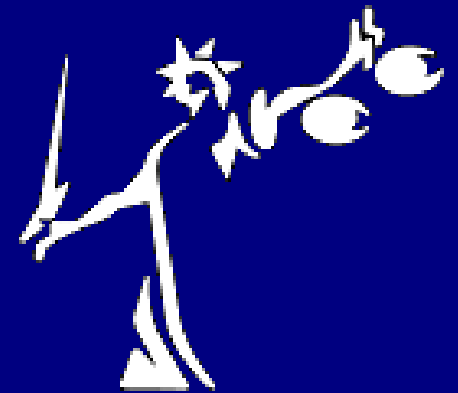


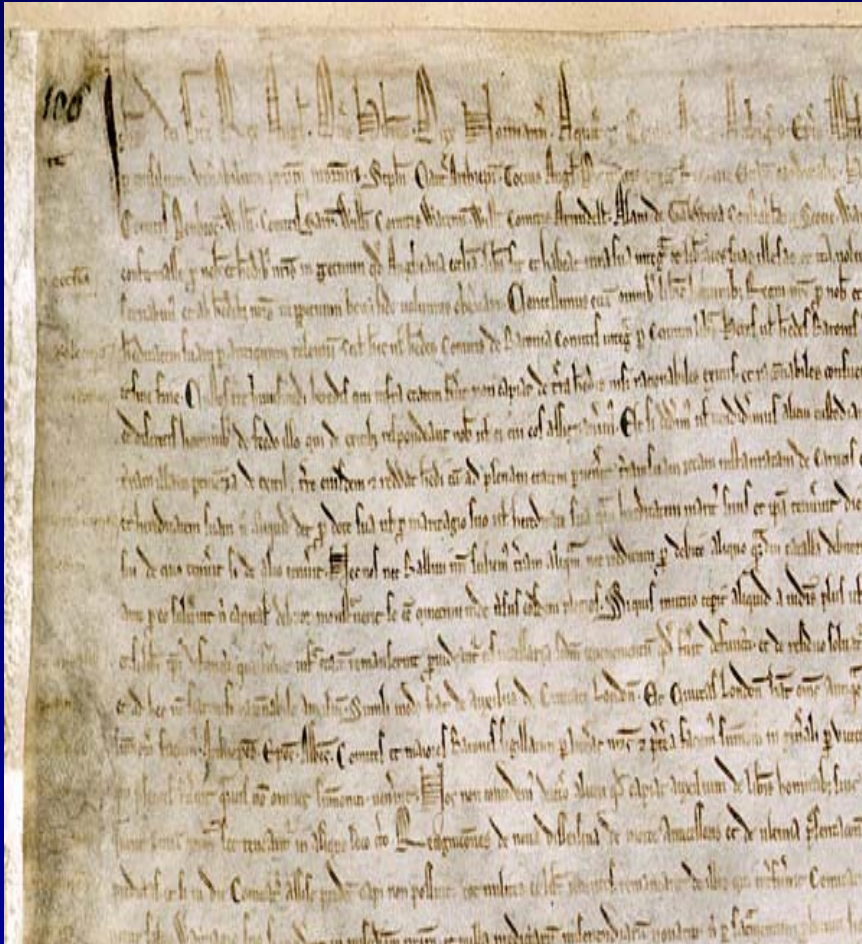
# Human Rights

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JUSTICE

# Magna Carta 1215

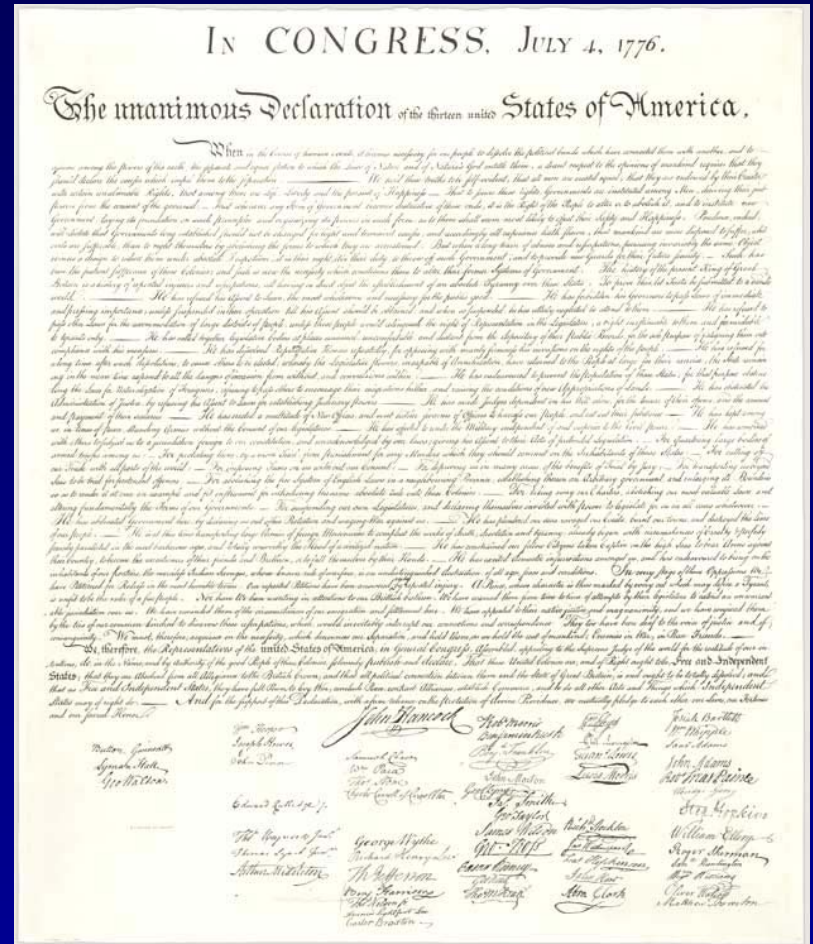


‘No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled. Nor will we proceed with force against him, except by the lawful judgement of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice’

Article 3

# US 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’



# Declaration of the Rights of Man 1789



‘Les hommes naissent et demeurent libres et égaux en droits’

(‘Men are born and remain free and equal in rights’)

Article 1

# Universal Declaration of Human Rights 1948

‘All human beings are born free and equal in dignity and rights’

Article 1

‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’

Article 2

## UNIVERSAL DECLARATION of HUMAN RIGHTS



ON DECEMBER 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights, the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

Final Authorized Text

UNITED NATIONS

OFFICE OF PUBLIC INFORMATION

# Human Rights: The Core Principles

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**Freedom:** negative liberty ('freedom from') versus positive liberty ('freedom to')

**Equality:** 'procedural' versus 'substantive' equality

**Universality:** all people everywhere

# Human Rights: The Core Principles

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**Indivisible & interdependent:** civil and political rights 'versus' economic social and cultural rights

**Inalienable:** nobody can give up their rights

**Autonomy:** protecting people's freedom to make choices

# European Convention on Human Rights 1950

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Article 2 – right to life

Article 3 – prohibition of torture

Article 4 – prohibition of slavery

Article 5 – right to liberty

Article 6 – right to a fair trial

Article 7 – no punishment without law

Article 8 – right to family and private life

Article 9 – freedom of religion

Article 10 – freedom of expression

Article 11 – freedom of assembly

Article 12 – right to marry



# European Convention on Human Rights 1950

Article 13 – right to effective remedy

Article 14 – non-discrimination

A1P1 – right to property

A2P1 – right to education

A3P1 – right to vote

Protocol 4 – freedom of movement

Protocol 6 – death penalty

Protocol 12 – ‘free-standing’ right to equality



# Absolute versus Qualified Rights

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## Article 3 ECHR:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

# Absolute versus Qualified Rights

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Article 8(1) ECHR:

Everyone has the right to respect for his private and family life, his home and his correspondence

