HOUSE OF LORDS

Library Note

National Bills of Rights: International Examples

This House of Lords Library briefing focuses on the national bills of rights adopted in five countries: the US, Germany, Canada, New Zealand and South Africa. It summarises the events that led to the drafting of the bill in each country, and provides an overview of their provisions and how they are enforced. It then briefly examines the debate had in Australia on whether to adopt a national bill of rights. Finally, it discusses a number of historical declarations of rights adopted in the United Kingdom, as well as recent proposals for a 'British bill of rights'.

National Models

The bill of rights concept has been the subject of debate among a number of commentators. For instance, one has noted that the phrase 'bill of rights' has been used at "various times, in different contexts by different people", and that "even today there is no standard definition". Nevertheless, several have used the term 'bill of rights' to describe an instrument which gives legal effect to a broad set of fundamental human or civil rights, and defines their status within the national legal order. Documents with these characteristics have also been called 'Charters of Rights', or as in the UK, 'Human Rights Act'.

In 2008, the UK Joint Committee on Human Rights published the report, *A Bill of Rights for the UK?*, in which it examined the question of whether Britain should adopt a bill of rights. The Committee identified four possible models for a national bill of rights:

- Judicial power to strike down legislation for breach of bill of rights
- Judicial power to strike down but subject to parliamentary override
- Judicial obligation to interpret statute compatibly with the bill of rights and power to declare incompatible if not possible, giving opportunity for legislative response
- Judicial obligation to interpret legislation consistently with the rights and freedoms contained in the bill of rights

Proposals for a British Bill of Rights

Since its enactment in 1998, there have been calls for a British bill of rights to either replace or build on the UK Human Rights Act 1998. Most recently, the Conservative Party 2015 general election manifesto included a commitment to abolish the Human Rights Act and introduce a British bill of rights to "break the formal link between British courts and the European Court of Human Rights, and make our own Supreme Court the ultimate arbiter of human rights matters in the UK". In evidence given to the House of Lords Constitution Committee in December 2015, the Secretary of State for Justice, Michael Gove, stated that the Government intended to publish a consultation in 2016 on how it hoped to "revise the Human Rights Act and the Bill of Rights".

Emily Haves | Sarah Tudor
19 February 2016
LLN 2016/010

Table of Contents

1. Bill of Rights: National Models 1
2. International Treaties on Human Rights 3
    2.1 International Covenant on Civil and Political Rights 3
    2.2 European Convention on Human Rights 3
3. United States 5
    3.1 Historical Background 5
    3.2 US Bill of Rights: Provisions 5
    3.3 Bill of Rights in Practice: Role of the Courts 6
4. Germany 8
    4.1 Historical Background 8
    4.2 Basic Law for the Federal Republic of Germany (Grundgesetz): Provisions 9
    4.3 Basic Rights in Practice: Constitutional Court and ECHR 10
5. Canada 13
    5.1 Historical Background 13
    5.2 Canadian Charter of Rights and Freedoms: Provisions 15
    5.3 Charter in Practice: Role of the Canadian Supreme Court 16
6. New Zealand 17
    6.1 Historical Background 17
    6.2 New Zealand Bill of Rights Act 1990: Provisions 17
    6.3 Bill of Rights Act 1990 in Practice: Impact and the Role of the Courts 18
7. South Africa 20
    7.1 Historical Background 20
    7.2 South African Bill of Rights: Provisions 20
    7.3 Bill of Rights in Practice: Constitutional Court 21
8. Australia 23
    8. 1 Australian Constitution 23
    8.2 Australian Constitution and Human Rights 23
    8.3 Recent Proposals for an Australian Bill of Rights 24
9. Bills of Rights in the UK 27
    9.1 Historical Declarations of Rights 27
    9.2 Recent Proposals for a British Bill of Rights 28

1. Bill of Rights: National Models

The bill of rights concept has been the subject of debate among a number of commentators. For instance, academic Charles Parkinson has noted that:

> [T]he phrase bill of rights has been used at various times, in different contexts by different people. Even today there is no standard definition.[1]

David Erdos, Lecturer in Law at the University of Cambridge, suggests that a bill of rights legally defines the basic rights of an individual or citizen, and politically demarcates the power and discretion of the state.[2] He further argues that modern bills of rights regulate the relationship between the state and its citizens. He states that it is an instrument which gives legal effect to a broad set of fundamental human or civil rights, and grants these rights an "overarching status with[in] the national legal order".[3] Robert Blackburn, Professor of Constitutional Law at Kings College London, explains that they set out the basic law of human rights which are "enforceable directly by individuals through the legal process".[4] Law scholar, Philip Alston, proposes that there are three essential characteristics of a bill of rights: they provide protection for those human rights which at the time of formulation are considered important; they are binding upon governments and can only be overridden with "significant difficulty"; and they provide some form of redress in the event that violations occur.[5] Senior Research Fellow at London Metropolitan University, Alice Donald, states that documents with these characteristics are also called 'Charters of Rights', or as in the United Kingdom, a 'Human Rights Act'.[6]

