and was misreported by the press in 2009.<sup>32</sup> At that time, the Judicial Communications Office moved quickly to explain why the decision wasn't about a cat at all, but rather a Home Office error, pointing out that the Home Office lost the case because they 'conceded that they had mistakenly failed to apply their own policy for dealing with unmarried partners of people settled in the UK'.<sup>33</sup> But in June 2011, shortly before the Conservative Party Conference, the story was repeated in *The Sun*, *The Sunday Telegraph* and *The Daily Mail*<sup>34</sup>, although this time with the qualifier that the deportation was avoided 'partly' because of the cat (which was still wrong). The cat story was then adopted, without the 'partly' qualifier, by the Home Secretary for her party conference speech, which it was used as a primary example of why 'the Human Rights Act needs to go'. As many pointed out in the following days, the story was inaccurate. But who paid

<sup>28</sup> <http://www.thesun.co.uk/sol/homepage/news/3848868/May-Scrap-the-Human-Rights-Act.html>

<sup>29</sup> <http://www.express.co.uk/news/uk/381630/Tories-pledge-to-scrap-dangerous-Human-Rights-Act>

<sup>30</sup> 'Human rights is a charter for criminals and parasites our anger is no longer enough' *Mail on Sunday*, 15 July 2012

<sup>31</sup> 'Human rights laws are a charter for criminals, say 75% of Britons', *Daily Mail*, 16 April 2012,

<http://www.dailymail.co.uk/news/article-2130224/Human-rights-laws-charter-criminals-say-75-Britons.html> (accessed 13 March 2013).

<sup>32</sup> 'Migrant facing deportation wins right to stay in Britain... because he's got a cat', *Daily Mail*, 19 October 2009 (<http://www.dailymail.co.uk/news/article-1221353/Youve-got-cat-OK-stay-Britain-officials-tell-Bolivian-immigrant.html> - accessed 13 April 2013)

<sup>33</sup> 'Immigrant allowed to stay because of pet cat', *Daily Telegraph*, 17 October 2009

(<http://www.telegraph.co.uk/news/newstopping/howaboutthat/6360116/Immigrant-allowed-to-stay-because-of-pet-cat.html> - accessed 13 April 2013)

<sup>34</sup> 102 foreign criminals and illegal immigrants we can't deport, David Barrett, *Sunday Telegraph*, 11 June 2011 (<http://www.telegraph.co.uk/news/uknews/law-and-order/8570639/102-foreign-criminals-and-illegal-immigrants-we-cant-deport.html> - Accessed 13 April 2013)

the price for this major gaff? Only the Justice Secretary Ken Clarke, who exposed the error, was ultimately sacked.<sup>33</sup> In modern politics, being on-message on human rights is more important than getting it right.

Another example. The claim that a serial killer, Dennis Nilsen, was allowed to receive hardcore gay porn in jail thanks to human rights law. In fact, his case was thrown out by the High Court at the first hurdle.<sup>34</sup> And, yet, that total fabrication is still on *The Sun's* and *Daily Mail's* websites<sup>35</sup> as an example of 'more madness' under the HRA. This highlights a significant problem: in the age of the internet, it is easy for myths to take root. Like the heads of Medusa, human rights myths are simple to create but almost impossible to kill off.

There is the claim that the UK loses three out of four European human rights cases, which made the front pages of both the *Daily Mail* and the *Daily Telegraph* in 2012. The real figure is around one in fifty,<sup>36</sup> but the newspapers never apologised or corrected their stories. In August 2014 *The Sun* reported another bogus statistic: that the 'Euro judges go against the UK in 3 out of 5 cases'.<sup>37</sup> The article included what it seems the author thought<sup>38</sup> was a sufficient qualification: 'Terrorists, rapists, killers and paedophiles have won at the court, which overrules Britain in three out of five cases *it hears*' (emphasis added). But as I pointed out in my response, that was wrong too.<sup>39</sup> As a good illustration of the dynamic I referred to above, Dominic Raab MP, one of Parliament's most vocal human right critics, was quoted in support of the article's claim.

