THE ANDREW MARR SHOW

INTERVIEW:
CHRIS GRAYLING, MP
JUSTICE SECRETARY
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ANDREW MARR:
Those who argue that the recent government reshuffle amounted to a shift to the right are quick to cite the appointment of my next guest. In sharp contrast to his predecessor as Justice Secretary, Ken Clarke, Chris Grayling told the Conservative conference that he intends to be a tough Justice Secretary: householders should be able to use pretty much any level of force against intruders, this so-called ‘Bash a Burglar’ initiative; and prisoners will not get the vote whatever European judges or British lawyers say. Chris Grayling joins me now. Welcome.

CHRIS GRAYLING:
Hello there.

ANDREW MARR:
Maybe we should start with the controversy over prisoners getting the vote because this has clearly divided not just the government but actually the Conservative Party because we’ve heard one of your colleagues say, Attorney General, say that it’s completely impossible to ignore the European Court of Human Rights and that lawyers will just take you to pieces if you try, and yet you and the Prime Minister have said that you’re not going to move on this issue. There must be some kind of
middle way, but we don’t understand what it is.

CHRIS GRAYLING:
I don’t think it’s true that the Conservative Party, the Government or indeed Parliament is divided over this issue. I think it’s very clear that most people in the political world in the United Kingdom do not want to give votes to prisoners. But what Dominic Grieve was arguing was that we had to be very careful about how we approached the issue, and I have to be very careful as well in my role as Justice Secretary and Lord Chancellor. The reality is that we are signed up to the European Convention on Human Rights, we are signed up to the European Court on Human Rights. If, therefore, we choose to disagree with a ruling from that court, we have to understand that we are taking a significant step outside that international commitment.

ANDREW MARR:
And a risk, and a risk because you could then be challenged, there’d be endless legal challenges from prisoners which could cost the government a lot of time and the taxpayer a lot of money.

CHRIS GRAYLING:
Well the Government has to therefore think through very carefully, and I’m thinking through very carefully. I acquired this brief about three weeks ago. I took it over from the cabinet office. I’m thinking very carefully how we do the right thing for the United Kingdom whilst being very clear … The Prime Minister expressed his view last week in the House of Commons about what he thinks about this issue. Ultimately this is a matter for Parliament to decide. At the end of the day Parliament has in clear case law the right to say to the European Court of Human Rights, we do not agree with you. But what the Law Lord who passed that ruling a decade ago said very clearly is that Parliament must also understand that there are political consequences if it chooses to disagree with the European Court. And so what we are now thinking through is how best we respond to that situation.

ANDREW MARR:
So we know that you do disagree and that there is a full frontal clash of some kind.
Either, presumably, you have to leave the whole system or you leave yourself open to legal challenge in court? There’s no other way through this, is there?

CHRIS GRAYLING:
Well that’s why you’ll forgive me if I’m circumspect about saying exactly how we’re going to approach this issue because we’ll clearly have to tell Parliament first - before too long because the deadline’s in a month’s time. There are precedents from other European countries of them saying no, we don’t agree with you to the European Court of Human Rights, but of course the counter argument is that if we send a message that says we will stand up to the court, where does that leave countries in other parts of Europe that perhaps have less good human rights records than we do where there are really quite serious issues about the right to a trial, for example?

ANDREW MARR:
(over) So you are not attracted… you are not attracted to the idea of simply leaving the European Court of Human Rights?

CHRIS GRAYLING:
Well there’s a bigger and longer and deeper question which I have to address as part of my work as Justice Secretary, running into the next election and as a Conservative in particular, to say what do we do about a situation where I think there is wide agreement that the court is now doing things at a level that was never envisaged by its creators. If you read the original convention from back in the 1950s, written by Conservatives at a time when Stalin was in power and sending people to the Gulags, it was established for a very different purpose to some of the ways it is being used now. Ken Clarke has already done some good work on trying to secure reform in the courts, trying to get proportionality into what it does, but I think there’s further to go and we will go into the next election with a very clear plan as to how a Conservative government would approach the whole issue of the European Court.