Alice Donald further argues that the models which have been used to draw up bills of rights since the Second World War vary from the US model of constitutional supremacy, which entrenches fundamental rights as supreme law, to statutory models which give primacy to parliamentary sovereignty and involve "some form of dialogue between judicial and legislative institutions".[7] Robert Blackburn explains that the question of entrenchment, "in other words, establishing the fundamental status and legal priority" of the bill of rights in relation to ordinary acts of parliament, goes "to the heart of its constitutional nature".[8] He further states that a bill of rights which has an entrenched status and has priority over other forms of law "serve a higher body of moral and legal principle to which ordinary administrative and legislative measures must conform".[9] He states that an "interpretative" bill of rights would not be an entrenched document and would not possess legal priority over later ordinary acts of parliament.[10]

In 2008, the UK Joint Committee on Human Rights published the report, *A Bill of Rights for the UK?*, in which it examined the question of whether Britain should adopt a bill of rights.[11] The

---

[1] Charles Parkinson, *Bills of Rights and Decolonisation: The Emergence of Human Rights Instruments in Britain's Overseas Territories*, 2007, p 3.
[2] David Erdos, *Delegating Rights Protection: The Rise of Bills of Rights in the Westminster World*, 2010, p 3.
[3] ibid, p 10.
[4] Robert Blackburn, *Towards a Constitutional Bill of Rights for the United Kingdom*, 1999, p 17.
[5] Philip Alston, *Promoting Human Rights through Bills of Rights*, 1999, p 10.
[6] Alice Donald, 'A Bill of Rights for the United Kingdom? Lessons from Overseas', in Roger Masterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitutional and Comparative Perspectives*, 2013, p 283.
[7] ibid, p 284.
[8] Robert Blackburn, *Towards a Constitutional Bill of Rights for the United Kingdom*, 1999, p xxxii.
[9] ibid, p xxxvii.
[10] ibid, p 64.
[11] Joint Committee on Human Rights, *A Bill of Rights for the UK?*, 10 August 2008, HL Paper 165-I of session 2007–08.

Committee identified four possible models for a national bill of rights, and identified countries that had drawn upon those models when creating their own bill of rights:[12]

- Judicial power to strike down legislation for breach of bill of rights (US and European jurisdictions with a constitutional court, eg Germany)
- Judicial power to strike down but subject to parliamentary override (Canada)
- Judicial obligation to interpret statute compatibly with the bill of rights and power to declare incompatible if not possible, giving opportunity for legislative response (the UK under the Human Rights Act)
- Judicial obligation to interpret legislation consistently with the rights and freedoms contained in the bill of rights (New Zealand)

This briefing focuses on the national bill of rights adopted in a small selection of countries, providing a brief overview of their provisions and how they are enforced. However, a number of national states mentioned in this briefing have drawn upon two particular international human rights treaties, the United Nation's International Covenant on Civil and Political Rights and the Council of Europe's European Convention on Human Rights, when drafting their own bill of rights,[13] and several have incorporated the treaties into their own constitution.[14] Therefore, the briefing first looks at the two international treaties, before focusing on the national bills of rights in the US, Germany, Canada, New Zealand and South Africa and discusses the debate had on the issue in Australia. Finally it examines historical declarations of rights in the United Kingdom as well as recent proposals for a British bill of rights.

[12] Joint Committee on Human Rights, *A Bill of Rights for the UK?*, 10 August 2008, HL Paper 165-I of session 2007–08, p 60.
[13] ibid, p 23.
[14] However, they have not exclusively drawn on these two treaties.

2. International Treaties on Human Rights

The United Nation's International Covenant on Civil and Political Rights (ICCPR) and the Council of Europe's European Convention on Human Rights (ECHR) are two international human rights treaties which set out a range of civil rights and freedoms.[15] The ICCPR is part of what is known as the United Nations International Bill of Rights, which also consists of the Universal Declaration of Human Rights 1948, and the International Covenant on Economic, Social and Cultural Rights 1976. The Council of Europe also enacted a Social Charter in 1965, prescribing policies with respect to labour standards.[16] At the international level, both the ICCPR and the ECHR have their own enforcement machinery, the principal agencies of which are the UN Human Rights Committee and the European Court of Human Rights (ECtHR) respectively.[17]

Another example of an international treaty on human rights is the European Union's Charter of Fundamental Rights, which became legally binding on EU members states with the Treaty of Lisbon's entry into force in 2009.[18] The Charter brought together "in a single document the fundamental rights protected in the EU" under six titles: dignity, freedoms, equality, solidarity, citizens' rights, and justice. It also entrenches the rights and freedoms enshrined in the ECHR.

The following sections will focus on the ICCPR and the ECHR only.

2.1 International Covenant on Civil and Political Rights

On 16 December 1966, the UN General Assembly adopted the ICCPR. It entered into force on 23 March 1976.[19] It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of expression, freedom of peaceful assembly, electoral rights, and the right to due process and a fair trial. As at 2 February 2016, the ICCPR has 74 signatories and 168 parties.[20]

The Human Rights Committee receives periodic reports from each state party on the quality and protection of human rights in their country and the measures they have adopted to give effect to the rights of the covenant.[21] The Committee responds to the reports and may request further information. Complaints by one state party that another is not fulfilling its human rights obligations will go to the Committee. Under an optional protocol member countries can commit their individual citizens to bring human rights complaints before the Committee.