More inaccurate figures can be found in the *Daily Mail's* splash alleging that prisoners' human rights claims were costing £500,000 per week in legal aid,<sup>40</sup> almost double the real amount.<sup>41</sup> Then there is the constantly repeated allegation that the HRA prevented the deportation of the killer of Philip Lawrence, a head teacher. The real story, as was widely reported at the time of the tribunal decision in 2007, was that he avoided

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<sup>33</sup> We may never know the exact reasons for Ken Clarke being moved on from the role of Justice Secretary, but it is a fair assumption that his consistently pro-human rights and pro-European views were central to the decision to replace him with 'attack dog' (cf. Sunday Telegraph) Chris Grayling

<sup>34</sup> 'Review of the Implementation of the Human Rights Act', *Department of Constitutional Affairs*, July 2006, p.30

<sup>35</sup> '35,000 back Sun on rights', *The Sun*, 3 August 2007; 'How do you label a goat?', *Daily Mail*, 20 November 2006 (<http://www.dailymail.co.uk/news/article-417637/How-label-goat.html> - accessed 13 April 2013)

<sup>36</sup> Adam Wagner, 'UK loses 3 out of 4 European human rights cases? More like 1 in 50, actually', *UK Human Rights Blog*, 12 January 2012 (<http://ukhumanrightsblog.com/2012/01/12/uk-loses-3-out-of-4-european-human-rights-cases-more-like-1-in-50-actually/> - accessed 13 April 2013)

<sup>37</sup> Craig Woodhouse, 'Euro judges go against the UK in 3 out of 5 cases', *The Sun*, 24 August 2014

<sup>38</sup> According to my conversation with him on Twitter

<sup>39</sup> Adam Wagner, 'No, The Sun, "Euro judges" do not "go against UK in 3 out of 5 cases". More like 1 in 100.', *UK Human Rights Blog*, 27 August 2014 (<http://ukhumanrightsblog.com/2014/08/27/no-the-sun-euro-judges-do-not-go-against-uk-in-3-out-of-5-cases-more-like-1-in-100/>)

<sup>40</sup> Jack Doyle, '£500,000 a week in legal aid for prisoners' human rights claims: YOU pay for them to seek easier life or early release', *Daily Mail*, 30 December 2012 (<http://www.dailymail.co.uk/news/article-2255065/500-000-legal-aid-week-prisoners-human-rights-claims-YOU-pay-see-easier-life-early-release.html#ixzz2Gd4Xueeu> - accessed 18 April 2013)

<sup>41</sup> Adam Wagner, 'Avalanche! Daily Mail on new year dishonour list for dodgy prisoner human rights article', 31 December 2012, *UK Human Rights Blog* (<http://ukhumanrightsblog.com/2012/12/31/avalanche-daily-mail-on-new-year-dishonour-list-for-dodgy-prisoner-human-rights-article/> - accessed 18 April 2013)

deportation due to EU Freedom of Movement law.<sup>42</sup> The Chindamo case is an example of the regular confusion between the European Court of Human Rights and the European Union. They are entirely separate institutions, and yet the *The Sun* reported a decision from the England and Wales Court of Appeal under the byline 'EU could let fiends like him prey on your children'.<sup>43</sup>

Where, you might ask, is the press regulator? The answer is that it occasionally intervenes, but invariably the damage has already been done and its sanctions seem to have no effect on future conduct. The Press Complaints Commission (PCC) reprimanded *The Sun* for confusing the European Union and the European Court of Human Rights, leading to an online correction and a tiny *mea culpa* on page two of the newspaper.<sup>44</sup> But despite promising the PCC that it would "alert its staff to the issue and incorporate it into its training program", the newspaper repeating the EU/ECHR error a few weeks later.<sup>45</sup> Nor did it stop *The Sun*, wrongly stating that the European Court 'stopped a British judge imposing a whole-life tariff on Ian McLoughlin'.<sup>46</sup> The reality is that the judge's decision was swiftly overturned by the Court of Appeal. Following my complaint, *The Sun* published a correction. The newspaper's Ombudsman's initial response to my complaint demonstrates the newspaper's reckless approach to human rights reporting; responding to my point that the decision had been overturned on appeal, she said '[t]here was clearly no space in the layout to go into all this intricate detail about legal cases that followed'.