ANDREW MARR:
And could that go as far as to actually threaten to leave this system if you don’t get the reforms you want?
CHRIS GRAYLING:
Well I’m not going to be tempted into specifics yet because I haven’t done the work. What I would say is that the core principles of the convention about basic human rights - the right to be sent … not to be sent to the Gulags without a fair trial, which is where some of these things came from - are of paramount importance in today’s world as they were in the past.

ANDREW MARR:
(over) Alright, let me …

CHRIS GRAYLING:
(over) We have to be careful about how we address the issue, but the current situation where you have terrorists who are using the act to try and stay in the United Kingdom, not to be sent back to their home country, I don’t believe is acceptable.

ANDREW MARR:
And taking it from the other side then, if I can try this way, is it therefore possible - given the stand of the court - that some prisoners, some prisoners in the UK will get the vote whatever you say?

CHRIS GRAYLING:
Well I think you need to listen very carefully to what David Cameron said last week in the House of Commons.

ANDREW MARR:
(over) Well just give us a very clear answer on that.

CHRIS GRAYLING:
(over) He is very clear in saying … David Cameron stood up and said in the House of Commons under this government, he does not intend that prisoners will be given the vote.

ANDREW MARR:
Does not intend, but that does leave the door open to some prisoners getting a vote.

**CHRIS GRAYLING:**

*(over)* But he was very clear he didn’t want to give prisoners the vote.

**ANDREW MARR:**

Right and so that’s not going to happen. Okay. Theresa May said that she’d actually quite like to see Britain getting out of a lot of this whole human rights area and starting again. There’s been talk for a long time in your party about a British Bill of Rights to replace the European one. In your guts, are you attracted to that or not?

**CHRIS GRAYLING:**

I think there’s certainly a very real question about the way in which the human rights framework is applied within the UK. You know if you take a practical example: Article VI, which is there to establish that right to a fair trial, its originators never intended it to be used as a benchmark for social security tribunals, for example.

**ANDREW MARR:**

Right, sure.

**CHRIS GRAYLING:**

So there are ways in which the European Court now applies the original convention, which I think go away from the original intentions of its creators. We’ve got to be very careful. These are difficult international issues. What we don’t want to do is take steps that destabilise progress in other parts of Europe towards improved human rights, better judicial systems, a fairer criminal justice system, but at the same time we have to have a system that is I think relevant to the modern world, is used for the things it’s intended to use. I’m very clear that …

**ANDREW MARR:**

*(over)* Yuh. I’m completely unclear as to whether you’re in favour of it or not as a system.

**CHRIS GRAYLING:**
Okay, I am very clear that what is there has to change.

**ANDREW MARR:**
Right.

**CHRIS GRAYLING:**
The Conservative Party will not in coalition (because there are disagreements in Parliament) be able to achieve all the things it would like to achieve. I’m also very clear that we will go into the next election and one of my tasks for the next two years is to develop a plan for change that we can put to the public at that election.

**ANDREW MARR:**
Okay. Let me turn to another issue which caused a fair amount of comment after your election … your conference speech, which is the so-called ‘Bash a Burglar’ changes. Now you’re saying that it is possible for disproportionate force as it were to be also reasonable. What I’m wondering is in practical terms, does that mean if a burglar comes into my house, I can pick up a carving knife and stick it through him if I possibly can, or bash him over the head with anything very heavy, or indeed (if I have a gun license) shoot him and be pretty clear that I won’t be prosecuted?