2.2 European Convention on Human Rights

The ECHR was drafted by the Council of Europe in Rome on 4 November 1950. Formally, the Convention for the Protection of Human Rights and Fundamental Freedoms, it came into force on 3 September 1953. The adoption of the Convention by the Council of Europe was the first

---

[15] Robert Blackburn, *Towards a Constitutional Bill of Rights for the United Kingdom*, 1999, p 19.
[16] ibid.
[17] ibid.
[18] European Commission, 'EU Charter of Fundamental Rights', accessed 3 February 2016.
[19] United Nations Human Rights Office of the High Commissioner, *International Covenant on Civil and Political Rights*, accessed 2 February 2016.
[20] United Nations Treaty Collection, 'International Covenant on Civil and Political Rights', accessed 2 February 2016.
[21] United Nations Human Rights Office of the High Commissioner, 'Human Rights Committee', accessed 2 February 2016.

step in implementing the UN's Universal Declaration of Human Rights of 1948.[22] By ratifying the Convention, member states accept international legal obligations to guarantee certain civil and political rights to individuals within their jurisdiction. The ECtHR was established in 1959, and it rules on individual or state applications alleging violations in its jurisdiction of the civil and political rights set out in the ECHR.[23]

[22] House of Commons Library, *A British Bill of Rights?*, 22 January 2016, p 4.
[23] Further background information on the ECHR can be found in the House of Commons Library briefing, *A British Bill of Rights?* (22 January 2016).

3. United States

3.1 Historical Background

After declaring their independence from the British in 1776, the 13 original states of the United States of America established a national government under the Articles of Confederation.[24] This agreement was intended to prevent states from conducting their own foreign policy, however this proved difficult to enforce. National leaders became convinced of the need for a stronger central government and set up the Constitutional Convention, which met in Philadelphia between May and September of 1787.[25]

The Constitution of the United States was proposed by the Constitutional Convention in 1787 and came into effect in 1788, replacing the Articles of Confederation.[26] Article 5 of the Constitution provides that amendments can be made to it,[27] as long as a two-thirds vote of both Houses of Congress propose the amendment, and three quarters of the States approve it.[28] The US Bill of Rights is composed of the first ten amendments to the Constitution. During the process for ratifying the agreement, fears were expressed that the Federal Government might abuse its power, a fear which the American Civil Liberties Union argues "came from the colonial experience".[29] In their formal ratification of the Constitution, several States asked for amendments that would protect individuals from the State, and others agreed to it with the understanding that such amendments would be offered.[30] Consequently, in 1789 the new Congress proposed to the States twelve constitutional amendments—drawing on the 1776 Virginia Declaration of Rights[31]—ten of which were ratified in December 1791 and became the Bill of Rights.[32]

3.2 US Bill of Rights: Provisions

Amendment 1 forbids Congress to make laws establishing a religion or curtailing freedom of speech, press, and assembly.[33] Amendment 2 states that "a well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed".[34] David Currie, Professor of Law at the University of Chicago, highlights that whether or not this amendment permits individuals to possess weapons has been "hotly disputed".[35] Amendment 3 states that in peacetime, soldiers shall not be housed in private homes without the consent of the owner, and amendment 4 protects against "unreasonable searches and seizures" and stipulates that warrants must only be issued "upon probable cause".[36]

---

[24] US Department of State Office of the Historian, 'Articles of Confederation, 1777–1781', accessed 3 February 2016.
[25] US Department of State Office of the Historian, 'Constitutional Convention and Ratification, 1787–1789', accessed 3 February 2016.
[26] David P Currie, *Constitution of the United States*, 2000, p 1.
[27] Constitution of the United States, article 5.
[28] David P Currie, *Constitution of the United States*, 2000, p 10.
[29] American Civil Liberties Union, 'The Bill of Rights: A Brief History', accessed 2 February 2016.
[30] United States National Archives, 'The Charters of Freedom: Bill of Rights', accessed 2 February 2016.
[31] United States National Archives, 'Bill of Rights: Virginia Declaration of Rights', accessed 2 February 2016.
[32] United States National Archives, 'Bill of Rights', accessed 2 February 2016.
[33] US Bill of Rights, amendment 1.
[34] US Bill of Rights, amendment 2.
[35] David P Currie, *Constitution of the United States*, 2000, p 11.
[36] US Bill of Rights, amendments 3–5.

Amendments 5, 6 and 8 are concerned with an individual's rights when accused of a crime. The right to due process and a speedy and public trial by jury, the right not to be tried or punished more than once for the same offence, the right not to be compelled to be a witness against oneself and the right not to suffer "cruel and unusual punishments" are all protected.[37] Amendment 5 also provides that private property shall not be taken for public use without "just compensation". Amendment 7 establishes the right to trial by jury in civil cases.