The PCC also told *The Daily Mail* to correct a front-page splash<sup>47</sup> ('HUMAN RIGHT TO MAKE A KILLING') which claimed the European Court of Human Rights had 'handed... criminals taxpayer-funded payouts of £4.4million – an average of £22,000 a head'. As the Council of Europe pointed out in an unprecedented press release responding directly to a newspaper article<sup>48</sup>, the story was wrong on two counts. First, the real figure of *compensation* granted by the Court since 1998 was £1.7m, less than half of the alleged pay out. Second, only some of the pay outs were to criminals, and many

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<sup>42</sup> Adam Wagner, 'Telegraph wrong again on foreign deportation' (UK Human Rights Blog, 8 September 2011) (<http://ukhumanrightsblog.com/2011/09/08/telegraph-wrong-again-on-foreign-deportation/> - accessed 13 April 2013)

<sup>43</sup> Adam Wagner, 'No, The Sun, the Human Rights Act is not the EU', 10 February 2013, (<http://ukhumanrightsblog.com/2013/02/10/no-the-sun-the-human-rights-act-is-not-the-eu/> - accessed 13 April 2013)

<sup>44</sup> Press Complaints Commission, 26 July 2013, <http://pcc.org.uk/news/index.html?article=ODQ3Mg==>

<sup>45</sup> 'Victory for Evil: EU Judges say whole-life terms 'inhumane'', *The Sun*, 10 July 2013 – nb. This headline was amended after I tweeted the newspaper's political editor: see (<http://ukhumanrightsblog.com/2013/07/10/not-again-eu-judges-behind-victory-for-evil-says-sun/>)

<sup>46</sup> 'It's time to stop crazy human rights rulings from European judges', *The Sun*, 27 July 2014

<sup>47</sup> Clarifications and Corrections, *Daily Mail*, 10 November 2013 <http://www.dailymail.co.uk/home/article-2498733/Clarifications-corrections-European-Court-Human-Rights.html>

<sup>48</sup> Council of Europe: 'Court concern at "seriously misleading" UK news article', 11 October 2013 [http://www.humanrightseurope.org/2013/10/court-concern-at-seriously-misleading-uk-news-articles/?utm\\_source=twitterfeed&utm\\_medium=twitter](http://www.humanrightseurope.org/2013/10/court-concern-at-seriously-misleading-uk-news-articles/?utm_source=twitterfeed&utm_medium=twitter)

were not. But again, the damage had been done. The corrections were both printed weeks after the original stories, which in the age of social media might as well be a million years. The story was widely reported in other newspapers, none of which published similar corrections; the claim was repeated as recently as last month in *The Daily Express*.<sup>49</sup> In his 2012 report into press ethics, Lord Justice Leveson observed:

It is one thing for a newspaper to take the view that... the asylum and/or human rights system should be reformed... It is another thing to misreport stories either willfully or reckless as to their truth or accuracy, in order to ensure that they support those political views... there are enough examples of careless or reckless reporting to conclude that discriminatory, sensational or unbalanced reporting in relation to ethnic minorities, immigrants and/or asylum seekers is a feature of journalistic practice in parts of the press, rather than an aberration.<sup>50</sup>

Reporting of human rights decisions is now so inaccurate, says President of the UK Supreme Court Lord Neuberger, that it ‘may tempt some into thinking that it is hardly worth maintaining the State’s inability to deny you a fair trial, to kill or torture you, and to preclude you enjoying freedom of expression.’<sup>51</sup> And unforced public corrections are so rare that it is reasonable to assume that much of the misinformation is deliberate. As a result, the Human Rights Act and the European Court of Human Rights have become monsters in the eyes of the public, and those who claim using human rights law have themselves been monstered.

