

JUSTICE, research and a bill of rights

Student Human Rights Network

Roger Smith

Director

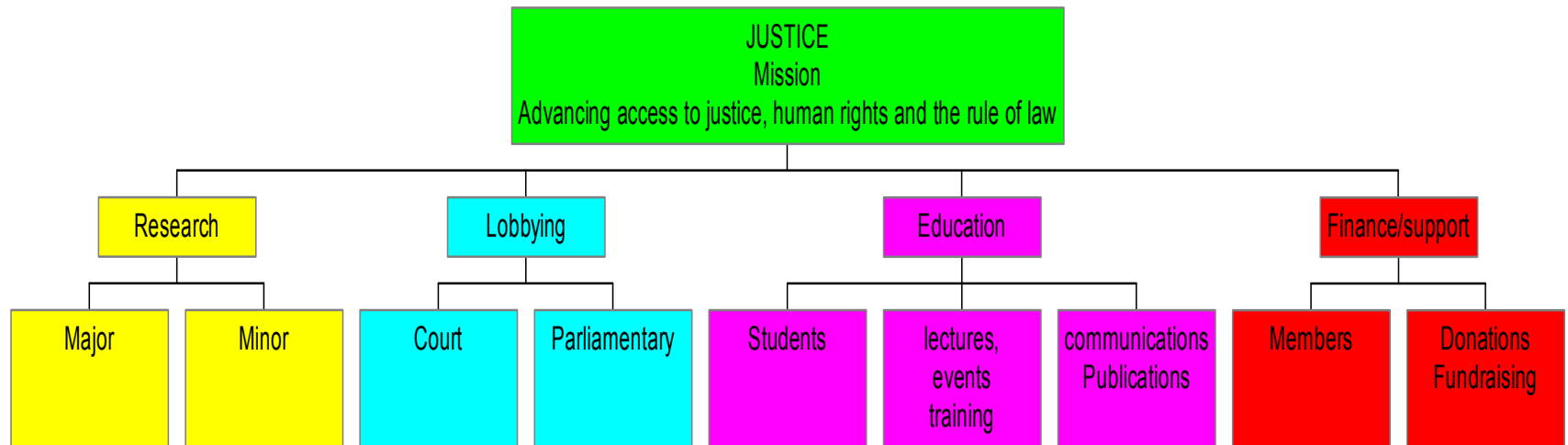
JUSTICE, UK

15 November 2008

Roger Smith, JUSTICE



JUSTICE: what we do



Human rights

Research: Major – bill of rights

Minor – intercept evidence, secret evidence

Lobbying – court: TPAs; legislation

Counterterrorism Bill

Education – student HRN; event to launch
ICJ report 17 Feb; publications

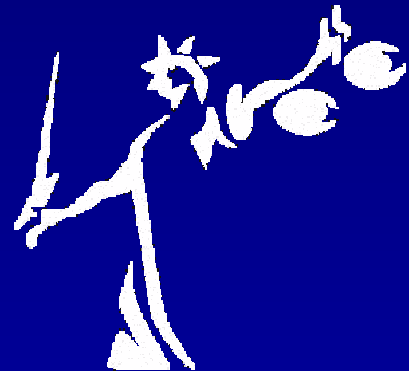
Finance/support – membership, donations,
grants, conferences



Bill of Rights: really?

Smith is being backed by Home Office lawyers who feel they have a hard enough time trying to protect their decisions from the impact of the Human Rights Act. Straw remains convinced he has the backing of Brown, although Downing Street may be shaken by the cabinet criticism.

Guardian 4 November 2008



Bill of Rights: really?

‘The wretched Human Rights Act’

Paul Dacre, Society of Editors, 9 November
2008

‘Human Rights Act: the law that has devalued
your human rights.’

