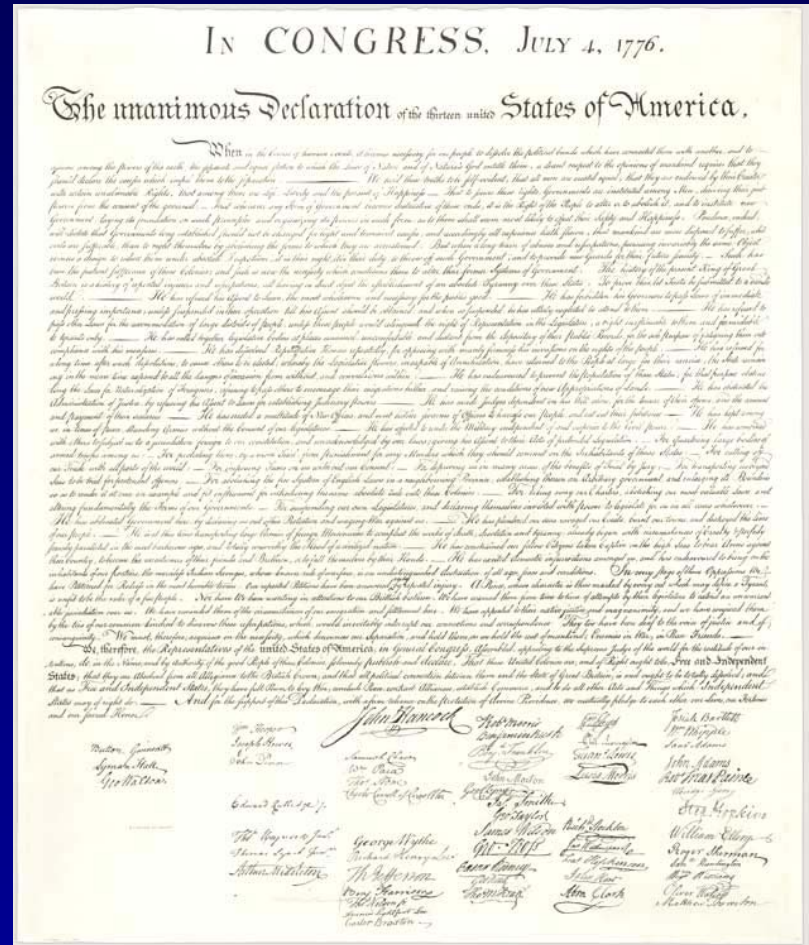


Human rights and the constitution



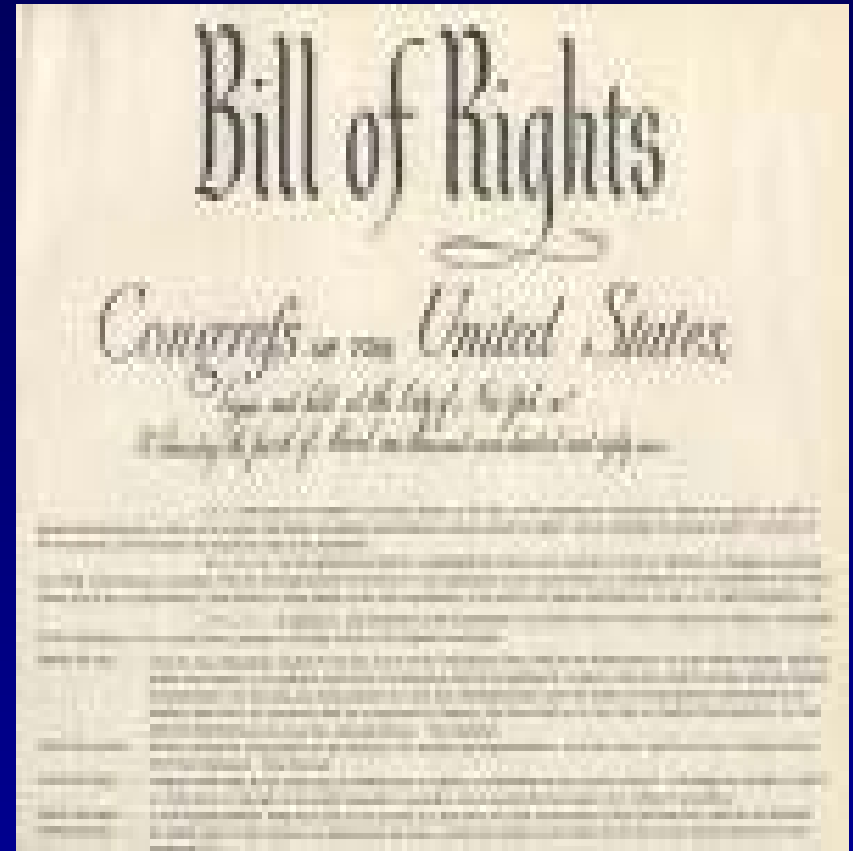
US Declaration of Independence 1776

'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness'



Bill of Rights 1791

Proposed by James Madison as a set of amendments to the United States constitution in order to broker a deal between the Federalists and their opponents. Allowed states to accept the constitution subject to amendments. Dealt with civil liberties and attendant curtailment of power of executive and legislative power.