### **Why is the media doing such a bad job?**

There are a number of interlocking dynamics at work here. Perhaps foremost is the slow and unedifying death of ‘serious’ journalism, and especially legal journalism. For lawyers like me, reading law reporting in newspapers is as painful as a musician having to listen to an off-key symphony. Much of the mainstream media’s legal reporting is poor, with no appreciation of or even attempt to explain what judges are really doing when they judge. The UK Human Rights Blog, which I edit, has a section on poor legal reporting – it is a very regular feature.

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<sup>49</sup> Stephen Pollard, ‘Now we can quit European Court of Human Rights’, *The Daily Express*, 13 August 2014: “Last year for instance figures released in the House of Commons Library showed that murderers, paedophiles and rapists had been given £4.4million of British taxpayers’ money because of rulings by the ECHR”. This statement has since been corrected online following my contact with the author via Twitter.

<sup>50</sup> Lord Justice Leveson, *Report into the Culture, Practices and Ethics of the Press* Vol. II, November 2012 §8.48-8.49 ([http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780\\_ii.pdf](http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_ii.pdf) - accessed 13 April 2013)

<sup>51</sup> Lord Neuberger, ‘Open Justice Unbound?’ *Judicial Studies Board Annual Lecture 2011*, p. 15, (<http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/mr-speech-jsb-lecture-march-2011.pdf> - accessed 13 April 2013)

The frenetic pace of news delivered by social media is also in part to blame; legal judgments are difficult to understand, particularly by non-lawyers, and having to do so in a few minutes is almost impossible. Distilling that understanding into 140-character tweets is even harder. But the reality is that in an increasingly cash-deprived industry, most major newspapers are no longer willing to pay for specialist journalists, and the quality of coverage has suffered as a result. Former *Telegraph* Legal Editor and BBC chief legal correspondent Joshua Rozenberg has said that many national newspapers no longer have a designated legal correspondent, meaning that they ‘don’t provide the service they did’.<sup>32</sup> The *Daily Telegraph* itself no longer has a legal editor or legal correspondents. Frances Gibb of *The Times* is now the only full-time legal editor of any distinction, but the newspaper’s weekly Law Section (the last of its kind in a printed newspaper) is losing size, status and influence. In 2010 *The Guardian* launched an ambitious online law section. In 2013 it made its online legal editor redundant in order to save costs. Not all legal journalism is bad – the BBC’s coverage is a notable exception, and legal blogging is to a small extent filling the gap – but taken as a whole, the public is poorly served.

Not all poor legal reporting can be blamed on the lack of specialist reporters. Newspapers often sacrifice legal accuracy at the alter of ideology. Again we return to some of the groups protected by human rights law – immigrants, terrorists, prisoners and the like – who serve as useful villains. And stories about unpopular groups also link in well with the three key ideological currents running through some coverage of human rights: Euro-skepticism, antipathy to immigration and tough criminal punishment. *The Daily Mail*, *The Daily Express*, *The Sun* and *The Daily Telegraph* thrive by stoking anger against unpopular groups who are seen to be gaining too much advantage from human rights. Controversial judgments provide regular opportunities for ‘human rights gone wrong’ stories and long-running campaigns,<sup>33</sup> often bolstered by inaccurate reporting and infected with editorial masquerading as news. And because some of the hardest human rights cases involve criminals or suspected criminals, there are enough *truly* monstrous human rights claimants to make it seem that the entire system has been hijacked by undesirables. Perhaps most memorable are Abu Hamza, the hook-wielding Islamist terrorist who for years used human rights law to block his extradition, and John Hirst, who killed his landlady with an axe but also won the right – as yet unimplemented – for some prisoners to vote in elections. And then there is Abu Qatada, whose case was so controversial (although the UK eventually got the result it wanted – his extradition to

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<sup>32</sup> ‘The geek shall inherit’ *Legal Week*, 20 October 2010

<sup>33</sup> For example, the *Telegraph*’s longstanding campaign to prevent ‘foreign criminals’ using human rights law to avoid deportation to their home countries, which has been strongly supported by, amongst others, the Home Secretary

Jordan) that it may have set the UK on a path towards withdrawal from the European Convention on Human Rights.

