



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Legislative scrutiny: Bill of Rights
Bill, [HC 611](#)

Wednesday 14 December 2022

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Members present: Joanna Cherry (Chair); Lord Dubs; Lord Henley; Baroness
Ludford; Bell Ribeiro-Addy; David Simmonds; Lord Singh of Wimbledon.

Questions 16 - 41

Witness

[I](#): Dominic Raab MP, Deputy Prime Minister and Lord Chancellor and Secretary of
State for Justice, Ministry of Justice.

Examination of witness

Dominic Raab.

Q16 **Chair:** Good afternoon and welcome to today's meeting of the Joint Committee on Human Rights. We are a cross-party Joint Committee, which means we have Members from both the House of Commons and the House of Lords.

Our focus today is the Bill of Rights Bill, which was introduced in the House of Commons on 22 June. The date for the Second Reading of the Bill has not been set as yet. We are happy to have with us this afternoon the right honourable Dominic Raab, Deputy Prime Minister and Lord Chancellor. Good afternoon, Lord Chancellor, we are very pleased to have you here. We had hoped to see you five months ago. Nevertheless, we welcome you today and thank you for coming. Before I ask you any questions about the Bill of Rights, it has been reported in the *Guardian* today that you blocked the reappointment of the Victims' Commissioner, Dame Vera Baird. Is that report accurate?

Dominic Raab: I am responsible for the appointment and, as you know, we have been engaged in an open competition. I refreshed the open competition because I wanted to get the fullest and strongest field within which to choose. That is the right thing for such an important role. There is always a balance between doing it swiftly and doing it as comprehensively as possible, but my view, particularly with the Victims Bill and the changes that were being made, is that it was worth a wider trawl to attract the very best and widest talent group for such an important appointment.

Chair: My understanding is that she stepped down in September after being told in July that she would not be reappointed. Is that correct?

Dominic Raab: I would have to come back to you on the specific dates, but we made clear that we would go out to open competition. As I say, I am conscious of the need to fill the post, but it is right to make sure that we do it with the very best field of candidates we can have. I am confident that we will.

Chair: Is it accurate that she wanted to be reappointed but was told she would not be?

Dominic Raab: No. You would need to speak to Vera about what she wants to do.

Chair: Can we ask you to clarify for us in writing whether she wanted to be reappointed and whether she stepped down in September after being told in July she would not be reappointed?

Dominic Raab: You need to go to her about her intention, but I can tell you that I certainly did not tell her that.

Chair: The post is vacant at the moment. When do you expect to fill it?

Dominic Raab: Again, I would need to look at the dates, but we are in the middle of the process. I accept that it is an important role. I want to fill it as soon as possible.

Chair: It has been empty since September.

Dominic Raab: Yes.

Q17 **Chair:** In her resignation letter, Dame Vera Baird said that the criminal justice system was in chaos, and she accused the Government of downgrading victims' interests. What is your response to that?

Dominic Raab: That is demonstrably wrong. It may reflect the fact that she had hoped that she would be reappointed by then, but I cannot speak to that. What I can tell you is that with the Victims Bill we have made very important strides. We have quadrupled the funding for victims since 2010. In relation to violence against women and girls in particular, there will be a whole range of support with the national rollout next year—at the end of the first quarter, I think—of Operation Soteria. We have the 24/7 rape support line. The Section 28 pre-recorded video evidence measure has now been rolled out nationally. We have made very important strides, but there is still more to do.

Chair: Do you agree that it is unfortunate that while all this critical legislation is passing through Parliament there is no independent victims' rights commissioner in place to scrutinise it from the victims' point of view?

Dominic Raab: That is true, but we have lots of others who provide comments. I am not going to downgrade or diminish the importance of the Victims Commissioner. Far from it. It is precisely because of the importance of getting that appointment right that we are going through such a rigorous process. I hope that person will be in place shortly. They will of course have the opportunity to provide us with that important feedback, as Dame Vera Baird did until recently, on the victims' clauses of the Bill that have gone through pre-legislative scrutiny.

Chair: You said that you hoped to fill the post shortly. The *Guardian* reports that the post is expected to remain vacant until spring next year.

Dominic Raab: I would have to come back on that, but that has not come from me.

Chair: Do you agree that it would be regrettable if the post remained empty for several months?

Dominic Raab: I want to get it filled as soon as possible, but the most important thing is to get the very best candidate.

David Simmonds: I certainly was not aware that these questions were going to be raised. Important as they are, for the record I would like to say that these questions are not being asked on the basis of evidence we have taken as a committee. Clearly reports in the *Guardian* are reports in

the *Guardian*. I am sure the committee could consider the matter, take any evidence and perhaps raise some further questions in due course.

- Q18 **Chair:** As you know, the committee would hope to do that. We cannot take evidence from the Victims Commissioner if there is not one in place, but your point is duly noted, David, thank you.

Moving now to the Bill of Rights Bill, Lord Chancellor, it is nearly six months since you published the Bill of Rights on 22 June, and it is three months since the Second Reading was pulled just before 12 September. We now have the House of Commons business up to the Christmas Recess and there is no sign of a Second Reading of the Bill. Can you tell us when the Bill will receive Second Reading?

Dominic Raab: We are ready to go. The Bill has been published, which of course gives us all the more time for valuable scrutiny and consultation. The change of government has had an impact. It is a collective effort and the Prime Minister today addressed his sequencing of priorities, which I fully support, but we are ready to go. The Bill of Rights is ready to go and we look forward to bringing it to Second Reading and engaging with your committee and with Members of both Houses.

Chair: You cannot give us a date.

Dominic Raab: No. I have not been given one yet, but, as I said, we are ready to go with it

Chair: When it does come to the Commons, is the plan to take it to a committee of the whole House?

Dominic Raab: Yes.

Chair: Looking at the history, which you and I have both alluded to, the Bill was published on 22 June. You were due to give evidence to us on 20 July, but you pulled out. We expected a Second Reading of the Bill on 12 September, and that was pulled by the Government headed by Prime Minister Liz Truss. On 14 September, you were due to give us evidence and you cancelled again. On 17 October, Brandon Lewis MP, the Lord Chancellor appointed by the right honourable Liz Truss, told us that the Bill had been paused and they were looking at it again. I was present at a Westminster Hall debate on 24 October when the junior Minister told us that the plans were now just to review and update the Act. He reminded us that the Conservative manifesto did not say that you were going to repeal and scrap the Human Rights Act.

The day after that, on 25 October, you returned to office as Lord Chancellor and announced on Twitter that the Bill would have its Second Reading in the next couple of weeks, and you confirmed that to this committee by a letter dated 14 November. On 22 November, you told the Commons that the Bill was going to have its Second Reading very shortly, and that you were close to agreeing a timetable with Commons business managers. On 8 December, the *Daily Mail* reported that No. 10 had—I am using their language—“Kicked the Bill into the long grass”. The

Times said that the Bill had been deprioritised, but you were trying to convince the Prime Minister that the Bill was crucial and that several other proposed laws hinge upon it.

I am going through that timetable, because it is a bit tortuous. It is fair to say that there has been a bit of a Hokey Cokey with the Bill since it was first published in June last year. It does seem that three different Prime Ministers and many of your colleagues are not very keen on the Bill and that it is very much your personal baby. Is the lack of enthusiasm from your colleagues a bit embarrassing for you?

Dominic Raab: No, not at all. You can cite newspaper reports and this and that, but the reality is that both former Prime Minister Johnson and Prime Minister Sunak are committed to the Bill of Rights, and I am delighted that we will be taking it forward.

Chair: Are the reports in the *Times* accurate that you were arguing that the Bill was crucial and that several other proposed laws hinged upon it?

Dominic Raab: Look, I am not going to comment on tittle tattle in newspapers. I am here to answer your questions to me on any of the details in the Bill.

Chair: Let me put my question to you then. Would it be correct to say that there are other proposed laws that hinge upon the repeal and replacement of the Human Rights Act?

Dominic Raab: We have always said that if we want to deport more foreign national offenders or strengthen free speech in the way we have described, those are all things that a Bill of Rights will help us to deliver. I have been clear in the past that I think we will have a better chance of delivering some of the more concerted parole reforms if we have the Bill of Rights. Terrorist offenders in separation centres in prisons are increasingly claiming a right to socialise under Article 8, for example. Frankly, issues like that just show you the material benefits of delivering the Bill of Rights. I do think it is important for a whole range of the Government's policy aims, particularly with regard to public protection but also to some of the other areas I have touched on.

Chair: Yesterday, the Prime Minister announced in Parliament that he will be bringing forward a package of immigration legislation in the new year. Do you think the success of that legislation would hinge upon repealing the Human Rights Act and replacing it with the Bill of Rights?

Dominic Raab: I think they have a crossover, but we will want to make sure that the legislation on small boats that comes through is self-standing. The Bill of Rights will assist, but I do not think it will resolve the small boats crisis on its own. I have always been very clear on that. I want to be clear that it will assist in three particular ways: in the approach to interim orders; in the kerbing of the more creative judicial innovations; and, in particular, in the repeal of Section 3 of the Human

Rights Act, with the ability to effectively amend legislation through the courts being licensed effectively to do so—

Chair: You are talking about the interpretive obligation.

Dominic Raab: Yes, but effectively to read down legislation without Parliament having any scrutiny. There are also the provisions in the Bill of Rights in Clause 7. Those three will materially help to protect greater border controls, within the margin of appreciation and the bounds of what is permissible under the ECHR. That would, at various points, help with small boats. I certainly support the Home Secretary and the Prime Minister in bringing through the small boats legislation in the new year.

From a human rights point of view, the appalling tragedy that we have seen today just shows you how this will be a human rights-enhancing measure and why we need to look at what is going on in the channel and with small boats as a human rights, I would say not only the disaster like the one we have seen now, but the recipe for far more humanitarian loss-of-life, and the measures that we are taking will help to protect human rights for precisely that reason.

Chair: What measures will be human rights-enhancing?

Dominic Raab: Measures that stop this awful trade and people taking these appalling risks, which can lead to tragedies like the ones we have seen today.

Chair: You are talking there about the organised crime and smugglers.

Dominic Raab: I am talking about it in the round. We need to deter it at every level, consistent, of course, with our international obligations. We take very seriously. The draw, the attraction, of coming here illegally and taking the kinds of risks that we have seen, and the criminal gangs with their business model who prey on them. I would have thought that was clear, graphically and tragically so, from what we have seen today.

Chair: Do you think the Prime Ministers' proposals and your Bill of Rights will enhance the human rights of asylum seekers?

Dominic Raab: Yes. Overall, I think they will have exactly that effect by discouraging perilous, illegal routes and with the emphasis the Prime Minister has put on the importance of international safe routes.

As Foreign Secretary at the time, alongside the then Home Secretary Priti Patel and the then Chancellor, the current Prime Minister, and the current Immigration Minister as the Secretary of State for MHCLG, as it then was, I was very proud to pioneer the Hong Kong BNO package that has been taken up. That was a really important thing to do. Likewise, on Ukraine and Afghanistan, we have shown that we have a compassionate history and heart as a nation—and I say this as a son of a refugee—welcoming those who flee persecution, but that is put at risk, both with regard to public confidence and in practical operational terms, when you have these chaotic illegal routes. Stopping those in the way I have described is much

safer and, if you look at in aggregate, will enhance human rights in this country and internationally.