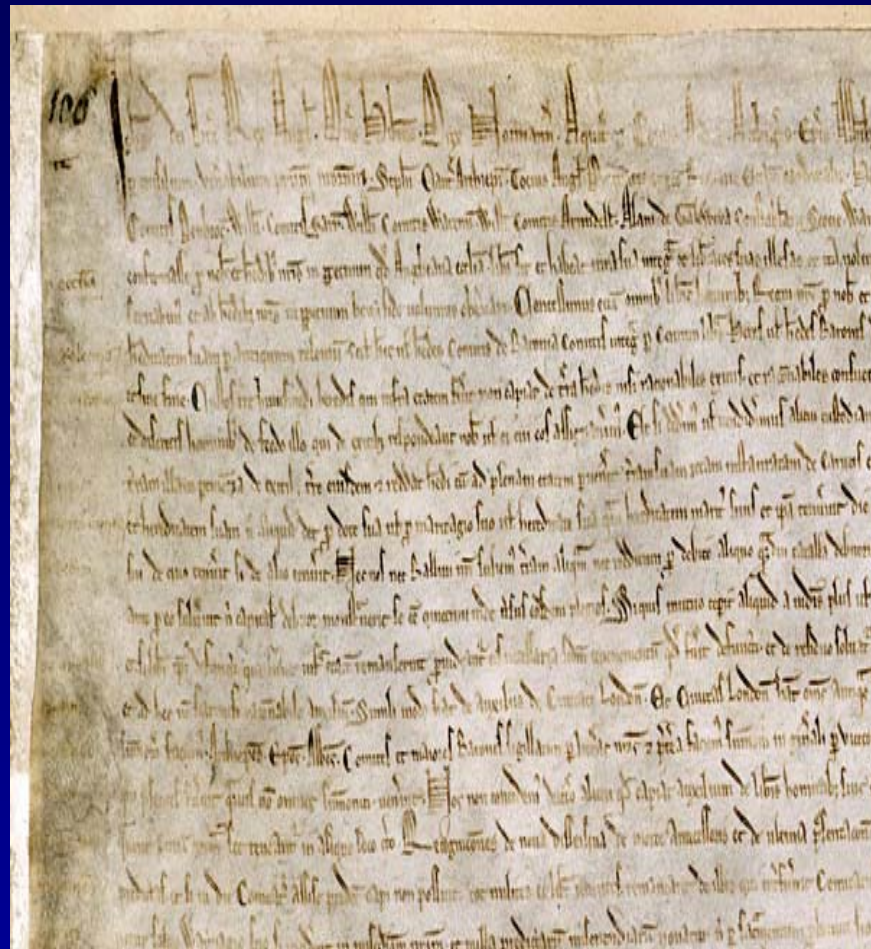


Bill of Rights: influences

Magna Carta 1215

‘No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled. Nor will we proceed with force against him, except by the lawful judgement of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice’

Article 3



US Bill of Rights: influences 2

Bill of Rights 1689

- ‘excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted’



US Bill of Rights: influence 3

Eighth amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Sixth amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence

European Convention on Human Rights 1950



Article 6

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

European Convention on Human Rights 1950



Everyone charged with a criminal offence has the following minimum rights ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...

European Convention on Human Rights 1950



Article 46

- (1) The High Contracting Parties undertake to abide by the final judgement of the [European] Court [of Human Rights] in any case to which they are parties;
- (2) The final judgement of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution.

The impact of Article 6: influence on UK 1



McGonnell v UK (2000) 30 EHRR 289
Independence of judges (Guernsey)

Constitutional Reform Act 2005

Established Supreme Court, made judicial appointment more independent of executive, effectively abolished in all but name the Lord Chancellor.

The impact of Article 5 and 6: influence on UK 2



Pre-ECHR

Liversidge v Anderson [1942] A.C. 206

detention on determination of
'reasonable cause' by Home Secretary
because of 'hostile associations'
UPHELD

A v Secretary of State for HD [2004] UKHL
56. SSHD could certify his reasonable
belief that a person's presence in the
United Kingdom is a risk to national
security, and he suspects that the
person is a terrorist. SUCCESSFULLY
CHALLENGED

The impact of Article 6: influence 3



Steel and Morris v UK (15 Feb 2005)

denial of legal aid to the applicants has deprived them of the opportunity to present their case effectively before the court and contributed to an unacceptable inequality of arms with McDonald's.

Salduz v Turkey (2008)

Even where compelling reasons might exceptionally justify denial of access to a [pre-trial] lawyer, such restriction - whatever its justification - must not have unduly prejudiced the rights of the accused.

1. Article 6. Detention and 1

UK government response

HRA:

Between October 2000 and June 2009:

- 26 declarations of incompatibility
- 16 final orders

Government responded to all final orders.

European Court

UK 'relatively positive approach' (PJCHR) but end 2007
30 cases still under supervision of Council of
Ministers – 15 systemic eg *Hirst v UK* (votes for
prisoners) Only Italy and Turkey have more cases
outstanding for more than 5 years.

Bills of Rights: everyone agrees on a name

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



Bills of Rights

But not on:

- (a) content;
- (b) Entrenchability
- (c) Enforcement; or
- (d) Process