In reality, the picture is much more nuanced, but little of that nuance makes it to the press. Human rights, being universal, are available to everyone, including convicted criminals and even terrorists. But whilst their judgments may generate more column inches, criminals and terrorists are not the most regular beneficiaries of human rights. For example, of the 28 'declarations of incompatibility' made under the Human Rights Act since its introduction in October 2000, only 11 involved convicted criminals or terrorists.<sup>54</sup> Of those 11, two were about people with 'spent' convictions who wanted those convictions stricken from the national police database. The other 17 included three cases about detention under mental health powers, transsexuals' right to marry, the right of a child's dead father's name to be put on their birth certificate, the rights of men to claim the equivalent of a payment usually reserved for widow mothers and a challenge to sham marriage rules and hosing assistance for a pregnant spouse. There are many other examples of cases of what the public might consider 'human rights gone right' – such as enhanced investigations into deaths required under Article 2 ECHR, right to life cases, gay rights. But cases involving villains receive a lot more attention. The old adage that bad news travels fastest applies here; the media should not entirely be blamed for only reporting the most controversial cases. But if that is right, then the failure to publicise the cases not involving terrorists and rapists lies elsewhere.

Over in Westminster, politicians are keen to support – or at least reluctant to oppose – anti-human rights campaigns. They 'should be fighting back against this', as former MP David Howarth has said, 'but they are so afraid of these newspapers that they don't'.<sup>55</sup> Whilst MPs are reluctant to promote human rights, newspapers are free to manufacture their own alternative reality where terrorists always avoid deportation and suspects evading arrest get takeaway chicken deliveries because of human rights judges.<sup>56</sup>

There is also another agenda which encourages newspapers to erode confidence in human rights law. Tabloid newspapers in particular see the HRA as being responsible for the introduction of a 'privacy law by the back door', threatening their celebrity gossip-driven business model. As Paul Dacre, editor of the powerful *Daily Mail*, has complained, rather than this being legislated by Parliament accompanied by the usual

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<sup>54</sup> See the list <http://www2.lse.ac.uk/humanRights/articlesAndTranscripts/2013/incompatibilityHRA.pdf>

<sup>55</sup> *EHRC Human Rights Inquiry*, *ibid* p.97

<sup>56</sup> This story was reported in the *Daily Telegraph* on 8 June 2006: 'A suspected car thief who bombarded police with bricks and tiles during a rooftop siege [in Gloucester] was given a Kentucky Fried Chicken takeaway meal by officers to ensure his 'well-being and human rights'. The Government later confirmed that the Human Rights Act had nothing to do with the decision, but the story has endured as a 'human rights gone wrong' myth – see *Human Rights Inquiry: Report of the Equality and Human Rights Commission*, June 2009 p.96

debates and votes, the ‘wretched Human Rights Act’ has allowed ‘one Judge<sup>57</sup> with a subjective and highly relativist moral sense [to] do the same with a stroke of his pen’.<sup>58</sup> It is no coincidence that the *Daily Mail’s* website, now amongst the most popular news sites in the world, is dominated by celebrity news and pictures. Why would newspapers support a human rights system which potentially damages their bottom line?

Human rights myths are compounded by the low level of public education on human rights, meaning basic misunderstandings and errors persist. And the more the old myths are repeated and amplified, the more believable the new myths appear to be – a kind of public *miseducation*.