Chair: I do not want to stray too far into what is the province of the Home Affairs Committee, but I need to challenge you on a couple of things there. We know that there are no Ukrainians or people from Hong Kong on the boats crossing the channel because there is a safe, legal route for them, but we know that for people from other countries, asylum seekers, there is no safe, legal route for them to come to the United Kingdom. There is talk of more safe, legal routes, but we have not been given any detail.

Would you answer the question that the Home Secretary was unable to answer: if somebody wants to come to this country to claim asylum and there are not the kinds of resettlement schemes that we have seen for Ukraine available to them, what is their legal route to get here at the moment?

Dominic Raab: It is not just Ukraine. There are the BNOs, as I mentioned, and Operation Pitting.

Chair: Let us talk about the country for which there is no scheme in place.

Dominic Raab: Sure, but I think it is right that we focus our compassion on the most acute disasters. It is a fair question, and the Prime Minister, when he set out the proposals yesterday, talked about this. We will work with the UNHCR to identify those most in need—I do think that is an important thing to do—so we offer that safe haven to those who are most vulnerable. Our legislation will introduce a cap on the overall number, set by Parliament in consultation with local authorities, and that is the way we will do it. That is also a better way of encouraging integration for those who come here.

I went to Cobham Free School in my constituency recently and was struck when three BNO children and their mother—I think the mother may work there—approached me to thank the UK for our generosity.

Chair: I am asking you about people for which there is no established scheme. I am not querying the fact that it is good to have established schemes. I am asking you quite a precise question, Lord Chancellor. What is the legal way at present for people from countries for which there is no established scheme to come to and claim asylum in the United Kingdom?

Dominic Raab: I just said that that is what the legislation will address.

Chair: There is no way at present. If you need legislation to address it, there must not be a way at present. Is that right?

Dominic Raab: No, the Prime Minister was clear. It has been done ad hoc, if you like, in recent years, and part of the package of measures, as well as clamping down on the illegal routes, is to clarify the more generic

way this will be done rather than just country by country. There will be legislation with a cap, but it will be done in consultation with the UNHCR so that we can focus on areas where they think there is the greatest need and where the burden sharing is most appropriate. We can also do it in a controlled way with local authorities because of the integration piece that I touched on.

Chair: You are talking about the future.

Dominic Raab: Yes.

Chair: At present, you are unable to point to a safe, legal route for someone wanting to come to the United Kingdom to claim asylum if they are not from one of the countries for which there is a designated scheme.

Dominic Raab: I think it is legally possible, but I ought to defer to the Home Secretary.

Chair: How is it legally possible?

Dominic Raab: You can claim asylum in different ways, but the truth is that I should not—

Chair: You have to be in this country to claim asylum. Is that not the law at present? How do you get here if you are not from a country with a scheme?

Dominic Raab: What I wanted to do is set out the proposals for the future, but it is not for me to discuss the current asylum arrangements; that is for the Home Secretary. I am sure she would be willing to write to you if you need further detail.

Q19 David Simmonds: Obviously, I entirely agree and support everything you have said so far about the future and the way the scheme works in respect of existing safe and legal routes or resettlement.

As a committee, we took evidence on the Nationality and Borders Act, and one of our frustrations and something we spent some time on was this question of the relationship between safe and legal routes and the ability of the UK Government to consider a claim to be either disadvantaged or inadmissible because of the means by which someone came to be in the UK. We know, as the Chair has outlined, that you cannot lodge your application for asylum in Britain unless you are already physically here.

It is a commendable ambition that the UK Government want to break the cross-channel smuggling route by saying, "If you come by a route that's irregular, that would disadvantage you in lodging your claim", but at present that will always fail because there is no alternative route by which those people could have launched their claim. Even the European Convention on Human Rights may not be the key issue here. The point is that a British court would take the view outside of that: that if the system had frustrated any possible means by which someone could lodge a

claim, that factor had to be set aside.

The question then becomes: what will be the safe and legal route by which someone who is currently in northern France with a family member in the UK can lodge a claim, or even seek permission to travel to the UK—whether at an asylum centre, at the UK border in Calais or at a consulate anywhere else in the world—in order that there will be an alternative to getting in a small boat, which in turn would enable the UK Government to say, “If you come in a small boat, that will not be your advantage. If you take the safe and legal route, it will be”?

Dominic Raab: Yes, but again, I am not going to comment on what judges may or may not decide and I am not going to do the Home Secretary’s role. All I would say in relation to those who have come from France is that, by definition, they have come through a safe third country, either directly or indirectly, and that is one of the problems here. That is not supposed to happen. If you look at the crisis situations that we have addressed—I think of Afghanistan, and we mentioned Ukraine and Hong Kong—we have found a way to do it, from the source country or from countries in the region. I accept that there is a problem with the situation in Calais and France. That is what the Prime Minister, the Home Secretary and the whole Government are seeking to address. I get the conundrum that you are posing. It is just probably for the Home Secretary to answer your questions in more detail.

Chair: I just want to query something quickly and then we will move back to the Bill of Rights. You said that some people in northern France have come through a safe third country and that is not supposed to happen.

Dominic Raab: Yes.

Chair: But there is nothing in the international refugee convention that says that people have to claim asylum in the first country they come to, is there?

Dominic Raab: No, but our experience has been part of the Dublin convention. I know that that does not—

Chair: We are not part of the Dublin convention, because we left the European Union.

Dominic Raab: Of course, but it was happening even before then. There is an expectation now, Whether it is custom international law is, I think, debatable, but certainly there is a moral argument—I would need to check whether it is a legal argument—that you claim your asylum in the first jurisdiction.

Chair: I assure you that it is not the legal position, because I checked it yesterday before I asked the Prime Minister about it. As to the moral argument, is there not equally a moral argument that if people are migrating across the world, whether it is because of famine, climate crisis or political oppression, it is not fair to expect countries in the immediate

vicinity of the problems to take all the asylum seekers? Surely there is a moral obligation for global Britain to play its part.

Dominic Raab: Of course, that is right, but whether it is Ukraine or Hong Kong, whenever we make the assessments, it is not a question of what we want. The vast majority of people travelling those distances, if they have to flee their home country, if they have to leave their homes, would prefer to be in a country of the region. That is clear from the migratory flows. That is the first thing.

In terms of the moral duty, I have talked about my family history before, and I think we want to be a compassionate country. Few countries have shown so much compassion proactively on Hong Kong, and very swiftly on Ukraine and Afghanistan, but it has to be done via a structured and orderly route. What I do not accept as a premise, Joanna, is that chaotic flows across such long distances, with the UK a natural magnet for all sorts of reasons, is the right way to do it. You will lose public confidence. I saw it when I lived in the Netherlands for three years as a diplomat on posting at the time of the murder of Pim Fortuyn and the big raising of tensions, particularly with some of the ethnic minority communities there. If it is felt by the public that there is no structured, controlled way, if you do not have integration—this is why we talk about local authorities—the centre parties start to get attacked by the fringe parties. Whatever our views, and we may differ on many things around this table, we all want to avoid fringe parties, some of which we have seen gain increasing traction in Europe.

Chair: I hear you, Lord Chancellor.

Dominic Raab: If you want to maintain public confidence, you have to show that we can do this in a managed, organised and less chaotic way.

Chair: We can debate these issues all day, but we really need to get back to human rights, which is what this committee is concerned with. I want to get back to asking you about the Bill of Rights. In fairness to you, you have been working on this Bill of Rights for many years. It stems from a book you wrote over a decade ago, and I think it would be fair to say the Bill of Rights is very much your baby, is it not?

Dominic Raab: No. I have thought about it a lot but, if you want to be precise about it, it was in the 2010 manifesto. It was also in the 2015 manifesto; we talked about it, albeit in a slightly different version of the language, in the last manifesto. I would challenge the assertion that the Human Rights Act got everything right. It is a very British thing, not even just a Conservative thing, that human rights are a journey that we are on, from Magna Carta right the way through. It is not a transaction where it is just done and we look to write the next chapter true to our traditions and the modern circumstances as we go. I have made a contribution to that, as many others have. As I say, it has been in various manifestos for the Conservative Party. I could not claim sole authorship, as much as you might try to flatter me to that extent.

Chair: That is very modest of you. Perhaps I can put it this way, and I am really not trying to be cheeky or rude here, Lord Chancellor. You know that I very strongly believe in due process.

Dominic Raab: Yes.

Q20 **Chair:** I very strongly believe that if accusations are made against a person in any capacity, they should be innocent until proven guilty, but I need to ask you this because there is an investigation into a number of allegations against you at present. As I stress, those are allegations, and I am a great believer in due process and respecting the fact that one should wait until the outcome of an investigation before making a judgment, but I need to put this question to you. If, for any reason, you had to demit office, who do you think would take this Bill forward?

Dominic Raab: I am afraid that is a bunch of hypothetical questions that I am not going to indulge you on. I have been clear on the claims made about me, and I believe I have behaved professionally throughout, but of course I welcome, and indeed I called for, an independent investigation so that I could deal with them transparently, not through the tittle tattle that is anonymously leaked to the media. I am very confident that the Bill of Rights is a government proposal, not my proposal, and we have collective responsibility on these things.

Chair: You said a moment ago that you did not think the Human Rights Act was perfect. I want to put a quote to you from Lord Carnwath, the former Supreme Court Justice who gave a lecture about your Bill of Rights proposals back in February of this year. He said this of the Human Rights Act: "It was a simple and elegant way of consolidating those rights within our own law, while respecting the key principle of Parliamentary Sovereignty". Would you agree or disagree with that statement?

Dominic Raab: No, I would not characterise it in that way, but I respect the fact that he might. A whole range of other people were involved right at the outset: Jack Straw, David Blunkett—very much Labour architects who disagree. I do not think it is a partisan thing.

Chair: This is Lord Carnwath I am talking about.

Dominic Raab: Yes.

Chair: Former Supreme Court Justice, not a Labour architect.

Dominic Raab: I agree.

Chair: I think he was thinking about it more as a constitutional lawyer, and he said that it was a simple and elegant way of consolidating those rights within our own law while respecting the key principle of parliamentary sovereignty, so it is not really a political proposition; it is more of a lawyer's proposition.

Dominic Raab: No, but there have been quite a few who have criticised both the Strasbourg and the wider UK application of human rights,

including various QCs and previous law lords. Whether or not they agree with the Bill of Rights, I do not want to put words in their mouths, but the critique of the Human Rights Act, and indeed the way we apply Strasbourg case law, goes far beyond the political domain.

Chair: The terms of reference for the independent review of the Human Rights Act did not include replacing the Act or include the scope of the convention rights, so it is fair to say that we do not have the benefit of the independent reviews expert views on those matters, do we?