# Absolute versus Qualified Rights

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## Article 8(2) ECHR:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

# Absolute versus Qualified Rights

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## Key concepts:

- ‘in accordance with the law’
- ‘necessary in a democratic society’
- for a legitimate aim; and
- *proportionate* to that aim

# Absolute versus Qualified Rights

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Absolute rights: Articles 2, 3, 4(1) and 7

Limited rights: Articles 5 & 6, 12-14

Qualified rights: Articles 8-11

# International Human Rights Framework

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- Convention on the Elimination of Racial Discrimination 1965
- International Covenant on Civil and Political Rights 1966
- International Covenant on Economic Social and Cultural Rights 1966
- Convention on the Elimination of Discrimination against Women 1979
- Convention Against Torture 1984
- Convention on the Rights of the Child 1989
- Convention on the Rights of Migrant Workers 1990
- Convention against Enforced Disappearances 2006
- Convention on the Rights of Persons with Disabilities 2006

# International Law versus UK Law

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- ‘Monist’ versus ‘Dualist’ countries.
- ‘Dualist’ countries – international treaties signed by the executive cannot create rights or impose duties unless and until incorporated into domestic law.
- The UK signed the European Convention in 1950 but did not incorporate it.
- Although UK accepted the right of individual petition, the UK courts had no power to apply the Convention.



# The Human Rights Act 1998

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- By the late 90s, the UK was one of the few western democracies without a domestic human rights instrument.
- c.f. the US Bill of Rights 1789, the Canadian Charter of Rights and Freedoms 1982, the New Zealand Bill of Rights Act 1990, the South African Bill of Rights 1996
- Lengthy delays in taking cases to the European Court of Human Rights – 7 years between lodgment and judgment
- Common law protection for fundamental rights seen as increasingly ineffective

# The Human Rights Act 1998

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- How to protect human rights without limiting the supremacy of Parliament?
- Section 3 of the HRA 1998: Duty on courts to interpret legislation *compatibly* with Convention rights
- Section 4 HRA: Power of courts to make a declaration of *incompatibility* of legislation with Convention rights
- Declarations do *not* affect the validity of legislation

# The Human Rights Act 1998

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- Section 6 HRA: Duty on government ministers and public bodies to act *compatibly* with Convention rights
- Section 19 HRA: Duty on government ministers to make a statement on compatibility to Parliament when introducing legislation

# The role of the Courts under the HRA

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Between October 2000 and June 2008:

- 25 declarations of incompatibility
- 7 overturned on appeal
- 2 subject to further appeal

In the same period before the European Court of Human Rights:

- over 100 judgments against the UK involving a violation of one or more Convention rights

# The role of the Courts under the HRA

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Examples of declarations of incompatibility:

- *A and Others v Secretary of State for the Home Department* [2004] UKHL 56 (the ‘Belmarsh case’) – Part 4 of the Anti-Terrorism Crime and Security Act 2001 incompatible with Articles 5 and 14 ECHR
- *International Transport GmbH v Secretary of State for the Home Department* [2002] EWCA Civ 158 – Part 2 of the Immigration and Asylum Act 1999 incompatible with Article 6

# The role of the Courts under the HRA

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Examples of section 3 'read down' power:

- *MB v Secretary of State for the Home Department* [2007] UKHL 46 – reading down the provisions of the Prevention of Terrorism Act 2005 to allow disclosure compatible with Art 6
- *R (Baiai) v Secretary of State for the Home Department* [2008] UKHL 53 – reading down section 19 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 consistent with Article 12

# The role of the Courts under the HRA

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Examples of cases involving section 6 HRA:

- *DD and AD v Secretary of State for the Home Department* (SIAC, 27 April 2007) – quashed decision of the Home Secretary to deport applicants to Libya contrary to Article 3
- *EM (Lebanon) v Secretary of State for the Home Department* [2008] UKHL 64 – quashed decision of the Home Secretary to remove mother and child to Lebanon contrary to Article 8