Daily Telegraph, Nick Herbert MP 9th November
2008



Bills of Rights: always a contradiction

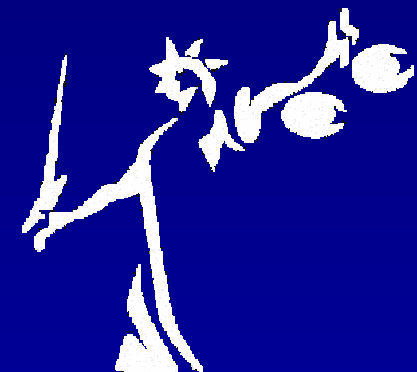
- ‘A Bill of Rights and Duties [to] give people ... a framework for giving effect to our common values’ (Cameron)
- A ‘modern Bill of Rights to define the core values which give us our identity as a free nation’
- A ‘new Bill of Rights’ to ‘entrench the rights presently enshrined in the ECHR in the British constitutional framework’



Bills of Rights: going forward or backward?

JUSTICE strategy: open up the debate

- Objective
- Jurisdiction – Britain?
- Content
- Legislative form
- Judicial entrenchment
- Process



Prelude: relevant constitutional documents

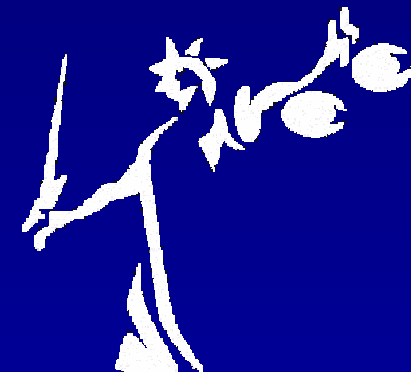
- Bill of rights: ‘An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown’.

- European convention on human rights – absolute, limited and qualified; ‘proportionality–

ARTICLE 46 ECtHR Chahal

- Human rights Act – truth and fiction

- EU charter of fundamental rights and freedoms

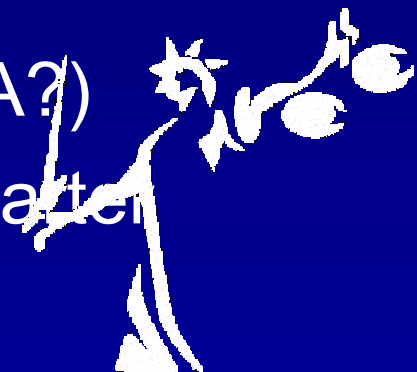


Content of a bill of rights

Paradox; content galvanises debate but little discussion except rights/duties

Good report from HR committee

- MUST BE 'ECHR PLUS' but could strengthen, modernise or make more explicit ECHR rights
- Guarantee 'traditional' British rights (jury trial, legal aid, medical care??)
- Articulate socio-economic aspirations (SA?)
- Implement international treaties or EU charter



Content: rights and duties?

Difficulty is ECHR

- Respect and forbearance
- Equality
- But must avoid qualification of ECHR right

Use a preamble?



Content: uncontroversial example

- South Africa: ‘Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been adversely affected has the right to be given written reasons’ (Art 33)
- EU: right to ‘affairs handled impartially, fairly and within reasonable period of time’ – to be heard, access to file, obligation for reasons (Art 41)
- UK Ombudsman’s six principles of good administration



Form – special legislative options

- Amend Parliament Acts
- Special majority vote in the UK Parliament
- Referendum
- Declaration against amendment

But would require a degree of consensus and attract a degree of controversy.



Form – judicial enforcement

- Supreme Court strike down power
- Parliamentary override
- Judicial declaration of incompatibility with legislative response (HRA)
- Parliamentary override
- Interpretative statute only

BUT HRA very suitable mechanism for ECHR rights in tune with common law.



A bill of rights and the constitution

- Devolution
- Revising parliamentary sovereignty
(*Lindsey v Anderson* cf *Belmarsh*)
- Checking the executive

Bills of Rights: four outcomes to debate

- A true 'modern bill of rights' that strengthens a national constitution and national consensus
- A destructive politically contested debate which increases dissent on range of issues including the Union
- Much wider public acceptance of the Human Rights Act and greater understanding of the Human Rights Act.
- Nothing happens