Dominic Raab: Actually, Sir Peter Gross's report and his panel's contribution, which is very valuable, covered quite a lot of the ground. I look very carefully at it. In some areas—for example, where they were proposing various different amendments at the European level—they probably went further than anything we have suggested in the Bill of Rights. The reality is that I have taken the view, and the Government have taken the view, that we need further reform on some of the issues that they considered but did not recommend a particular outcome on. Section 2 is a good example. The case for amending Section 2 and Section 3 is irresistible, but I respect the fact that people take different view on this.

Chair: I was asking you something rather more specific, Lord Chancellor. I said that the independent review was never asked to consider replacing the Human Rights Act or to consider the scope of the convention rights, so we do not have the benefit of their expert view on that, do we?

Dominic Raab: Actually, if you look at it—I do not have it to hand, but I am sure I could dig it up—they looked at quite a lot of—

Chair: I am talking about their terms of reference.

Dominic Raab: Yes, but they looked at all these things anyway. They looked at extraterritorial jurisdiction, for example. That is not a procedural thing.

Chair: They did not look at the scope of the convention rights, Lord Chancellor.

Dominic Raab: I do not think that is quite right. Extraterritorial jurisdiction is, I think, the substantive scope, because it is the territorial scope.

Chair: I am talking about the convention rights from Article 1 on the right to life through to the right to family life. They did not look at the scope of those rights because they were not asked to.

Dominic Raab: Actually, if you look at the proposals for the Bill of Rights, not only are we staying state party to the European convention, but we incorporate a schedule of rights. It is true that we look at the way the UK interprets those rights in the procedural framework, but those are fundamentally about rights that are derogable or rights that admit of

qualification—for example, Article 8. We do not touch Articles 2 and 3 substantively.

Chair: I am not asking you about your consultation. I am asking you about the independent review. Do you agree with me, and it is a matter of record, that their terms of reference did not include replacing the Human Rights Act and did not include the scope of the convention rights. Therefore, although we have the benefit of their expert views on many other matters, we do not have the benefit of their expert views on those issues because they were not asked to consider them?

Dominic Raab: No, because what they did was reach further and in fact delve into substantive issues. I have given you an example of that, but we may have degree to differ on this, Madam Chair.

Chair: They concluded that no significant changes needed to be made to the Human Rights Act. That is correct, is it not?

Dominic Raab: They had a range of recommendations.

Chair: Three small changes.

Dominic Raab: Okay, so they did recommend changes.

Chair: They concluded that no significant changes were needed to the Human Rights Act. That is right, is it not?

Dominic Raab: Madam Chair, I do not think it is news to say that we need to go further than Sir Peter's report, much as I hugely valued the insights and recommendations he made, but that is—

Chair: You never actually responded to Sir Peter's report, did you? On the same day it was published, you brought out your own consultation, and I think Lord Carnwath described the two things as ships that passed in the night.

Dominic Raab: No, I consulted with Sir Peter and I had the benefit of his report. I looked at it very carefully and I discussed it with him.

Chair: You did not publish a response to his report, did you?

Dominic Raab: No, but we have woven our views on his report into the response on all the other things we have been doing, including the Bill of Rights consultation.

Chair: Your predecessor, Sir Robert Buckland, has described the Bill of Rights as a “cure without a problem”. What do you think of that?

Dominic Raab: I hugely respect Rob, and he is entitled to his opinion, but I disagree with him in the way I have described. Let me give you a few examples.

The way we have had the combination of judge-made privacy law impinge on media freedoms and the pressure on free speech generally—

that is something that you have spoken about very passionately, Madam Chair—is a good illustration of where we have allowed the parameters of free speech to be narrowed, possibly more in practice than in law. The volume of Article 8 cases used to frustrate the deportation of foreign national offenders is also an issue. Parole has become adrift from its moorings and, as I have said, we would need the Bill of Rights effectively to deliver the reforms we have talked about, at least in totality. I also think we need to address the issue of separation centres in our prisons dealing with a terrorist threat. The Human Rights Act is being used as one of the legal weapons to challenge the use of separation centres.

What I have tried to do is give you concrete examples of things I believe need to be addressed and which the Human Rights Act is licensing litigation to prevent us from doing.

Chair: The independent review of the Human Rights Act concluded that no significant changes were required. Sir Robert says that the Bill of Rights is a “cure without a problem”. Your own public consultation showed that not one of your proposals had wide support. That is right, is it not?

Dominic Raab: It depends who you are talking to. Of course, when you do a consultation like that, mostly you hear back from the sector, NGOs, those who support the very elastic interpretation of human rights, which, as I said, I think is constitutionally wrong as well as creates the practical problems that we have made, but that is natura; that normally happens with consultations in those sectors. If you look at the broader public response, when people hear what we want to try to do, the strength of free speech brings some common sense into the system in areas where we think it is being abused—I have given the example of deporting foreign national offenders—I think it has widespread public support.

Chair: Let us look at someone who is broadly on your side in taking the view that there has perhaps been, to use your words, an elastic interpretation of human rights. Lord Sumption has told us that the Bill is “singularly badly drafted”. Do you have any plans to make amendments to fix the Bill as it makes its way through Parliament?

Dominic Raab: By the way, Lord Sumption is one of the most searing critics of the way Strasbourg in particular has operated in recent years. In fairness, both the Supreme Court and the Strasbourg court have shifted over time.

Chair: I am not asking you about that. I agree with you, and we both know, that Lord Sumption is a searing critic of the Human Rights Act, but my point to you, notwithstanding his concerns about the existing Act, is that he has said that your Bill is “singularly badly drafted”. What I am asking you, and I am keen to get an answer on, is whether you have any plans to make amendments to fix the Bill as it makes its way through Parliament.

Dominic Raab: We will go through Parliament in the normal way, and if there are better ways of achieving our aims, then of course. I am not quite sure where we are at this point in time, but whether it is in the Commons or in the other place, I am very happy to look at those. Indeed, I have extended that invitation to Lord Sumption.

Q21 **Chair:** Can I just ask you about the convention itself before we move on to more detailed questions about the Bill? As you have pointed out, there have been various promises and Conservative manifestos over the years to reform the Human Rights Act, but back in 2015, when the right honourable Theresa May was Home Secretary prior to the Brexit referendum, she said that, rather than leaving the European Union, the UK should leave the European Convention on Human Rights and the jurisdiction of its court.

More recently, we have it reported that the current Home Secretary, the right honourable Suella Braverman KC, said at an event at the Conservative Party conference that her position was that ultimately the United Kingdom needs to leave the European Convention on Human Rights. I asked her in the Chamber today if that was still her position and she declined to answer. But yesterday in the Chamber, when the Prime Minister was introducing his Statement about a new immigration law, a lot of your Conservative colleagues on the Back Benches were calling for the Government to derogate from the convention.

Again, today, we had a question at PMQs about derogation, and the issue was raised during the Home Secretary's Statement about the tragedy in the channel. I asked the Prime Minister yesterday if he would rule out derogation and he did not. What is your position on whether or not the United Kingdom should stay in the convention?

Dominic Raab: First of all, you are conflating various different things. Derogation is of course permitted within the—

Chair: I am coming to derogation in a minute. I am asking you about your position on staying in the convention.

Dominic Raab: Let us not conflate derogation—

Chair: Hang on a second, Lord Chancellor, I was explaining to you what has been said over the last couple of days and narrating to you comments that have been made in the Chamber—

Dominic Raab: Not just the last couple of days; you went back to 2015.

Chair: I went back to what Theresa May said in 2015 and reminded you of what the Home Secretary said, but then I asked you a question that was very specific: what is your position on staying in the convention?

Dominic Raab: The Government's position is very clear: we rule nothing out. Nothing is off the table for the future, and I have made the point that the Bill of Rights envisages us staying within the convention and, indeed, that the ECHR is included as a schedule. The main effect is to overhaul the procedural framework for interpretation, although it does

have measures dealing with dialogue and the margin of appreciation, but that is the Government's position. I think it is entirely consistent with what both the Prime Minister and the Home Secretary have said.

Chair: That is very helpful. Your position is that nothing is off the table for the future.

Dominic Raab: I do not think any Government can take things off the table.

Chair: You are not ruling out withdrawing from the convention in the future.

Dominic Raab: In the future, depending on the situation we find ourselves in, given the ebb and flow of the approach Strasbourg has taken, I do not think it is responsible for the Government to rule things out. What it is the responsibility of the Government to do is to make sure that we deal with the big issues of the day. One of the big issues which our constituents feel very, very frustrated about is the situation with small boats.

Chair: We have talked about small boats a lot, and I am conscious of the time. You wrote to us on 14 July in response to my letter of 13 June as acting Chair of the committee that, "Our plan as a Government is to remain party to the European Convention on Human Rights". Have you changed your position since then?

Dominic Raab: No, and if you allow me to complete what I was saying, the Bill of Rights envisages that we stay in the European convention; indeed, that we incorporate the convention as part of a schedule to the Bill of Rights. But if you are asking us to tie ourselves down indefinitely for the future, that is not something we are willing to do. I think I am known as saying for many years that I think we can achieve most, if not all, of what we want to do by asserting the marginal appreciation and changing the procedural framework, but I cannot guarantee it.

Chair: Okay. That is very interesting, because when this committee went on a delegation to Strasbourg earlier this year, we met with many interlocutors who told us about how important they felt it was that the United Kingdom should remain in the convention because of the signal leaving would send out to other states, particularly eastern European states. But we were told that UK Ministers visiting Strasbourg have repeatedly assured various interlocutors at the Council of Europe there is no question of the UK withdrawing.

Dominic Raab: Madam Chair, you have a new Government, a new Prime Minister, and we have the acute crisis in the channel. I am looking forward to going over to Strasbourg in the new year. I have always had a very good relationship with them. We want to stay within the convention. No one is looking to trip up out of it, but I think we have to put the national interest first. That is the responsibility of any Government.

Q22 **David Simmonds:** Thank you. I think we have all heard loud and clear

that the Government remain, certainly for the foreseeable future, committed to the ECHR. We also heard quite a few articulations about the idea of the need for a new global agreement on migration. Clearly, in the drafting of the Bill of Rights, one of the things that might be under consideration is compatibility with future ambitions and what that might look like. I am just interested in whether there has been any discussion in international fora about what a successor agreement or set of treaties might look like. Is that something the Government are thinking about?

Dominic Raab: We of course engage with all our international partners. A lot of that is done by the Foreign Secretary, although all Ministers have a role in it. I remember us having this conversation with respect to the Brighton declaration. It was Ken Clark and Dominic Grieve who pursued that at the time, and they are not known for being human rights hawks. There is absolutely no reason why we could not revive those kinds of initiatives, whether at a global level or a European level.

I cannot say whether a protocol or anything like that is immediately on the horizon, but it is certainly true that there is a lot of concern about some of these migratory issues and the feeling that the architecture that was set up in the post-war era is not reflective of the circumstances that we are seeing today. I think that must be true. Quite how we address that and whether we have a convention or deal with it in other ways is an interesting question.