Amendment 9 states that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people".[38] Academics Harold Chase and Craig Ducat explain that this means that "there are certain rights of so fundamental a character that no free government may trespass upon them whether they are enumerated in the Constitution or not".[39] Finally, amendment 10 lays down that any powers not explicitly given to the Federal Government or prohibited by the Constitution are reserved for the States or the people.[40]

3.3 Bill of Rights in Practice: Role of the Courts

In the United States, the courts have the power to declare federal and state statutes unconstitutional.[41] This includes ruling on conflicts with the amendments to the Constitution which make up the Bill of Rights. This power was first exercised in the case of *Marbury* v *Madison* in 1803 when the Supreme Court, the US's highest court of appeal, decided that a statute allowing it to rule on certain types of cases was unconstitutional.[42] While the legal origin of the judicial authority to rule on constitutional issues can be debated, Currie argues that *Marbury* v *Madison* "is a basic source of the American doctrine of judicial review of both executive and legislative action."[43]

Since this time, many cases concerning whether legislation breeches provisions in the Bill of Rights have come before the courts. Frequently, the courts have based their decisions on a balance of opposing interests. For example, amendment 5 specifies that no-one should be deprived of life, liberty or property without due process of law. In ruling on cases relating to this right, the courts have decided what constitutes due process by weighing the invasion of the affected private interest against the contested procedures and their burden on the public interest.[44] This can be seen in the contrasting decisions of *Goldberg* v *Kelly* and *Goss* v *Lopez*. In the former, because the point at issue was the termination of welfare benefits which would have "endangered a recipient's very survival", the Supreme Court ordered that an administrative hearing similar to a judicial trial be held before benefits could be withdrawn. In *Goss* v *Lopez*, however, because the disputed sanction was only a minor suspension from school, due process was satisfied by the head teacher orally informing the student of the suspension and giving him an opportunity to respond.[45]

Similarly, in deciding on cases involving the provision in amendment 1 that "Congress shall make no law […] abridging the freedom of speech", the courts examine how seriously the

---

[37] US Bill of Rights, amendments 5–8.
[38] US Bill of Rights, amendment 10.
[39] Harold W Chase and Craig R Ducat, *Edward S Corwin's The Constitution and What It Means Today*, 1978, p 440.
[40] US Bill of Rights, amendment 10.
[41] David P Currie, *Constitution of the United States*, 2000, p 15.
[42] ibid, p 16.
[43] ibid, p 19.
[44] ibid, p 49.
[45] ibid.

restriction limits communication, and how strong society's interest is in doing so.[46] A decision in the case of *Schenck* v *United States*, in 1919, led to the emergence of the "clear and present danger" doctrine: that in order for an expression to be penalised by government it must have occurred in such circumstances, or have been of such a nature, so as to create a clear and present danger that it would bring about "substantive evils" that is in within the power of government to prevent.[47] However, this doctrine later gave way to an approach with a "built-in bias against government interference" that prioritised freedom of speech, which was predominant until the 1950s. Chase and Ducat argue that since then, the Supreme Court has not sought an overarching doctrine but takes each case "on its own merits" and balances "the competing private and public interests".[48]

[46] David P Currie, *Constitution of the United States*, 2000, p 76.
[47] Harold W Chase and Craig R Ducat, *Edward S Corwin's The Constitution and What It Means Today*, 1978, p 304.
[48] ibid, p 307.

4. Germany

4.1 Historical Background

Bismarck's Constitution 1871

In 1871, the German Empire was formed under the leadership of the Chancellor, Otto von Bismarck, and a constitution was enacted.[49] The Constitution was the result of a series of agreements between the participating German States, and established a German nation-state. The Empire was a federation, but its laws took precedence over those of the States.[50] The Constitution regulated the organisation of the State, but it did not set out a list of basic rights that it would guarantee or protect.[51]

Weimar Constitution 1919

After the end of the First World War in 1918, the 1871 Constitution was replaced by the Weimar Constitution of 1919.[52] The Weimar Constitution introduced a parliamentary federal republic, with an emphasis on the centralisation of political powers.[53] The Constitution contained a section which listed a set of fundamental rights. However, they did not accord individual rights and the various agencies of the State were not bound by them in law.[54] Academics Sabine Michalowski and Lorna Woods argue that the basic rights listed in the Constitution were "just political statements that needed the enactment of statutory provisions to award individual rights."[55]

In January 1933, the then President, Paul von Hindenburg, appointed Adolf Hitler as Chancellor (head of the cabinet) who almost immediately dissolved the legislature and called for a general election. On 28 February 1933, an emergency decree was introduced under which all basic rights guaranteed under the Weimar Constitution were temporarily suspended.[56] Legislation passed in March 1933 empowered the Government to enact statutes without the legislature's involvement.[57]

Post Second World War Settlement

At the end of the Second World War in 1945, the former German Republic was occupied and administered by the military commanders of the four Allied Powers: the United States of

---

[49] Sabine Michalowski and Lorna Woods, *German Constitutional Law: The Protection of Civil Liberties*, 1999, p 3; and Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 64.
[50] ibid.
[51] Sabine Michalowski and Lorna Woods, *German Constitutional Law: The Protection of Civil Liberties*, 1999, p 3.
[52] In November 1918, the German Kaiser (Emperor) was forced to abdicate and was replaced in 1919 with an newly elected body, and the Weimar Republic was formed; Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 64; and Christopher Cuplin and Ruth Henig, *Modern Europe*, 1997, p 261.
[53] Sabine Michalowski and Lorna Woods, *German Constitutional Law: The Protection of Civil Liberties*, 1999, p 3; and Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 65.
[54] Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 65.
[55] Sabine Michalowski and Lorna Woods, *German Constitutional Law: The Protection of Civil Liberties*, 1999, p 3.
[56] ibid, p 3; and Christopher Cuplin and Ruth Henig, *Modern Europe*, 1997, p 283.
[57] Sabine Michalowski and Lorna Woods, *German Constitutional Law: The Protection of Civil Liberties*, 1999, p 4.