**CHRIS GRAYLING:**
Well I probably won’t pick the weapon for you, but what I mean by that is this. You have to look at it the other way round with disproportionate force. If you are in your home, you are confronted by a burglar, you fear for your safety, and if in the heat of the moment you act in a way that actually in the cold light of day might seem over the top - it's not the cold light of day, you are in a highly pressurised moment, you grab whatever you have to hand, you lash out - if you do that, the law should be (and when I introduce changes to the legislation in the next few months it will be) on your side. Of course you know there are circumstances and the example I’ve used is if you knock the burglar out cold and then you stick a knife in him, that would be deemed to be grossly disproportionate and you would face prosecution. But if you grab the nearest weapon, you lash out in the heat of the moment, then the law should be on your side. It’s what the public want and expect.
ANDREW MARR:
(over) And legally, is it possible to draft something that includes the words ‘disproportionate’ and ‘reasonable’ in the same sentence?

CHRIS GRAYLING:
Well it has been done. There is an amendment waiting to be tabled. We will bring it before Parliament in the next few months. I’m very clear that this is a change that should and will happen …

ANDREW MARR:
Yeah.

CHRIS GRAYLING:
… as long as Parliament accepts it, which I hope and trust it will.

ANDREW MARR:
If this was … if this had been in law before, does it mean that Tony Martin, for instance, would not have been prosecuted?

CHRIS GRAYLING:
Well it’s very difficult to apply to an individual case, partly because you’d have to look through the individual evidence in court. A judge would have to form a ruling. What I want is a situation where the default is very clearly on the side of the householder. All too often what happens is the householder in this situation is arrested, put in a police cell for thirty-six hours while the police and the prosecuting authorities say well was this reasonable or not. What this is designed to do is to raise the bar, so they’re very clear that unless the circumstances are grossly disproportionate, unless the household has acted in a way that all commonsense would say would be way over the top, then actually the question of prosecution wouldn’t arise. They’d be interviewed as a witness, as a victim of crime, not a perpetrator.

ANDREW MARR:
Now apart from being a politician, before that you were a BBC journalist for quite a
while.

CHRIS GRAYLING:
I was. Indeed I was trained in this very building where we’re sitting now.

ANDREW MARR:
There we are. So with both hats on, give us your response to the latest in the Savile. We’ve seen Gary Glitter’s been arrested, but what more needs to be done to change the climate, change the atmosphere around child abuse, and what can you do as Justice Secretary to make sure that happens?

CHRIS GRAYLING:
Well I mean clearly what has emerged is absolutely horrendous, it’s shocking. There was clearly a culture that should never, ever, ever have been allowed to exist. And unless we should think the world has changed totally, you just have to look at what’s happened in some Northern towns recently where they have some equally shocking cases of abuses of gangs of men abusing teenage girls.

ANDREW MARR:
Yes indeed, indeed.

CHRIS GRAYLING:
So this is not a problem that’s gone away. I don’t buy Harriet Harman’s argument that we should rush into a judge led inquiry for this reason. There is always a danger if you set up a very substantial inquiry process of that kind, that it takes much longer to get to the truth. What should be happening right now first and foremost, and clearly is happening with the police, is that we should be looking to see who is still around who was involved and criminal proceedings should follow if people were guilty of participating in these offences alongside Jimmy Savile. So that’s of paramount importance.

ANDREW MARR:
Sure. In the old days quite clearly people were not taken seriously, victims were not taken seriously enough and weren’t treated in a way that gave them the confidence to
come forward. Do there not need to be changes to the law to ensure that culture is over?

CHRIS GRAYLING:
Well it’s difficult always to frame laws that deliver commonsense in that respect. It’s about people in positions of responsibility listening. One of the things that we’re doing - in fact today we are advertising for a new Victims Commissioner who will be there to represent victims and their families, who will be there to advise my department and other parts of government on where the systems are inadequate. One of the complaints I often hear from the families of victims is that the offender has been released and they don’t know about it.

ANDREW MARR:
But do you accept that victims in the past have not been taken seriously enough and that needs to change?

CHRIS GRAYLING:
Oh absolutely. Quite clearly, there is no question, and I hope every single person in the law enforcement world today is accepting the fact that things went badly wrong; it should not happen again.

ANDREW MARR:
Chris Grayling, thank you very much indeed for joining us for now.

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