Q23 **Lord Singh of Wimbledon:** Good afternoon, Lord Chancellor. My question relates to international implications and interim measures regarding the proposed Bill of Rights. Do you think Russia should have been free to ignore interim measures of the European Court of Human Rights that ruled they should not execute Aiden Aslin and Shaun Pinner, two British nationals?

In addition, Article 34 of the convention provides that states must not effectively hinder people bringing cases to the Strasbourg court. The Strasbourg court has held that this requires states to follow interim measures. Do you agree that failure to comply with an interim decision of the Strasbourg court is a breach of Article 34 of the convention?

Dominic Raab: In terms of what Russia did, of course Russia should not be engaged in the substantive violation of human rights. That is the fundamental point. Once you have engaged in a lack of due process and capital punishment, it seems a bit niche to be pointing to whether or not they comply with an interim order, I would say.

Interim orders have an interesting history. You refer to the convention, but interim orders are not actually a feature of the convention at all; they are a feature of the rules of procedure. Rule 39 is a rule of procedure of the Strasbourg court. It has no basis in the convention whatsoever, and I think this is important. Indeed, the Strasbourg court originally recognised that that was the case and, for long periods of its history, interim orders under Rule 39 were advisory, not binding. This is important.

At some point—I forget the exact date, but I could easily write you with it; it is in all the case law in all the textbooks—the Strasbourg court, of its own initiative and not because states parties in a legislative exercise of power gave them that right, changed its view and said, “Well, actually, we do think our interim orders are binding”. That is quite wrong. Certainly if it happened in the jurisdictions of the UK, we would find it remarkable and unconstitutional for a court, through a rule of procedure governing its internal process, to abrogate and to take upon itself what is effectively a right of injunction. It was not intended by the convention. It does not feature in the convention. It is an internal rule of procedure of the court.

Chair: Hang on a minute, Lord Chancellor. The question was about Article 34. Lord Singh put it to you that the Strasbourg court has held that Article 34 of the convention requires states to follow interim measures. It is an interesting procedural history you have given us, but the fact is now that the court has said that Article 34, and I will read it out to you, “Individual applications. The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention of the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right”. The court has now held that that means the high contracting parties must obey interim measures. If I may just query your comment that the interim measure of the court in relation to Aiden Aslin and Shaun Pinner was rather niche, there was an interim measure that they should not be executed. It is hard to imagine anything less niche.

Dominic Raab: No, no, I am afraid that is not a fair characterisation of what I have just said. First of all, the appalling substantive human rights abuses were the principal issue at stake. As for Rule 39 interim orders, a court cannot judicially legislate to give itself a power to issue injunctions.

Chair: It has not judicially legislated.

Dominic Raab: It has.

Chair: It has interpreted Article 34 as being that the high contracting parties must not hinder effective exercise of the right to bring application. If you bring an application to do X and effectively your rights are going to be obliterated in the meantime, there can be no effective individual application without an interim measure. You know that as well as I do; we are both lawyers.

Dominic Raab: Not only is it clear that what you are saying is wrong, but the Strasbourg court’s initial view was that its interim orders were non-binding and advisory only.

Chair: I am talking about its current view, Lord Chancellor.

Dominic Raab: That is what I am saying.

Chair: The law develops. The law is not stuck in stone.

Dominic Raab: No, it does develop, but it develops, in this country, subject to the oversight of Parliament, and what would be remarkable and indeed—

Chair: What also develops in this country—

Dominic Raab: Sorry, can I answer your question?

Chair: The jurisprudence of the court develops the law, but this is undergraduate law. It is not just Parliament; it is the courts as well.

Dominic Raab: No, no, sorry. I think you are just fundamentally wrong about this. We may have to agree to differ, but it is absolutely wrong for a court citing a rule of procedure of evidence to then create a power to injunct the Executive. That is just constitutionally wrong, and it was not even the Strasbourg court's initial view. It took many years for it to flip from a view that it was advisory to view that it was binding. I think that is wrong.

Chair: You are talking about the history here. I am talking about the current position, which does not relate to a procedural rule but to an article of the convention, and is that the court has held that Article 34 requires parties to follow interim measures. That is the question that my colleague put to you.

Dominic Raab: I am sorry. It is wrong for a court, through interpretation, to judicially legislate. That is at the heart of the constitutional strengthening, the demarcation for the separation of the powers—

Chair: You think it is wrong for the court to interpret the convention. I am astonished by this. Are you saying that it is wrong for the Strasbourg court to interpret the convention?

Dominic Raab: No, but there is a big difference between applying the law to the facts of a case and creating a power for yourself, absent any democratic oversight and particularly one as potent as a power of injunction. I am afraid that in any other jurisdiction other than this we would just be saying that this is common sense. The problem is that it has not been done as a result of clear agreement by the states parties. That is indisputable.

Q24 **Lord Singh of Wimbledon:** Thank you for that. Moving on very quickly, why are you proposing to prohibit UK courts from having regard to interim measures of the Strasbourg court?

Dominic Raab: Because it is not contained in the convention. As I said, I think the assumption of that power by any judicial body is quite wrong, absent any democratic oversight.

Lord Singh of Wimbledon: Why are you prohibiting it? That question has not been answered.

Dominic Raab: Yes, I think it is wrong. Do you mean that we could allow them just to take it into account? If we want to legislate to that effect, that is Parliament's prerogative, but we have not. Powers of injunction against the Executive are set out clearly in legislation and well understood. The parameters are understood. Those are decided by the legislature holding the Executive to account. I think that is right.

Lord Singh of Wimbledon: That is prohibition as far as I can see.

Q25 **Baroness Ludford:** Lord Chancellor, the Bill removes the requirement in Section 2 of the Human Rights Act for court to take into account the case law of the Strasbourg court. Baroness Hale has said that Section 2 ensures that the two courts "speak the same language". Would removing Section 2 lead to the Strasbourg court giving less weight to the reasoning of the UK courts?

Dominic Raab: No, I do not agree. Section 2 was originally envisaged as taking into account provision at the high-water mark under Thomas Bingham in the House of Lords, and it was effectively an obligation to match the Strasbourg case law. In fairness, it has ebbed and flowed since then, and I want to pay tribute to the current Supreme Court because I think it has restrained some of what I as a member of the legislative as well as the Executive would consider to be the excesses of the past. But what ebbs may flow. It is right to be more prescriptive about the canons of interpretation when taking into account Strasbourg jurisprudence.

There is an interesting interrelationship between Strasbourg and the UK courts that is sometimes underestimated. The Strasbourg court, as with most civil law countries, does not have a strict doctrine of precedent that allows its case law to be more fluid—the kind way of putting it—in the common law system. Again, it is different around the UK. We take case law as precedent unless it is overruled by subsequent precedent or by Parliament, so what has happened with Section 2—magnified by the impact of Section 3, which effectively allows courts to rewrite or amend legislation—is that a ratchet effect is created whereby the most elastic interpretations in Strasbourg become the threshold, the floor, in the UK. Article 8 was a very good example of that, as what actually happened under the Human Rights Act jurisprudence was that the parameters of Article 8 were expanding through judicial innovation, if I can put it like that, and at various points Strasbourg looked at this and thought, "Well, that is a prompt for us to go further".

Let me give you one very concrete example. The first time the Strasbourg court used Article 8 to scupper a deportation was, from memory, in the mid-2000s. That was very much prompted by the innovations in UK case law, which were allowing deportation orders, particularly for FNOs—foreign national offenders—to be scuppered on those grounds. That is a good example of the push factor involved, not just the pull factor, but I think we need much clearer canons of interpretation. The replacement of Section 2 with Clause 3 of the Bill of Rights will help us to achieve that.

Baroness Ludford: Is it not better to sum up what you just described as

a creative judicial dialogue? Sir Peter Gross said of taking account that, "You are not bound by it, but you must take account of it so that you have your link in". Why shouldn't you have that if you are a party to the convention? It is no big deal, is it, to take account of—

Dominic Raab: No, it is just not factually accurate. I am not saying that this is the position of the current Supreme Court, but if you look at Ullah and the position Tom Bingham took, this was not what he said. He said that effectively you needed to match the case law from Strasbourg. That is a good example of where well-intentioned provision in the HRA—

Chair: Have we really moved on from Ullah?

Dominic Raab: We have.

Chair: Yes, so that is history now.

Baroness Ludford: If it is not broken, do not fix it.

Dominic Raab: Sorry, let me answer one or other of you. I do not think that is quite right, because what ebbs may flow and it is the same in Strasbourg. Some people have said to me, "Actually, rather than you are tearing up human rights, you are codifying the best practice that we have seen in the Supreme Court". Fair enough. What is right, given that ebb and flow, which is so important on the canons of interpretation, is that we provide a clearer framework. That is all Clause 3 does.

Q26 **Baroness Ludford:** Clause 3(3)(a) would limit the power of domestic courts to interpret convention rights more expansively than the Strasbourg court. Will this not disempower our courts and give the final say and the meaning of convention rights to Strasbourg, perhaps with the Strasbourg court less inclined to give a margin of appreciation to the UK courts?

Dominic Raab: No, I do not think so. What it will do is encourage the UK courts to adopt a more autonomous approach to the interpretation of case law, bearing in mind the other factors listed in Clause 3. In particular, allow them to divert from Strasbourg case law—again, noting the point I made earlier that the case law in Strasbourg is often quite haphazard. A good example of that is prisoner voting. I can think of a whole string of cases, like *Hirst v United Kingdom (No 2)* (2005) ECHR 681 through to an Austrian case and others, which jumped around the place quite a bit.

It is absolutely legitimate for us to say, "Well, we want an autonomous approach" and, given that the Strasbourg case law often differs with itself, there is a power to diverge from it, which is Clause 3(3)(b). Again, we come back to this ratchet point that Strasbourg case law, when it is pronounced, is treated like precedent. It is not in Strasbourg and we should not treat it as such in the UK.

Baroness Ludford: You have raised prisoners' rights, and I cannot resist because it obviously has an iconic symbolism in certain quarters. I think

it has been much misrepresented. The Strasbourg court did not say that all prisoners must vote; it said that the UK should adopt a scheme for prisoners to vote distinguishing between different categories. Permit me that comment.

Dominic Raab: Can I address that point? I was the Human Rights Minister in 2015/2016, and at various points they hinted that they would accept giving a cohort of prisoners the vote. Since when was that the court's role? There was no prisoner voting right in the convention to allow engagement in what was effectively not just dialogue but negotiation. As we have set out in various points in the Bill of Rights, it was something on which actually, notwithstanding the controversy, we had a decent dialogue with Strasbourg. I remember speaking to the Committee of Ministers, and we very respectfully said that we did not want to trip up out of the convention but we felt that this judgment was wrong. We felt that the Strasbourg case law had changed and shifted so fluidly that there could not have been a huge amount of confidence in Strasbourg in it. Respectfully, we did not want a particular fight about this, but we were not going to give prisoners the vote, and Parliament had decided that.