America, Britain, France and the USSR. Following discussions at the Four Power conference in London in 1947, it was decided that the eastern part of Germany, occupied by the USSR, would not be part of the immediate constitutional reconstruction of Germany.[58] In 1948, the three western-allies instructed the eleven West-German Länder (provincial) governments to set up a national constitutional writing body to draw up a new constitution conforming to the requirements of democracy, federalism and the protection of individual rights and freedoms.[59] Following a meeting of representatives from the Länder governments, the Parlamentarischer Rat (parliamentary council) was established, consisting of 65 Members elected proportionally by the Landtage (provincial parliaments) according to political party representation.

In September 1948, the Parlamentarischer Rat convened for the first time, and by May 1949 it had formulated and adopted the text of the new German Constitution, the Basic Law.[60] It subsequently received the necessary approval from the three military governors, and from the various Landtage.

In 1989, following the removal of the Berlin Wall, the question of reunification arose. On 1 July 1990, a monetary economic and social union between the two German States was established, and the Reunification Treaty, with the accession of the German Democratic Republic (East Germany) to the Federal Republic of Germany (West Germany), took effect on 3 October 1990.[61] According to the Treaty, upon its ratification the Basic Law would come into force in the former German Democratic Republic.

4.2 Basic Law for the Federal Republic of Germany (Grundgesetz): Provisions

The Basic Law starts with a catalogue of fundamental rights, which are listed in articles 1 to 19. The inclusion of the basic rights in the Constitution means that they are legally binding.[62] According to article 1(3), the rights listed "shall bind the legislature, the executive and the judiciary as directly applicable law".[63] The following types of rights are included in the Basic Law:[64]

- The right to human dignity and the duty of all public authority to respect and protect the inviolable dignity of all people.
- Protection from State intervention, such as the right to life and physical integrity, the right to self-fulfilment, freedom of faith and conscience, and the right to choose and practice an occupation or profession.
- Political participatory rights such as freedom of assembly and freedom of association, freedom of expression, and the right to freely establish political parties.

---

[58] Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 65.
[59] ibid.
[60] Sabine Michalowski and Lorna Woods, *German Constitutional Law: The Protection of Civil Liberties*, 1999, p 5; and Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 65.
[61] Sabine Michalowski and Lorna Woods, *German Constitutional Law: The Protection of Civil Liberties*, 1999, p 5.
[62] German Bundestag, 'Adoption of Legislation: Introduction', accessed 1 February 2016.
[63] German Bundestag, *Basic Law for the Federal Republic of Germany as at 12 November 2012*, art 1(3) BL.
[64] German Bundestag, 'Adoption of Legislation: Introduction', accessed 1 February 2016.

- It guarantees rights such as universal equality before the law, and the equality of men and women.

Amendments to the Basic Law are only possible with the acceptance of two-thirds of the Members in both the Bundestag and the Bundesrat.[65] However, some fundamental principles of the Basic Law cannot be amended at all. Article 79(3) states that:

> Amendments to this Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible.[66]

The Basic Law also contains "all essential regulations governing" the structure of the State and the basis of state action.[67] The German Bundestag explains that:

> One of these important provisions states that the executive (ie authorities and agencies) is bound by law and justice in its actions. The Federal Republic of Germany is not only a democratic and social federal state, it is also governed by the rule of law. This means that authorities and agencies do not act arbitrarily but on the basis of all those binding rules […] All action by public authority can be reviewed by courts, citizens may lodge an objection and institute legal proceedings to fight for their rights, if they should have been denied them.[68]

4.3 Basic Rights in Practice: Constitutional Court and ECHR

Role of the Constitutional Court

It is the Federal Constitutional Court's (FCC) duty to ensure that the Basic Law is adhered to.[69] The FCC states that it has a particular duty in the "enforcement of the fundamental rights".[70] It explains that all government bodies are obliged to respect the Basic Law, and should any conflict arise, the jurisdiction of the Court is invoked. It further explains that all its decisions are final and all other government institutions are bound by its case-law. The Court can declare law unconstitutional. However, the Court is not a political body and "questions of political expediency may not be taken into account", it "merely determines the constitutional framework within which politics may develop".[71]

FCC and ECHR

There are number of provisions in the Basic Law which regulate on the matters of international law.[72] For instance, article 25 regulates on the primacy of international law. It states that the general laws of international law "shall be an integral part of federal law", and that they will "take precedence over the laws and directly create rights and duties for the inhabitants of the

---

[65] German Bundestag, *Basic Law for the Federal Republic of Germany as at 12 November 2012*, art 79(2) BL; and Sabine Michalowski and Lorna Woods, *German Constitutional Law: The Protection of Civil Liberties*, 1999, p 34.
[66] German Bundestag, *Basic Law for the Federal Republic of Germany as at 12 November 2012*, art 79(3) BL.
[67] German Bundestag, 'Adoption of Legislation: Introduction', accessed 1 February 2016.
[68] ibid.
[69] Federal Constitutional Court, 'The Court's Duties', accessed 2 February 2016.
[70] ibid.
[71] ibid.
[72] Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 113.