The public have too few tools with which to make up their own minds. But it need not be so. Human rights law may be complicated but it is also involves fascinating human stories which *interest* people. My experience of speaking to groups of young people about human rights is that they are enthusiastic to learn about rights. The lack of public education is partly a failing of the state, and in particular the New Labour government which introduced the HRA assuming the public would embrace their new (or at least newly articulated) rights. That may have been a fair assumption – who could have believed that additional protections against arbitrary state actions would become so unpopular? – but it represents a failing in light of what has happened since. Few politicians dare to put their head over the parapet to encourage more human rights education – indeed, the current government has quietly purged human rights from the national curriculum.<sup>59</sup> With public understanding so poor, those who deliberately misrepresent the law are allowed to do so with impunity.

The situation is so bad that a recent commission on the creation of a UK bill of rights concluded that even a major public education campaign would likely lead to ‘more of the same; a highly polarised division of views between those for and against our current human rights structures’.<sup>60</sup> The Commissioners themselves were so internally divided that they spent much of their time squabbling and ultimately produced eight separate ‘position papers’ along with their ‘main’ report, which itself demonstrated little common ground.

Another reason for public misunderstanding is that judges do not do enough to make their judgments accessible. Although human rights are themselves very simple, even simplistic, applying them to everyday life is complicated. Even if someone wants to bypass the narrative presented by media or politicians, and go straight to the source,

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<sup>57</sup> Mr Justice Eady, the now-retired High Court judge who presided over many of the major post-HRA privacy cases

<sup>58</sup> Paul Dacre, Speech to the Society of Editors, 10 November 2008; (<http://www.journalism.co.uk/2/articles/532774.php> - accessed 13 April 2013)

<sup>59</sup> <https://www.liberty-human-rights.org.uk/news/latest-news/human-rights-national-curriculum>

<sup>60</sup> Commission on a Bill of Rights: *A UK Bill of Rights? The Choice Before Us*, December 2012, Vol. 1, p. 29

they will encounter long, bewildering judgments written in difficult language. Judges tend to be former barristers. They are used to being hired brains, drafting their clever advice in the secluded surrounds of the Temple. The Bar's traditional culture means that the courts resemble private members clubs rather than a public forum where important decisions impacting on social policy are being made every day. I challenge any member of the public to turn up at the Royal Courts of Justice and find their way to the most interesting case of the day. The RCJ can seem as foreboding and impenetrable as the 16<sup>th</sup> century fortress it resembles.

Judges have gladly accepted the responsibility of making human rights decisions but still want to do so from Olympian heights. Some progress has been made in the internet age, particularly from the Supreme Court (UKSC). The UKSC, which was set up in 2009, broadcasts its hearings online, provides information through social media, publishes excellent judgment summaries and makes efforts to welcome members of the public to hearings.<sup>41</sup> But compare the UKSC's progressive approach to public education to the almost nonexistent efforts of the rest of the court system which, after all, generates the vast majority of legal decisions. Lawyers fees are expensive and legal aid is rapidly disappearing. In light of all this, it is no surprise that the public are left almost entirely at the mercy of the media to understand what judgments say.

### Conclusion

This paper did not set out to analyse criticisms of the human rights system, such as difficulties deporting foreign criminals, the quality of judges at the ECtHR or the democratic accountability of judges. I also have not sought to argue that media monsterring of human rights is entirely to blame for the unpopularity of the ECHR, or that highlighting inaccurate reporting *in itself* will answer major criticisms. All of that is for another day.

But inaccurately aimed attacks on human rights *are* damaging. The proliferation of myths and scare stories corrode public confidence in human rights and in the ability of judges to apply the law sensibly. This creates a serious risk that domestic and international laws protecting basic human rights will soon be dismantled, with the blessing of the electorate. What was once inconceivable – that the UK could withdraw from the 1950 European Convention on Human Rights – is moving inexorably towards the centre of the political debate. Human rights have been monsterved, and it may be too late to undo the harm which has already been done.

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<sup>41</sup> Unlike the Royal Courts of Justice, a member of the public turning up at the Supreme Court will be greeted by helpful staff who will guide them to the day's open hearings, including providing A4 information sheets about the current cases.