That is a good example of where, notwithstanding the judgment in *Hirst*, we engaged in dialogue and we have not given prisoners the vote. At the time, everyone told me that we would be kicked out of the Council of Europe. We were not and prisoners still do not have the vote. That is why we can feel confident in the approach we take in the Bill of Rights and in availing ourselves to the margin appreciation and engaging in that dialogue with Strasbourg.

Baroness Ludford: An alternative interpretation would be that the system worked.

Dominic Raab: It is not far from what I have just said, actually. We had to work pretty hard. Some of the clauses in the Bill of Rights will help to facilitate dialogue like the one we had with Strasbourg on prisoner voting. I certainly think we have a provision here which says that when you have an adverse ruling it should be notified to Parliament. Parliament should take its responsibility to look at those issues very seriously, but we also affirm the fact that, in Clause 1, judgments from Strasbourg cannot affect the right of Parliament to legislate. That is an important point of principle.

Baroness Ludford: The principle of subsidiarity means that the UK has primary responsibility for enforcing and securing convention rights domestically, but the Bill seems likely to increase the number of cases going to Strasbourg. How is this compliant with the principle of subsidiarity?

Dominic Raab: I am not convinced that it will have that effect. Keir Starmer's textbook on this subject from 1999 is quite interesting. He wrote, "The court is primarily concerned with supervision and the role is therefore subsidiary to that of domestic authorities. It has no role unless the domestic system for protecting human rights breaks down". I think he was right about it then, and that is basically the model that we adopt.

We are entitled to engage in dialogue with Strasbourg, and, as the malleability of the case law is shown, when we engage positively, as we did on prisoner voting, we can push back. Of course there will be cases that will go to Strasbourg from time to time; that is not an unhealthy part of the relationship. But I do not foresee a big ramping up of the cases.

Baroness Ludford: You are talking about how things have worked well under the existing Human Rights Act, but you are proposing to abolish the obligation of domestic courts to take account of Strasbourg case law and to limit their power to interpret convention rights, as you put it, more expansively than the Strasbourg court. Is there not a risk that there will be a gap? You want an originalist interpretation of the convention, so the danger is of a gap between the Strasbourg court and the domestic courts, and that could generate an increase in the motivation of people who feel that they do not have full interpretation in the domestic courts, according to what Strasbourg court would say. This, therefore, might give more people impetus to go to Strasbourg, whereas at the moment not many cases go to Strasbourg, and of those that do the UK wins most of them.

Dominic Raab: Yes, and I do not think that would fundamentally change. We have an excellent record, and I think that will long continue. I was looking at the record of adverse judgments against the UK by year, and the average between 2000 and 2010 was 24. The average between 2011 and 2021 was six. We have a stellar record. On issues of fundamental importance, whether constitutional or public protection, it is right that we engage in that dialogue. I do not think the floodgates would open in the way you are suggesting, and I do not think that when there is a very important principle at stake that is in any sense illegitimate. In fact, I think it is legitimate for us to push back in Strasbourg. Sometimes those cases are the vehicle for doing so.

Q27 **Bell Ribeiro-Addy:** Thank you, Lord Chancellor. I want to take you back just a little bit. You were explaining earlier where your views on changing to this Bill of Rights have come from. You understand that the Human Rights Act in this country is lauded as a model statute right across the world. Sir Peter Gross's review has confirmed that they want only minor changes, not wholesale destruction which it seems you are proposing. You have explained that several Conservative Party manifestos have made reference to these changes, but the most recent one was in Sir Peter Gross's review and that was that just minor changes need to be made. Given that review and the language in your most recent manifesto, I just want to understand where you believe the mandate comes from for your Government to make such sweeping changes to a vital piece of legislation that has such widespread support across the country and across the House.

Dominic Raab: I do not think it does have a widespread support across the country. In my time as Foreign Secretary, no one ever said to me, "Do you know what? We love the fact that the UK has the Human Rights Act". Indeed, when you look at the way other systems work, few would allow the kind of blurring of the separation of powers that we have.

In terms of where the mandate comes from, we mentioned the previous manifesto commitments. This one is entirely consistent with what we are doing in the Bill of Rights. In one sense, we have the Goldilocks criticism where some people say that we are going too far and other people say we are not going far enough because we do not talk about pulling out of the ECHR. I would say that this is the next chapter in our approach to human rights that strengthens quintessentially UK freedoms like free speech. We recognise that a jury trial is part of the right to a fair trial, but it is not particularly common on the continent, with some exceptions. We also curb some of the abuses that undoubtedly have taken place. This is a good common-sense reform, and the fact that you get that Goldilocks critique shows you how moderate the approach we have taken is.

Q28 Bell Ribeiro-Addy: I will move on to ask you some questions about public authorities and positive obligations. As it stands, the Bill you are proposing would limit the ability of the courts to apply positive obligations. These have been instrumental in the past in ensuring that the police effectively investigate loss of life—for example, the Hillsborough inquest and serious violence against women and girls, such as by the rapist John Worboys. Why would you want to weaken these rights and protections for these groups of people?

Dominic Raab: Nothing in our proposals would have prevented the Hillsborough inquiry. You mentioned John Worboys as well. Again, that is the same thing. Generally speaking, in relation to positive obligations, we come back to the same point I was discussing with the Chair: it cannot be right, as a basic matter of constitutional principle, that we allow a court to decide what is effectively a legislative matter regulating what our public service bodies do. There are a whole range of problems with that—for example, adding regulatory straitjackets.

The obvious example that I have given in the past is the Osman ruling. Anyone who read the Osman case from the 1990s could not help but be moved by that case. We have created a positive obligation, which sounds sensible as a matter of operational policy, to tip off those who are at risk of life or limb. No one would disagree with that. But when you find out that it has become a straitjacket regulatory requirement to tip off, without discretion, anyone who faces risk to themselves, and you see the proportion of resources involved—in the consultation we document what various different police forces have had to go through to protect gangsters from each other—you realise the problem with positive obligations: they are effectively a licence to provide a straitjacket obligation on to public service bodies. If it should be done, it should be done by Parliament. You emasculate the ability of a chief constable, for example, to decide the proper use of resource to pursue the public interest in prosecuting one or other. The National Police Chiefs' Council has highlighted the increasing resource burden of positive obligations.

In the consultation document, we looked at other police forces that found that they were increasingly required by threat-to-life notices to protect gangsters from each other. I just do not think that is the business of the courts. In the Bill of Rights, we have taken quite a practical approach.

There are post-commencement interpretations of the ECHR where we say that the courts are not required to apply positive obligations, and pre-commencement ones where we just say that you do not have to apply them and you must give great weight to the ability of a public authority to perform its functions. We must allow the police to decide operational priorities. We should not be affecting the operation of primary legislation. I would gently put the question back to you: which of those things do you think a court should be able to overrule in the imposition of a positive obligation, which by definition is not grounded in the convention?

Chair: Hang on a second. It is not really for members of this committee to answer questions. You are here to answer the questions, Lord Chancellor. We will stick with the questions that Bell is asking, if you do not mind.

Dominic Raab: Okay. Well, let me just say rhetorically then that I would be fascinated to hear from the committee which of the criteria in Clauses 5(2)(a) to 5(2)(e) you think we should not be having courts consider.

Chair: Can we stick with the committee's questions, please, rather than questions to the committee.

Dominic Raab: Madam Chair, it is squarely addressing the question I have been asked.

Chair: We have very limited time, and this is a very important issue because, as we have heard, positive obligations meant that the Hillsborough inquest went ahead, the black cab taxi rapist was properly dealt with after a long delay, and so on. I would like you to focus on the questions my colleague is asking rather than putting questions back to the committee—

Dominic Raab: I believe I have and have given a very full reply.

Chair: —otherwise we will not cover any of the ground we have to cover this afternoon.

Dominic Raab: I respectfully differ and I will reserve the right to express myself in the most effective way and give the fullest answers I can. All I am saying is: feel free to come back with the specific elements of our approach to positive obligations that you feel are unwarranted.

Bell Ribeiro-Addy: You have given some quite extreme examples there, but throughout everything you have said today it strikes me that you do not necessarily feel that all rights should apply to everybody equally. Specifically, do you feel that the right to life applies to everybody equally?

Dominic Raab: Of course. We do not seek to alter or affect substantive rights, as I said earlier, but we seek to determine whether it should be expanded, as indeed a range of other convention rights have been, to provide positive obligations on the state rather than requiring the state not to interfere with the rights of an individual. It is one of the tools,

along with Sections 2 and 3, that have been used to effectively allow a court-innovated regulatory approach to be imposed on the state without any democratic oversight. It is fundamentally undemocratic.

Bell Ribeiro-Addy: You do not agree that one of the primary functions of a state is to use its powers and resources to keep its citizens alive, regardless of who they are.

Dominic Raab: I do, but I also think that the ordering and allocation of the public service priorities and the judgment of the professionals, whether it is police officers or other public service providers on the front line, should be overseen by Parliament. Of course, the Executive should apply the law to them, and if there are regulatory changes or additional burdens, that should be done by Parliament, not the courts.

Bell Ribeiro-Addy: Threat-to-life notices are issued by the police directly when there is a real and immediate threat to a person's life. As I said, some of the examples you have given are quite extreme. In evidence to us, the Centre for Women's Justice said that threat-to-life notices have undoubtedly saved women's lives. Do you agree with that assessment?

Dominic Raab: No, what is saving people's lives is the police. The question in all these cases is whether the police, through the lens of a ruling that has been decided by lawyers in a court—an adversarial rather than a polycentric environment for policymaking—are being given the latitude, but also the oversight, to discharge their mandate to protect the public. You say that it is an extreme example, but it is just a very clear one. If you look at areas where, as a result of threat-to-life notices, police officers have to expend a significant amount of their time, it is wrong for a court to require or impose a regulatory burden.

I will give you the example we gave in the consultation paper. In 2014 to 2015, Greater Manchester Police had two separate operations over a significant period of time. One lasted 18 months, during which the force issued 100 threat-to-life notices. This was all between rival gangs. I am not saying that should not be policed; it should be policed, and policed robustly. But those operational decisions should be decided by chief constables. It is entirely wrong to try to look into the future and regulate through the lens of a courtroom. It is wrong on principle.

Bell Ribeiro-Addy: We know that politicians are flawed themselves, as are the police. At the moment, the Metropolitan Police themselves are in special measures, as are other public bodies. Who else is going to regulate this, if not the courts?

Dominic Raab: It should be done through acute accountability. We obviously have independent police complaints mechanisms, but of course—

Bell Ribeiro-Addy: Which people have very little confidence in.

Dominic Raab: I understand, but ultimately we, as parliamentarians, need to step up to the plate.

Bell Ribeiro-Addy: People also have little confidence in parliamentarians.

Dominic Raab: But I do not think they have confidence that the courts can act as a regulator, not in the sense of checking abuse by the Executive, including the police—that is absolutely their role—but to engage in what is effectively providing regulatory burden or regulatory measures, licensed by the Human Rights Act. I do not think that is right. I do not think anyone would say that that was right, but we do that implicitly, which is why we have taken the approach on positive obligations and the Bill of Rights that we do. Of course, we need the robust accountability of the Executive, the police and anyone else to the courts, but that is different from giving the courts a regulatory function. Effectively, that is what the Human Rights Act has done in practice, and it is wrong.