federal territory". Article 59(2) sets out the process for incorporating international treaties into German law. It explains that states:

> Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law.[73]

The ECHR is one example of an international agreement being incorporated into German law. Germany ratified the ECHR in 1952, and it entered into force on 3 September 1953.[74] In 2004, the status of the ECHR in German domestic law, and its interaction with Germany's basic rights as set out in the Basic Law, was considered by the FCC. A father who was seeking access to his son, having exhausted all domestic remedies, filed a complaint against Germany before the ECtHR. In February 2004, the ECtHR ruled that the appellant's right to have his family life respected, under article 8 of the ECHR, had been violated.[75] The ECtHR further judged that under article 46 of the ECHR, which states that parties to the Convention undertake to abide by the ECtHR's final judgment, Germany was under an obligation to make it possible for the applicant to at least have access to his child.

The case was subsequently referred to the FCC. It ruled that the ECHR held the status of a federal statute in Germany since it had been incorporated into German law by the federal legislature according to article 59(2) of the Basic Law.[76] Having become part of German domestic law, the Convention had to be applied by German courts, like other federal statutes, "in the framework of accepted methods of interpretation". The FCC further stated that:

> For this reason, German courts must observe and apply the Convention in interpreting national law. The guarantees of the Convention and its protocols, however, are not a direct constitutional basis for a court's review, if only because of the status given them by the Basic Law. But on the level of constitutional law, the text of the Convention and the case-law of the ECHR serve as interpreting aids in determining the contents and scope of fundamental rights and fundamental constitutional principles of the Basic Law, to the extent that this does not restrict or reduce the protection of the individual's fundamental rights under the Basic Law.[77]

However, the FCC also argued that:

> The Basic Law aims to integrate Germany into the legal community of peaceful and free States, but does not waive the sovereignty contained in the last instance in the German constitution.[78]

The FCC judged that since the legal effects of the ECtHR were binding on the state party as a whole, under article 46 of the ECHR, and in accordance with the rule-of-law principle enshrined in the Basic Law, if a judgment of the ECtHR touched on subject matter that comes

---

[73] German Bundestag, *Basic Law for the Federal Republic of Germany as at 12 November 2012*, art 59(2) BL.
[74] Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 111.
[75] Frank Hoffmeister, 'Germany: Status of European Convention on Human Rights in Domestic Law', *International Journal of Constitutional Law*, October 2006, pp 722–31.
[76] Federal Constitutional Court, 'On the Consideration of the Decisions of the European Court of Human Rights by Domestic Institutions, in Particular German Courts', 19 October 2004.
[77] ibid.
[78] ibid.

before the German courts, the latter must incorporate its reasoning in their own constitutional interpretation.[79]

The FCC found that the father's rights had been infringed under article 6 of the Basic Law, on the right to respect one's family life, in conjunction with a violation of the rule-of-law principle.[80]

[79] Federal Constitutional Court, 'On the Consideration of the Decisions of the European Court of Human Rights by Domestic Institutions, in Particular German Courts', 19 October 2004.
[80] Federal Constitutional Court, 'Father is Provisionally Granted Right of Access', 29 December 2004.

5. Canada

5.1 Historical Background

British North America Act 1867 and Statute of Westminster 1931

In 1867, the British Parliament passed the British North America (BNA) Act which established the Dominion of Canada, a federal union between four of the Canadian territories: New Brunswick, Nova Scotia, Ontario and Québec.[81] The BNA Act established the new federation's distribution of responsibilities and powers for each level of government.[82] Additionally, it contained a set of limited and discrete rights. For instance, the right to use either English or French language in the courts and Parliament of both federal Canada and Québec was established.[83] In the following years the federation was extended, and by 1905 all the Canadian provinces were part of the federation.[84]

The Statute of Westminster, passed by the British Parliament in 1931, empowered the Canadian Dominion to amend or repeal British law and parliamentary legislation applicable within its jurisdiction.[85] Furthermore, future British legislation would not apply, except if passed at Canada's request. As a result, Canada became an independent, sovereign state under the British Crown.[86] However, section 7(1) of the Statute of Westminster stated that nothing in the Act would "apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder". As a result, the power to amend the Constitution remained with the British Parliament.[87]

Canadian Bill of Rights 1960

There were a number of proposals for a bill of rights made in the 1930s, however, David Eros argues that it was not until after the Second World War that "serious political support for a national bill of rights" developed.[88]

In 1956, John Dienfenbaker, who had proposed the introduction of a bill of rights to the Canadian House of Commons in both 1952 and 1955, was elected leader of the federal Progressive Conservatives.[89] During his campaign for the general election in 1957, Diefenbaker confirmed the Party's commitment to a bill of rights. The Conservatives won the election, but could only form a minority administration. However, in 1958, the Conservative Party won the general election with a large majority, and in 1959 the first draft of the statutory Canadian Bill of Rights was introduced in Parliament. The Bill was withdrawn to allow for further scrutiny,

