

Discuss the view that a 'Bill of rights' alone is insufficient to protect rights and liberties.

A Bill of Rights effectively outlines the rights and liberties of the people. In the USA the first ten amendments to the constitution are known as the Bill of Rights. Of the ten amendments in the Bill of Rights, the 1st, 2nd, 5th, 8th and 10th are perhaps the most important today. For example, the 1st Amendments guarantee basic rights such as, freedom of religion; freedom of speech; freedom of the press; and freedom of assembly. These are just a few of the many rights and liberties stated in the Bill of Rights, so why are people to argue that a Bill of Rights alone is insufficient to protect rights and liberties?

Although the American Constitution and particularly the first ten amendments that constitute the Bill of Rights promise the citizens of the United States certain rights and protections, the civil rights record of the country highlights the fragile nature of such abstract promises. The constitution does not define the meaning of such phrases as 'liberty' or 'equal rights,' and therefore it is the responsibility of the courts, the un-elected branch of government, to make meaning through rulings they make on cases of constitutional importance. Many argue that although the constitution is codified, it still flexible as the content is very vague. Being so, this example highlights that a bill of rights alone is insufficient to protect rights and liberties.

History has shown the Bill of rights in the USA to have failed to protect the rights and liberties of all American people. The Bill of Rights arguably allows for the conservative bias of the judiciary allowing for such injustices as continued slavery. Civil rights and liberties at this point in history were defined by the elites in favour of elites who wanted to maintain their stronghold on political and social power. Even when laws were passed that seemingly sought to impose actual civil rights and liberties such as in the case of 'Brown v Board of Education' they were manipulated in such a way that reflected the persistent racist conservative views of the elite, who were more fearful of upsetting Southern whites than they were interested in upholding the true intentions of the constitution's clauses. After the end of segregation, the Supreme Court continually failed to address and indeed punish the states that enacted measure after measure which blatantly infringed their resident's rights and liberties. Again, the case of *Bowers v. Hardwick* identifies the conservative bias of the court that fails to protect the rights of homosexuals.

A Bill of Rights effectively turns judges into policy-makers. This is clearly evident in the USA, where rights of such groups as women, racial minorities and arrested people have been the subject of important Supreme Court decisions. Many women may consider that some of the decisions by the Court on abortion rights have taken away their 'right to choose.' If you take the abortion cases of *Planned Parenthood vs*

Casey and Gonzales vs Carhart, this shows the court chipping away at abortion rights. Being so, this leads to 'judicial tyranny,' as judges are able to make laws and to interpret them. Judges are unelected and also socially unrepresentative, so this expanded role for the judiciary highlights an undemocratic nature, which therefore suggests a Bill of Rights alone is insufficient to protect rights and liberties. It is evident that the USA Bill of Rights has failed to protect the rights and liberties of a significant minority of its citizens, as throughout history politicians and more importantly judges have firstly failed to grant certain groups civil rights and liberties in their most basic form.

The arguments suggesting a Bill of Rights alone is insufficient in protecting rights and liberties do appear convincing; however many would put forward arguments in favour of a Bill of Rights being sufficient to protect rights and liberties. As mentioned before, the Bill of Rights although codified is in fact vague. Take the 1st and 11th amendment for example; this can be applied to many situations that alone protect the rights and liberties. The case of Texas v. Johnson showed the Right of freedom of speech to be upheld, even though a conservative court did not like the action of burning the flag. This is a key example that suggests a Bill of Rights alone is sufficient in the protection of rights and liberties.

Currently within British politics there is controversy over the Issue of whether or not the UK Government should introduce a Bill of Rights. The conservative leader 'David Cameron' claimed that, 'current legislation is inadequate and hinders the fight against crime and terrorism.' Under Tony Blair labour passed the 'Human Rights Act' bill in 1998. This act has huge implications on rights and liberties of the British people. For example, it totally abolished the death penalty in UK law. It also requires UK judges to take account of decisions of the Strasbourg court (EU Court of Human Rights), and to interpret legislation, as far as possible, in a way which is compatible with the Convention. However, if it is not possible to interpret an Act of Parliament so as to make it compatible with the Convention, the judges are not allowed to override it. All they can do is issue a declaration of incompatibility.

In the UK it could be argued that a Bill of Rights being introduced with an entrenched document within the law with exact rules and regulations, the Government would not at any one point take away the civil liberties of UK Citizens. Without a Bill of Rights, those living in the UK could have their rights infringed by the Government and not be able to do anything much about it. Some say this took place when the 'anti-terrorism' laws were passed and it was made legal for the Government to hold terrorist suspects in jail for 28 days without trial. This, by some, is said to intrude on people's rights as it is the right of the person who is suspected to being a terrorist to either have a trial or to have the same maximum amount of time in prison without one as every other suspected criminal. Furthermore a Bill of Rights may never have allowed political parties such as the BNP to discriminate against who joins the party. Being so, this may well suggest a reason why a Bill of Rights alone can be sufficient in protecting rights and liberties.

In conclusion, history has proven that in the USA a Bill of Rights has failed to protect the rights and liberties of the people in many situations. Although Supreme Court cases such as 'Texas v. Johnson' explain otherwise, overall the evidence presented suggests a Bill of Rights to be insufficient. Society and life in general is always changing; therefore a Bill of Rights would restrain development in certain areas. With such strong evidence against a Bill of Rights alone, it is appropriate to look to other methods of protecting rights and liberties, such as the UK 'Humans Rights Act' and also the 'EU Court of Human Rights,' that can sit alongside a Bill of Rights to ensure that the rights and liberties of the people are protected.