Bell Ribeiro-Addy: The main example you have used is people involved in criminal activity, and you are proposing to limit the ability of the courts to interpret convention rights in a way that would require the police to protect the lives of people involved in criminal activity. Would your proposal not also apply to children involved in said activity, such as county lines, and why would you want to exclude such children from protection?

Dominic Raab: What you are saying is fundamentally misrepresenting my view. I do not want to exclude anyone. I do not even want to exclude the police from tipping off serious criminals about a threat to life. I am just trying to prevent them being required to do so in a regulatory fashion effectively by a ruling of a court that has not taken into account all the different competing priorities, operational and otherwise, and the finite resources of any police force. That is the bit that I think is wrong.

Bell Ribeiro-Addy: If they are not required to do so, how can we guarantee that they will do so?

Dominic Raab: That is why we have PCCs. That is why we have Parliament. That is why we have proper mechanisms for oversight of the Executive and the police. The courts are there when they stray beyond the law, but that is different from making the courts a regulator. That is the fundamental difference.

Bell Ribeiro-Addy: Are the laws not there to ensure that all these bodies act in the way they are meant to and to ensure that the courts enforce that action?

Dominic Raab: The fundamental difference between us, and I do not think it is that much, is that the courts are there to interpret and apply the law. They are not there to legislate or regulate.

Chair: I would like to try to understand something. In the Worboys case, the common law would simply have said that how the police investigated was up to them, but because of the positive obligations in the Human

Rights Act the court held that there was a duty to investigate effectively. That meant that the crimes of a serial rapist were brought to light properly and investigated properly. He was imprisoned and the Met changed the way they investigated sexual crime. When Professor Mark Elliott gave evidence to the Justice Committee, he said, "It seems clear that the kind of positive obligations that Worboys enforced would affect the police's ability to determine their own operational priorities. My assessment is that judgments like Worboys would be much less likely under the Bill of Rights". That is right, is it not?

Dominic Raab: No, I do not think so. If you look at the detail of the clause on positive obligations, that is apparent. More generally, encouraging litigation against the police is not a particularly effective means of the oversight we all want. Do not get me wrong, I am not saying it is unnecessary, but the risk, if it is shifted from holding the police to account when they have broken the law to trying to regulate them prospectively, is that you will skew the operational priorities that only a chief constable in the last analysis can decide, and skew the resources so that you have disproportionate focus on the one or other case that has had the fortuitousness to go to court rather than being looked at in the round. That is the thing we need to be careful of.

Chair: The Bill of Rights will discourage litigation against the police. I have a note of that. Thanks very much, Lord Chancellor.

Q29 **Bell Ribeiro-Addy:** Lord Chancellor, I want to ask you some questions about deportation and immigration. You were already quite clear about your views on the use of the right to a family life, and Clause 8 would restrict the ability of an individual to challenge deportation legislation on the basis that it is incompatible with the right to a private and family life, unless the legislation would cause extreme harm to the individual's family member. Would this not effectively extinguish the right to a private and family life in all those cases?

Dominic Raab: You get a sensible balance by not allowing serious offenders to claim spurious elastic rights to stay in this country when the public interest is overwhelmingly in removing them. Often they are trying to coercively involve family members in the proceedings, so it is in those members' interest for this individual to be removed. So no, it gets the right balance.

Bell Ribeiro-Addy: In a lot of these cases of foreign national offenders, we are talking about people who have been here for a number of years. Some of them may have been brought here when they were young. Some of them may have even been born here, just not had their citizenship and their immigration status regularised in the way they should have been. At times, we have proposed sending them to countries they probably left when they were very young, or maybe have never even been to, and away from their families. Do you think that is right?

Dominic Raab: Yes. If they have burgled, killed, raped, or committed other very serious offences and are not a citizen of this country—

citizenship marks something important—it is in the public interest and it is right.

Bell Ribeiro-Addy: Even though our nationality and citizenship department is clearly flawed.

Dominic Raab: No government body is perfect, but I stand by my view that if you commit a very serious criminal offence, you should be deported. I remember one case several years ago where the individual had paid no maintenance, had committed very serious crimes, had previously been convicted of battery against a partner, and yet was claiming the right to family life to stay. This is the kind of stuff, if I may say, so that gives human rights a bad name.

If you look at the travaux préparatoires to the convention, it was never envisaged that Article 8 would apply in such circumstances. You have quite a pernicious set of circumstances; something like 80% of successful human rights appeals against FNO deportation orders are Article 8 now, and yet this was never envisaged to apply to that set of circumstances. In the Bill of Rights, we are not talking about eroding things like Article 3, on the prohibition on torture. We do not go near that. That is right. I believe in moral absolutes, but I do think that in some of these areas the thing has become adrift from its moorings.

I remember an individual whose brother had been killed and dumped in the River Thames. I believe she was Nepalese. She saw me in a constituency surgery. I explained that we were not able to deport the perpetrator because of the right to family life, and she said, "But what about my family's rights?" I did not have a very good answer to that, and I do not think that we do unless we correct this.

Bell Ribeiro-Addy: How is Clause 8 compatible with your obligation to secure convention rights, including the right to a private and family life for everybody? Yet again, it seems you are saying that not everybody has a right to a private and family life.

Dominic Raab: Paragraph 1 of Article 8 sets out the right, and paragraph 2 sets out the qualifications to it. All we are doing is applying an interpretive framework, which I believe is consistent with that but I am sure will end up in dialogue with Strasbourg.

Bell Ribeiro-Addy: You would be restricting who has this right to private and family life, so you are effectively saying that it is not a right that you believe is universal to all.

Dominic Raab: No, I would be saying that the right to family life does not allow a murderer, a rapist, someone who commits armed robbery, to claim loose social or family ties to stay this country. There is no doubt that Article 8 was never intended to be the goalpost to shift to cover that.

Bell Ribeiro-Addy: Again, you seem to be using some of the most extreme circumstances, when a lot of the cases that we see as parliamentarians, that come through our inboxes, or that we are

contacted about more generally or hear about are not about that. We have situations where the Home Office, recognising that somebody has a right to a family life, is telling them to raise their child via Skype. Do you think that is correct?

Dominic Raab: It is for the Home Secretary to talk about the Home Office. The Home Office would be supported in the very difficult and important job it does if we had a legal framework that allowed it to focus on the areas where we want to protect rights and be compassionate and not allow those rights to be abused. That is why this is important.

Q30 **Bell Ribeiro-Addy:** I want to go on to how you believe the Bill of Rights will help the issue of small boats crossing the channel. You told the Justice Committee that you thought the Bill of Rights would be able to help with this, and you mentioned this earlier when you were answering questions from the Chair. Which clauses in the Bill do you think will help to resolve this issue, and exactly how will they do that?

Dominic Raab: First, I have never said that I thought they would solve small boats. I have said I think they could help materially in about three or four different ways.

Bell Ribeiro-Addy: Your words earlier to the Chair were, I believe, that they would address it.

Dominic Raab: Yes, but that is not same thing as solving it. I was very clear and I have been clear about this whenever anyone has asked me.

Bell Ribeiro-Addy: You are specifically quoted as saying to the Justice Committee that it will "help in some material respects" to solve the "small boats problem".

Dominic Raab: Exactly what I just said to you, but it will not solve the whole problem. We should be very clear on the things the Bill of Rights will and will not do, but you asked me a specific question. The approach we take to Sections 2 and 3 of the Human Rights Act, the approach we take to interim measures in Clause 24, the approach we take to primary legislation enacted by Parliament in Clause 7 of the Bill of Rights will all help. The key ways—the interim measures that we discussed at some length—are Sections 2 and 3 and stopping the creative judicial reading down or amending of legislation, and the greater respect for Parliament, or the greater weight given to Parliament in certain areas, which is set out in Clause 7.

Bell Ribeiro-Addy: Thank you. I have one more question for you about the Belfast/Good Friday agreement. Obviously you will know that, for us in the Labour Party, one of our proudest achievements in government is having delivered that, and the ECHR and the Human Rights Act are the scaffolding that holds this up, effectively. The Northern Ireland Human Rights Commission has advised that the Bill appears to be incompatible with the obligations under the Belfast/Good Friday agreement to incorporate the ECHR and provide direct access to the courts. Do you not believe that this alone should be enough for you to withdraw it?

Dominic Raab: No. The Bill of Rights is consistent with the Belfast agreement, because we stay within the convention and we incorporate, as I mentioned, the ECHR as a schedule to the Bill of Rights. That is what the requirements are.

Bell Ribeiro-Addy: If you stay within the convention just for the sake of doing so as opposed to actually complying with it fully, is it not just us having our cake and eating it and not living up to what we are meant to be following: the spirit of the ECHR in the Belfast/Good Friday agreement?

Dominic Raab: No, I just do not accept that with regard to the spirit or the letter. We would be fulfilling our obligations. One of our prerogatives is to engage in dialogue with the Strasbourg court. Róbert Spanó has just stepped down as president of the Strasbourg court. If you look at what he said, it has entered an age of subsidiary, whereas before it used to talk about the age of the living instrument. This is partly a reflection on the Brighton declaration and the movement to have less creativity in its own case law, but I think it is signalling that it is perfectly legitimate for us to engage in that dialogue.

Bell Ribeiro-Addy: How can we be doing this, specifically with regard to the Good Friday agreement, if we are failing to incorporate the ECHR and provide direct access to the courts?

Dominic Raab: What you are saying is factually not true. The Bill of Rights incorporates, as a schedule, Schedule 1(1) of the convention. It is in there, so it does incorporate the convention.

Chair: You said earlier that withdrawing from the convention is not off the table. If we, the United Kingdom, withdrew from the convention, that would be a big problem for the Good Friday agreement, would it not?

Dominic Raab: It is right for the Government to be clear that, first, our focus is on the public interest and the national interest. For that reason, nothing is off the table for the future. In terms of the Bill of Rights and what we are saying now, we have been very clear that we would stay within the convention and that we have incorporated it as a schedule to the Bill of Rights.

Chair: I hear you, Lord Chancellor, but the question I asked you was this: if the United Kingdom withdraws from the European Convention on Human Rights in the future, that would be a big problem for the Good Friday agreement, would it not?

Dominic Raab: I am not going to engage, Madam Chair, in hypothetical questions.

Chair: We might have to wait until Ireland is reunified before we do that. What do you think?

Dominic Raab: I am not going to be tempted down that route, but that perhaps shows more of your prejudices than mine.

Chair: It is not prejudice; it is perhaps just looking into the future. You are looking at the possibility of withdrawal from the ECHR, I am looking at the possibility of what might protect the United Kingdom from being held in breach of a very important international treaty.

Dominic Raab: Well, let us agree to differ.

- Q31 **David Simmonds:** The questions I would like to put to you are about the relationship between the UK courts and Parliament, the balance, which has been much referred to. The Independent Human Rights Act Review concluded that, since 2004, “there has been no real evidence” that UK courts have misused Section 3. Given that point, what is the motivation for repealing Section 3, and given that the Government could bring legislation forward to overturn any bit they did not like, would that be a more constructive way forward rather than remove it entirely?