---

[81] Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 71; and David Erdos, *Delegating Rights Protection: The Rise of Bills of Rights in the Westminster World*, 2010, p 49.
[82] Canadian Museum of History, 'British North America Act1867', accessed 1 February 2016.
[83] David Erdos, *Delegating Rights Protection: The Rise of Bills of Rights in the Westminster World*, 2010, p 50.
[84] Manitoba in 1870, British Columbia in 1871, Prince Edward Island in 1873, and Alberta and Saskatchewan in 1905; Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 71.
[85] Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 73.
[86] ibid; and Canadian Government, Department of Intergovernmental Affairs, 'Why, in 1931, Canada Chose Not to Exercise its Full Autonomy as Provided for Under the Statute of Westminster', accessed 1 February 2016.
[87] ibid.
[88] David Erdos, *Delegating Rights Protection: The Rise of Bills of Rights in the Westminster World*, 2010, p 50.
[89] ibid.

and was reintroduced in July 1960. On 4 August 1960, the Bill was passed in the House of Commons unanimously, and was passed in the Senate without a formal vote being taken.[90]

The Canadian Bill of Rights 1960 declared that there existed in Canada, "without discrimination", certain human rights and fundamental freedoms such as the right to life; the right to equality before the law and the protection of the law; freedom of religion; speech; assembly and association; and the right to be free from arbitrary detention or punishment.[91]

The fundamental rights sets out in the Bill of Rights took the form of an ordinary statute.[92] It did not apply to the provinces, and it was subject to ordinary amending procedures.

Proposals for a Constitutional Bill of Rights

In 1968, the Liberal Government proposed that a charter of rights, including Anglophone and Francophone linguistic rights should form part of a patriated and renewed BNA Act.[93] Negotiations with the provinces led to an agreement, known as the Victoria Charter, to constitutionalise three core 'political rights': universal suffrage and free democratic elections; freedom of thought, conscience and religion; and freedom of peaceful assembly and association.[94] It also proposed limited linguistic rights. However, the agreement collapsed in 1971 after Québec withdrew its support.[95] According to David Erdos, the Federal Government remained committed to introducing a bill of rights. However, he argues that the Progressive Conservative Party, elected in May 1979, put emphasis on both implementing reform on the basis of consent of the provinces, and limiting the range of rights included.[96]

In 1980, the Liberal Party won the general election. Following the election, the Prime Minister, Pierre Trudeau, announced his intention to constitutionalise a bill of rights that would include fundamental freedoms, democratic guarantees, freedom of movement, legal rights, equality, and language rights, secured if need be by unilateral resolution to the British Parliament.[97] In response to this, six of the nine provinces led a legal challenge which resulted in the Canadian Supreme Court ruling in 1981 that unilateral federal action would be technically lawful, but in the absence of a substantial measure of provincial support, it would be a breach of constitutional convention.[98] This ruling led to renewed negotiations which culminated in an agreement between the Federal Government and all the provinces bar Québec on a charter of rights entrenched in the Constitution. Following endorsement by the both the Canadian and British Parliament on 17 April 1982, Queen Elizabeth II signed the Constitution Act 1982, which incorporated the Canadian Charter of Rights and Freedoms.[99] The Act replaced the BNA Act

---

[90] David Erdos, *Delegating Rights Protection: The Rise of Bills of Rights in the Westminster World*, 2010, p 50.
[91] Canadian Bill of Rights 1960, s 1.
[92] Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 73.
[93] Included the right to communicate in either language in government communications and services, and the right to choose between English or French as the main language of instruction in publicly supported schools; David Erdos, *Delegating Rights Protection: The Rise of Bills of Rights in the Westminster World*, 2010, p 67.
[94] ibid, pp 67–8; and Parliament of Canada Information and Research Service, *Quebec's Constitutional Veto: The Legal and Historical Context*, May 1992.
[95] David Erdos, *Delegating Rights Protection: The Rise of Bills of Rights in the Westminster World*, 2010, p 68.
[96] ibid.
[97] ibid.
[98] ibid.
[99] ibid.

and transferred all legislative authority to Canada, including the power to make changes to the Constitution.[100]

5.2 Canadian Charter of Rights and Freedoms: Provisions

The Canadian Charter of Rights and Freedoms is an entrenched bill of rights,[101] which "guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".[102] The Constitution is the supreme law of Canada, and apart from certain exceptions, all laws must be consistent with the rules set out in the Constitution.[103]

The six broad categories of the rights contained in the Charter are:[104]

- The fundamental freedoms of conscience, religion, thought, belief, opinion, expression, assembly and association.
- Democratic rights, including the right to vote and the guarantees of regular elections and parliamentary sessions.
- Mobility rights to leave and enter the country and to reside in and to gain a livelihood in any province.
- Legal rights concerning the legal process.
- Equality rights, including equality before the law, equal protection and equal benefit of the law.
- Language rights such as the right to use either of Canada's official languages and the right of French and English linguistic minorities to an education in their language.

