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## Calls for a new UK bill of rights forget the trailblazing original

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William III's ascent to the throne spurred the genesis of human rights. Wikimedia Commons

David Cameron is riding into the 2015 election campaign with a promise to finally fulfil one of the Conservatives' 2010 manifesto commitments: to repeal the 1998 Human Rights Act, restore the sovereignty of Parliament against the "mission creep" of the unelected judges at the European Court, and enact a "British Bill of Rights" more properly rooted in "our values".

We do not, he insisted at his party conference in October 2014, "require instructions on this from judges in Strasbourg ... This is the country that wrote Magna Carta."

That document's 800th anniversary is of course rightly being celebrated this year – but it must not be forgotten that the UK also spawned the 1689 Bill of Rights. The Conservatives

are doing little to trade on that bill's legacy, and for good reason.

The international standards they are trying to remove us from are the ultimate descendants of our own 17th century attempt to pioneer human rights – and the Conservative desire to wriggle out of them is strangely blind to the UK's central role in developing human rights over the centuries.

## Watch your back

While it doesn't have the constitutional glamour of its more familiar cousin, the Magna Carta, the 1689 Bill of Rights has been seen ever since its passage as a cornerstone of Britain's unwritten constitution.

It was ratified to declare the terms with which they had welcomed the Dutch William III to the English throne. The bill reminded William that:

*The laws of England are the birthright of the people thereof, and all the kings and queens ... of this realm ought to administer the government ... according to the said laws.*

Its proponents argued that it simply asserted the long-held rights of parliament against the tyrannical impulses of some monarchs, which had been in full flower during the reign of James II.

The overwhelmingly protestant parliament was deeply suspicious of the threat that James, a Catholic, posed to their "traditional" rights. When he came to the throne, those suspicions were confirmed, as James tried to dismantle legislation that kept papists out of political and military office.

Parliament found itself threatened on two sides: from a religion which swore allegiance to the Pope, and from a monarch who refused to recognise its constitutional role. James, it had been argued, had un-kinged himself by refusing to rule England in accordance with its constitution.

Negotiations were begun with the steadfastly protestant William, Prince of Orange, James's son-in-law, who was invited to assume the throne. Before doing so, however, several figures in parliament argued that it was important to secure themselves from any future "arbitrary government", and to think carefully about what powers the crown should be given.

The Bill of Rights that emerged was designed to determine how best a king should rule. The "true, ancient and indubitable rights" for which its framers argued included frequent new parliaments, free elections, due legal process, and freedom of speech within parliament. They also limited the imposition of fines and taxation obtained by the monarch without recourse to parliament.

## Coming around again

There are a number of similarities between those political machinations and the plans the Conservatives are proposing today. Both documents, for example, do not seek to devise "new" rights, but to assert those that already exist.

In 1689, of course, the Bill of Rights was concerned with defending rights which had been trampled upon by a transgressive monarch, whereas today's proposals are ostensibly about clawing back rights which have been over-expanded to the point of "triviality".

In both cases, however, what was really at issue is the question of sovereignty, and the threat of foreign power.

The Roman papal threat of the 17th century bears no small resemblance to the bureaucratic threat of Brussels as framed by today's right: another foreign jurisdiction is riding roughshod over British constitutional principles, ignoring the will of our people as articulated by our government.

## Cruel and unusual

Just as Chris Grayling insists the government believes in “common sense” human rights, at the end of James II's reign, members of parliament were equally passionate about the “rights and liberties of the people of this Kingdom” – as long as they were Protestants.



Common sense? Chris Grayling. Joe Giddens/PA Wire

Catholics were seen as inherently suspect. As they swore loyalty to the Pope over and above the King, they could not be trusted to have the best interests of Britain at heart.

Anti-Popery is no longer the unifying national pastime it once was, but the Conservatives' proposals simply revolve around today's equivalent bogeymen, groups who are supposedly protected rather too much. Foreign criminals, illegal immigrants, travellers and terrorists – they all, the argument goes, deserve to have their rights limited because they have failed to uphold their “responsibilities” to this country.

The principles at stake in the 1689 bill seem almost generic now, but the defence of them set a standard for civil rights that holds strong around the world today – including in the European Union's supposedly domineering agreements.

Protection from “cruel and unusual punishment”, a phrase first used in the 1689 bill, was adopted into the US Bill of Rights in 1791, and later became the Eighth Amendment to the US Constitution. The 1689 wording also reappears in section 12 of Canada's 1982 Charter of Rights and Freedoms.

With some slight rewording, the right was enshrined as article five of the Universal Declaration of Human Rights (1948) and article three of the European Convention on Human Rights (1950). These two instruments, drafted in the wake of World War II, sought to establish a floor for basic universal rights beneath which no state could be allowed to sink.

The idea that these benchmarks have become too arduous for us to reach is a dangerous turn in the history of rights, and it is a strange betrayal of the UK's history of putting rights into law.

## Holding up

The concept of rights has of course evolved greatly since 1689. The past 325 years have

seen vast advances. And as rights become more secure, so too can they be taken further: it's a long way on the surface from the 1689 stipulation that "jurors be duly impanelled" to the right to a fair trial, with due process and equality of arms in the courtroom.

That need to adapt to changing times is what led the drafters of the European Convention to view it as a "living instrument", able to uphold a particular ethos even as history churned around it. This flexibility is precisely what allows these rights to remain vital and relevant today.

That is the legacy of the UK's own Bill of Rights – and it is a crying shame indeed to see the Conservatives and others on the right apparently hellbent on escaping it.



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