Dominic Raab: In the consultation documents we set out the areas where Section 3 has been a problem. I understand the argument that actually the courts’ approach has ebbed and flowed over time, but precisely because it has ebbed, it may flow again in the future. It is fair, on an issue so critical to the separation of powers, to have clearer canons of interpretation prescribed in our fundamental human rights law. It is just wrong to license a court to amend legislation. I am not blaming the courts for it. If you do that, they will follow the parliamentary prescription or requirement. I just think it is wrong. We need a clearer demarcation of the separation of powers and that is what the approach we take to Section 3 and indeed Section 2 will achieve.

- Q32 **David Simmonds:** Turning to Clause 40 of the Bill, which provides that the Secretary of State can make regulations to preserve or restore judgments on which the court have relied, there has been a great deal of debate about the importance of parliamentary sovereignty in this context. My question is why the argument is that it should be the Government, in the person of the Secretary of State, that makes that decision rather than it being a matter for Parliament about which judgments should be preserved or not.

Dominic Raab: Ultimately it would have to be done by regulations. It is a good point, and we did consider this at length. The regulations would be subject to parliamentary oversight, and any that amend or modify primary will be subject to the affirmative procedure. When we looked at this, I did feel confident that the parliamentary prerogatives—and I talked about this at length at various different points—are there. One thing the Bill of Rights does unequivocally is reassert not just the rights but the responsibility of Parliament to engage in this, including adverse judgments that we get from Strasbourg.

David Simmonds: How confident would you be that Parliament has the capacity, the opportunity, the scope to undertake that scrutiny to the appropriate and necessary level?

Dominic Raab: We should feel confident. Let us have a look at it. Since October 2000, when the HRA came into force, of the 46 declarations of

incompatibility, 40 have been fully addressed, six are still ongoing, three would be addressed by remedial orders currently before Parliament, one of which the Government have already said we will address by remedial order. That leaves two subject to appeal. That is a reasonably robust mechanism that we have in place, and that is why I have not suggested changing any of that.

Q33 David Simmonds: Clause 7 of the Bill suggests that the courts would be required to accept that the balancing between policy aims and convention rights is always properly carried out by Parliament. Lord Pannick was very critical of this position, the argument essentially being that it is just an attempt to take power away from the courts. I was wondering if you have a view about the appropriateness of the need to strike that balance through that clause.

Dominic Raab: When it comes to determinations of the public interest, and sometimes the substantive articles of the convention make reference to it, great weight should be applied to the decisions that Parliament makes, particularly when they affect policy aims rather than Executive action. We have talked a bit about free speech versus right to privacy. If Parliament has opined on the right balance between the rights of different individuals, or indeed different convention rights, that should be respected rather than what we have had in the past, which is opaque and sometimes expansive interpretations of the right to privacy through Article 8, used to erode that determination by Parliament. It would be different if we were talking about Articles 2 or 3, but in those other areas it is absolutely right.

David Simmonds: Just to probe a little further, we talked a lot about small boats, and the debate about migration, legal or otherwise, that has gone on can be an interesting example of where strong views have been expressed by Parliament, including, on occasion, by Ministers at the Dispatch Box. The aims that are set out by Ministers are not reflected in the law. We have heard frustration from Ministers about the decisions of the courts, but it is clear the courts are following the law as opposed to the policy aim that is set out. Could you perhaps give us a degree of assurance that due legal process will still be the absolute backstop in this context, as opposed to an opinion that might have been expressed in Parliament that is not perhaps reflected, for example, in the legislation?

Dominic Raab: I think you are absolutely right. If the Executive behaves in a way which is beyond the law, the court must hold it to account, but Clause 7 is about something rather different. It is about when there is a decision to be made on the right balance between competing rights, or competing policy aims, and where Parliament has a set position on this. All we are saying is that the courts must have regard to it. It is not binding them. It is not extinguishing the courts' discretion. We set out the principle in Clause 7(2)(b) that in those kind of circumstances the courts should give the greatest possible weight to the principle that in a parliamentary democracy decisions about how such a balance should be struck are properly made by Parliament. The truth is that the courts say this kind of thing all the time, and they are do indeed in Strasbourg. We

want to make sure that this is a canon of interpretation rather than just something that is said now and again but often departed from in practice under the HRA.

- Q34 **Lord Henley:** Lord Chancellor, can I move on to parliamentary scrutiny of human rights? The first point is that in your Bill you are removing Section 19, which imposes that duty on Ministers to certify this Bill complies with human rights and that all Ministers take that very seriously and take advice on it. In your letter of 14 July, you made a commitment that proposed legislation will be accompanied by an analysis of human rights implications. Now, if Section 19 is going, presumably the Government will not be certifying the Bill as fully compliant. At the same time, you are proposing something rather different, but are you proposing something in legislation? Are you looking for an amendment here? Are we getting less parliamentary scrutiny or less advice for our Ministers as to what is in any proposed legislation?

Dominic Raab: I am glad you have asked the question, because it is a very pertinent question. If you look at the requirement from Section 19, it is not something that comes from the convention. It was regarded as a practical means for Ministers to vouch that what they were doing was consistent with the HRA and the ECHR. The test in practice is whether it is more likely than not that the Bill would withstand legal challenge on convention grounds. It is effectively a 51% test.

There are a number of arguments against that, but, first, what about cases that might be of the highest importance? Let us say they affect public protection/counterterrorism powers. We have anguished about this a lot. Where there is a 45% to 50% prospects of success, there is an argument that we want to be less small-C conservative in our approach to litigation and avoid a binary test. You can argue that that has had a chilling effect, not just in big areas like CT but in other areas where we wanted to innovate legislatively, but unless we can hit the 51% threshold, that very binary threshold, we have our hands tied.

To put the other argument, there is also a range of cases where we have had all sorts of legislation where the Section 19(1)(a) statement has been made, but the legislation was declared incompatible. I was looking at some examples: the Safeguarding Vulnerable Groups Act 2006, the Anti-terrorism Crime and Security Act 2001—there are others. The approach we would take is not to have such a binary approach at the 51% threshold, but actually to have government Bills still accompanied by a human rights analysis, which would set out our view of the law.

I do not think that will reduce scrutiny. If anything, it will encourage a more granular nuanced debate about where the edges of the law are, and where we are entitled to engage in dialogue and, frankly, where we are not. As I said, there is a string of legislation where we have had adverse judgments, notwithstanding Section 19(1)(a) statements. I have discussed this with various colleagues in government and across Whitehall, and there is a feeling that Section 19(1)(a) threshold is too binary. That does not mean that there will not be a proper human rights

analysis when legislation is introduced. I hope I have explained the thinking clearly enough.

Lord Henley: You will not suggest that should be part of the Bill itself, that there should be that analysis?

Dominic Raab: I am happy to make a commitment to that effect. Only at the dispatch box. I am happy to be clear on what we envisage as a matter of practice.

Lord Henley: No doubt it will come up in the passage of Bill through both Houses and assurances will be given of the rights.

You have also accepted the Bill of Rights is likely to increase the number of declarations of incompatibility issued by UK courts. Is that going to leave victims without any effective remedy for breaches?

Dominic Raab: You can make an argument that it would strengthen accountability, but in any event it is the proper constitutional approach.

Q35 **Lord Henley:** Clause 25 imposed a duty on the Secretary of State to notify Parliament of any adverse Strasbourg judgments. The director of the Bingham Centre for the Rule of Law tells us that any parliamentary discussion without adverse judgments should focus on how the judgment should be implemented, not whether it should be implemented. Again, will we have assurances that government will not try and use parliamentary debates on this to avoid abiding by adverse judgments?

Dominic Raab: It is the prerogative of Parliament to decide how it legislates and it cannot tie its hands, and it should not tie its hands. This was very much born out of the experience of prisoner voting. One of the arguments that was made to us is, but has Parliament properly considered this? Is this just an oversight? A lot of the legislation on barring prisoners from voting was very old, so we made the argument that Parliament had considered this and there were various different debates; I remember the Back-Bench business debates and Westminster Hall debates on this. This is done out of respect and as a platform to allow for that kind of dialogue, but also because it was asked explicitly of us: "Has Parliament really considered this?" It should give some comfort to Strasbourg that we are properly engaged in dialogue and that Parliament is not ignoring their rulings.

Q36 **Lord Dubs:** Lord Chancellor, Clause 15 would introduce a permission stage preventing victims bringing human rights claims if they cannot show that they have suffered a significant disadvantage. Why should a victim of a human rights violation find it harder to enforce their rights than someone who has experienced negligence or breach of contract?

Dominic Raab: You have to show loss if you want to bring a negligence claim and a contractual claim. There is a permissibility stage at the Strasbourg court. It is a different one, but it is the right thing to do. Actually, we should all want the courts to be dealing with the most meritorious and substantive claims, and in the examples you have just

given there is always a test of loss; you cannot proceed without demonstrating loss.

Lord Dubs: The Ministry of Justice has referred to the fact the Strasbourg court imposes a similar test for applicants. Lord Mance has said that this “ignores the difference between first instance access to justice and review jurisdiction”. He is right, is he not?

Dominic Raab: No, there is a difference between the two courts. You and I have been debating this long enough, but people outside of Westminster find it extraordinary. On the issue of human rights, the most central violation that could be made to any citizen, or anyone else in this country, is that you can bring these claims when you have not suffered any material disadvantage. It is extraordinary.

Q37 **Lord Dubs:** Clause 18 requires courts to take into account a victim’s past conduct when awarding damages. Will this essentially lead to courts having to distinguish between worthy and unworthy claimants, and does Clause 18 not in fact undermine the principle that human rights supply to everyone?

Dominic Raab: No, because this is at the remedies stage. It is not at the damages stage. It is explicit, and in fact it is in the title of Clause 18. There has long been a principle that he or she who comes to equity must do so with clean hands. When you want to apply for compensation, it is quite right that a court takes into account what you did. Was it contributory to the wrong that you say you have suffered? We have that in negligence and I think it is right that we have it in human rights cases.

Lord Dubs: Clause 18 will also require the courts to give great weight to the importance of minimising the impact of damages on the ability of a public authority to carry out its functions. Is the best way for a public authority to avoid damages simply to comply with its human rights obligations?

Dominic Raab: Yes, but what we want to avoid is litigation being used as a tool to paralyse public bodies that are doing important roles. Both of those facets are important. I do not disagree with you. We want public bodies performing their functions lawfully and compatibly with human rights. What we do not want is to encourage a litigation culture. It is right that the courts take that into account. They do at the moment, but do they give great weight to it? I think it is something whereby we are reinforcing a factor rather than inventing it, in Clause 18(6).

Q38 **Baroness Ludford:** Lord Chancellor, can I just pick up on something you said? When Lord Dubs was asking you about the term “significant disadvantage”, it may just have been a slip of the tongue, but your reply referred to the fact that you wanted a victim to be able to show material disadvantage. As a committee, we spent quite a lot of time on what happened in care homes during Covid. If a family member was unable to visit their loved one because homes were applying restrictions which they should not have done, has that person suffered material disadvantage

when they were unable to be present when their loved one died?

Dominic Raab: As Lord Chancellor, I will not comment on hypothetical cases that have not been brought. I should have said “significant” rather “material” disadvantage, because it could of course be non-physical, for example, or emotional. If you are bringing a human rights claim that you have suffered some form of significant disadvantage or harm, I do think it is right to provide evidence, and I think most people would find that axiomatic in a human rights case.

Baroness Ludford: I will not continue, but the contrast is made with other types of claim. I might be going above my pay grade here, but then it is for the courts to decide in the redress and any damages or whatever ratification they order, and they will take a view on the disadvantage, but what you are introducing is a permission stage, which does not apply to other causes of cases of litigation. You have replied to Lord Dubs on that.

Dominic Raab: It would be extraordinary if we got to the end of the track on a case and then discovered that you can make some technical argument about rights being violated, but actually it did not do you any harm.

Baroness Ludford: Surely in the courts’ consideration of the case they will not entertain trivial cases. Their role is to adjudicate on what the impact of a human rights breach has been and what the redress is for it. You are just introducing a complication and a delay and cost.

Dominic Raab: Far from it. We are doing the opposite of that. We are making sure that a court can make that preliminary judgment up front, precisely to avoid the cost, the time, the wasted effort of their proceeding with a case where, at the end of it, there is no significant disadvantage. Most people would think that was common sense, but we may have to agree to differ.

Chair: If you think it is common sense, Lord Chancellor, why are not you introducing a similar permission stage for people who have experienced negligence or breach of contract?

Dominic Raab: I would need to look at how comparable that was, but this is really in relation to public law proceedings. With the hierarchy of claim that we are talking about here, a human rights claim over and above any other claim under UK law that the individual may have, it is right to say that, if you want to make that argument, you need to at least be able to show significant disadvantage. I would want to think, before giving a substantive reply, about why we would approach that differently. Negligence is a private law rather than a public law claim.

Q39 **Chair:** Staying with public law, the convention that we are a signatory to for the time being—you have told us that withdrawing from it is not off the table, and, as you have reminded us, the Bill of Rights will import the entirety of the convention into domestic law as the HRA currently does—does not contemplate any permission stage for a first-instance domestic claim. The full point Lord Mance made was that the European Court of

Human Rights test for permission stage is for review at the international level. The European Court of Human Rights does not contemplate that there would be any permission stage at the domestic level, and therefore the argument you are making by comparing your domestic level permission stage with the Strasbourg court permission stage is spurious, because admissibility criteria commonly differ at first instance and on review. That is the case, is it not?

Dominic Raab: I accept that they are different. The point I am making is that I do not think it is illegitimate or inappropriate, if the Strasbourg court has a permissibility stage for a human rights claim, for the UK courts to do so.

Chair: This is really important, because this is not my argument; it is Lord Mance's argument. He is making the point that admissibility criteria commonly differ at first instance and on review. Presumably you would not disagree with that.

Dominic Raab: No, I can understand that, but I do not think it is—

Chair: Do you disagree with it?

Dominic Raab: No, I do not. I would need to consider it at length before deciding whether I agree or disagree with it, but the point I am making is that often the human rights argument is tacked on at the end of a string of other claims that may be made against a public body. I am not saying that is right or wrong, but the kitchen sink, of you like, is thrown in with it. Given all the other claims, it is legitimate to say that the court should have a permissibility stage in relation to the human rights element.

Chair: When you say the kitchen sink, you are a lawyer, like I am, and you know that the position—

Dominic Raab: I am a recovering lawyer, Madam Chair.

Chair: Well, I am kind of a recovering lawyer as well, but the point is this. You will remember that in the recent gay cake case the decision of the Supreme Court made it very clear that if you have not plead the human rights point at first instance you cannot throw it in at the last minute. That is why people plead it from the beginning, is it not?

Dominic Raab: Yes, and that is fine. That point and the approach we take with the permissibility stage are entirely complementary.

Q40 **David Simmonds:** We talked quite a lot about parliamentary scrutiny in the UK context. I would just like to ask you what weight you give to the scrutiny provided by the Parliamentary Assembly of the Council of Europe and the other bodies of the Council of Europe to the operations of the convention.

I suspect some of the issues we have discussed here and that have been aired may arise from political pressure brought from that parliamentary assembly. Clearly, we have UK Members who are part of it. As a JCHR Committee we met the Legal Affairs Committee in Paris earlier in the

week, so we have seen a bit of their operations directly. What weight do you give to that scrutiny on the operations compared to the scrutiny of the UK Parliament, or other parliaments, over it?

Dominic Raab: It is important. I have to say that I have welcomed engaging with the Committee of Ministers. I have only done it once, but when I go out I will engage with both bodies. I am rather a fan of the Council of Europe. It does important work, well beyond the human rights realm. We want to make sure that the Strasbourg court is operating in an effective way and is sticking to its mandate, precisely because we are not looking to trip up out of the convention. I do not feel anything but warmth.

As Foreign Secretary, I remember trying to use the Council of Europe and these other bodies. For example, we had issues with UK citizens abroad not having due process rights in one or two countries, and therefore trying to make sure the convention rights in practice were being respected in some countries where young people get into trouble and may get arrested and locked up. Are they actually being treated properly? It was a good place to do it without some of the sensitivities that you might encounter if you raise the issue on a bilateral level. The Council of Europe has its place and does some important work.

Q41 **Chair:** Can I ask you some questions about devolution? You have been very generous with your time.

Dominic Raab: I was just thinking that.

Chair: We may disagree about many things, but we can agree that you have been extremely generous with your time and we are very grateful to you for that. I will just wrap up with a couple of questions about devolution, if I may.

Bell asked you some questions earlier about Northern Ireland, so I will focus on Scotland and Wales. From the evidence we have heard, both orally and in writing, it is fair to say that the Bill of Rights Bill has been met with significant opposition from key stakeholders and office holders in Scotland, Wales and Northern Ireland. For example, the Scottish Human Rights Commission has said that the Bill "relies on false premises instead of evidence and has been developed without adequate consultation or scrutiny", and that it would "significantly undermine rights protections for people in Scotland". Can I ask you why you are pressing ahead with legislation that is not supported in the devolved nations?

Dominic Raab: That proposition is variable depending on where you go and who you talk to. I have engaged with all the Executives, all the legislatures, across all the devolved Administrations. We have talked to academics, we have talked to practitioners, and it is a UK-wide piece of legislation. I believe it yields significant dividends in the way I describe that will benefit everyone across the UK. The Human Rights Act is a UK-wide piece of legislation. It is a protected enactment. Therefore, repealing it, replacing it, changing it in any shape or form is a matter for the UK

Parliament. I say that without prejudice to the devolved competencies in that area as well.

Chair: Professor Aileen McHarg, professor of public law at Durham University, gave evidence that this Bill of Rights will engage the Sewel convention and therefore that it would be normal for the UK Parliament to seek the consent of the Scottish Parliament. This committee has given its view that the Government should seek the consent of the Scottish Parliament and indeed the Welsh Senate. Do you agree with that?

Dominic Raab: Yes, we will.

Chair: If consent is withheld, will you respect that decision?

Dominic Raab: I do not want to get ahead of where we are, but I made the point that it is a UK-wide piece of legislation and it is a protected enactment under the devolution settlements. But let us not prejudice the engagement, because it is important and we have taken it very seriously and assiduously up until now.

Chair: I am asking the question, because on a number of occasions in recent years the Scottish Parliament has withheld consent to legislation and the British Government have gone ahead with it. Recently we have heard the new Prime Minister say that he wants to reset the relationship between Westminster and Holyrood and that the union between Scotland and England should be collaborative and constructive. Do you agree with me that those aspirations would involve respecting the decision of the Scottish Parliament to withhold consent if that were to be its decision? Let us be honest: the arithmetic is such that that will be its decision.

Dominic Raab: I do not agree with you. I do agree with what the Prime Minister said, and that is the way I would intend to proceed.

Chair: You previously told us that it was possible that the Bill would lead to divergences in the laws across the nations of the United Kingdom. Now the Bill has actually been produced, can you tell us which exact provisions in the Bill may lead to divergences and how you would manage that?

Dominic Raab: I do not know. I would need to look again at the context of what I said before. I think the whole point is this is it is a UK-wide piece of legislation. I respect that there is variable geometry under the existing devolution settlements and in terms of the devolved competencies, which can affect how rights may be applied in practice. Effectively, and you see this in other jurisdictions, the human rights constitutional federal legislation sets a floor, not a ceiling, and therefore within the devolved competencies you would have the right to go further. That would seem axiomatic to me as well.

Chair: We know that the Scottish Government already has plans to go further, because it is planning a human rights Bill that will incorporate socioeconomic rights.

Dominic Raab: I make no comment on that.

Chair: There are different directions of travel, perhaps, between the two Governments.

Dominic Raab: I want to be respectful. I remember studying the argument about economic and social rights at university. For me, those economic and social questions finely balance the polycentric rather than the adversarial and are all about the allocation of precious financial resources and social priorities, which is precisely the stuff that elected politicians should decide. There are plenty of people, from Marx right the way through to social-democratic politicians, who disagree.

Chair: Including the founders of the New Republic of South Africa, like Albie Sachs. Would you disagree with that?

Dominic Raab: There are plenty of others around the world who would make that argument. The problem with it is effectively that it is an attempt to shoehorn things that you cannot get through an elected House of Commons or, if you are not in government, you do not feel you can achieve by the back door. The risk is that you get a very skewed approach as a result, because the important thing with economic and social competing priorities is being able to look at them in the round, but in a way it is academic because we are not doing it here.

Chair: We are not doing it at Westminster. It will be done in Edinburgh, but it is only fair to mention, for the record, that our predecessor committee, of which Lord Dubs was a member, produced a report back in 2008 looking at these arguments very carefully and setting out how socioeconomic rights might be included in a British Bill of Rights without prejudicing political decisions. I really do not want to go down that rabbit hole just now, unless Lord Dubs wants to come in on it.

Lord Dubs: I was going to say that I think you were on the committee at the time, but I do not think you went on that visit to South Africa.

Dominic Raab: I have been many times, but not with you. Unfortunately, I missed out on that one. A rare point of disagreement between me and Lord Dubs. I normally agree with him on most things.

Chair: I think it was that visit to which I was referring, when Albie Sachs told the committee that a country that has given up on socioeconomic rights has given up on aspiration.

Dominic Raab: I would fundamentally disagree with that. The ANC is a pretty left of centre body, shall I say? I may be putting it rather mildly. If you believe in small-L liberal democracy, you want the most finely balanced shifting over time norms, policy issues, social mores, that affect the public purse. You want them to be decided in the round in Parliament, but I fear that I am going around the same track and you have been very patient with me.

Chair: You have been very patient with us and we are very grateful to you for your very generous giving of time. Not many Ministers come for more than two hours, so we are really grateful to you for that.