The Charter makes provision for governments to place some limits on Charter rights.[105] Section 1 of the Charter stipulates that other laws may limit the rights and freedoms in the Charter as long as they are reasonable and justified in a free and democratic society.[106] Furthermore, it is possible for governments to pass laws that take away some rights under the Charter. Section 33, states that Parliament or the legislature of a province "may expressly declare in an act of parliament or of the legislature, as the case may be, that the act or a provision thereof shall operate notwithstanding" the fundamental rights and freedoms

---

[100] Government of Canada, Library and Archives, 'Proclamation of the Constitution Act 1982', accessed 1 February 2016; and Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 73.
[101] Robert Blackburn, *Towards a Constitutional Bill of Rights for the United Kingdom*, 1999, p 61.
[102] Constitution Act 1982, s 1.
[103] Canadian Government, Canadian Heritage, 'An Overview of the Canadian Charter of Rights and Freedoms', accessed 1 February 2016.
[104] ibid; and Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 139.
[105] Canadian Government, Canadian Heritage, 'An Overview of the Canadian Charter of Rights and Freedoms', accessed 1 February 2016.
[106] Constitution Act 1982, s 1.

contained in the Charter.[107] However, a law that limits the Charter rights under the notwithstanding clause expires after five years.[108]

To amend the Charter, the Federal Parliament and seven of the ten provincial legislatures must agree to it.[109] The population of those seven provinces must also make up at least 50 percent of the total population of Canada.

5.3 Charter in Practice: Role of the Canadian Supreme Court

The Charter affords everyone a right of recourse from the courts in the event of an infringement of a Charter right.[110] It guarantees a fair and public hearing by an independent and impartial tribunal to any person charged with an offence.

The Supreme Court of Canada is Canada's final court of appeal.[111] The Court has an appellate, civil and criminal jurisdiction within and throughout Canada. As the highest court in the country, it hears appeals from the Federal Court of Appeal as well as the provincial courts of appeal and makes rulings on questions of constitutional law.

The Court can also invalidate statutory legislation, subject to the 'notwithstanding clause', for being inconsistent with the Charter.[112] For instance, in December 2013, the Supreme Court declared unconstitutional three Criminal Code offences addressing prostitution-related conduct on the basis that they violated section 7 of the Charter.[113] Section 7 protects the rights to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.[114] The Court suspended its declaration of invalidity for twelve months "considering all the interests at stake", and stated that it recognised "how prostitution is regulated is a matter of great public concern, and few countries leave it entirely unregulated".[115] In June 2014, the then Minister of Justice and Attorney General of Canada, Peter MacKay, stated that the Government would introduce the Protection of Communities and Exploited Persons Bill, which would criminalise the purchase of sexual services, and would introduce penalties for those who exploit others through prostitution.[116] The Bill received royal assent in November 2014.

---

[107] Constitution Act 1982, s 33; and Robert Blackburn, *Towards a Constitutional Bill of Rights for the United Kingdom*, 1999, p 61.
[108] Canadian Government, Canadian Heritage, 'An Overview of the Canadian Charter of Rights and Freedoms', accessed 1 February 2016.
[109] ibid.
[110] Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*, 2000, p 219.
[111] Supreme Court of Canada, 'Role of the Court', accessed 1 February 2016.
[112] Robert Blackburn, *Towards a Constitutional Bill of Rights for the United Kingdom*, 1999, p 61; and Joint Committee on Human Rights, *A Bill of Rights for the UK?*, 10 August 2008, HL Paper 165-I of session 2007–08, p 60.
[113] Canada Government, Department of Justice, 'Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act', accessed 1 February 2016.
[114] Constitution Act 1982, s 7.
[115] *Bedford* v *Attorney General of Canada*, [2013] SCJ No.72.
[116] Government of Canada, 'Statement by the Minister of Justice Regarding Legislation in Response to the Supreme Court of Canada Ruling in Attorney General of Canada v. Bedford et al', 4 June 2014.

6. New Zealand

6.1 Historical Background

Established as a British colony in 1840, New Zealand gradually achieved greater degrees of independence from the UK and by 1973 all limits on the New Zealand legislature's power had been removed.[117] The Constitution Act, which outlined the roles of the existing institutions of governance, was passed in 1986, but this did not include provisions that resembled a bill of rights.

In 1985, the then Minister of Justice, Sir Geoffrey Palmer, tabled in Parliament a white paper entitled *A Bill of Rights for New Zealand*. This paper proposed to establish in New Zealand law many of the rights contained in the ICCPR, and to affirm the rights of the Maori under the Treaty of Waitangi.[118] It suggested that such a bill should be enacted as a supreme law with a double entrenchment provision to protect it from ordinary repeal. A parliamentary select committee examined the white paper and undertook a public consultation. The consultation revealed that there was significant public opposition to the entrenchment provisions because of the proposed redistribution of power from elected representatives to the appointed judiciary.[119] Some were also concerned that it would "introduce uncertainty into the law", as existing statutes and policies could be open to challenge in the courts.[120] The Committee suggested removing the provision establishing the bill of rights as supreme law, the entrenchment provisions and the references to the Treaty of Waitangi, and recommended that the bill of rights be introduced as an ordinary statute.[121] These suggestions were implemented and the New Zealand Bill of Rights Bill 1989 was introduced, becoming the New Zealand Bill of Rights Act 1990.

6.2 New Zealand Bill of Rights Act 1990: Provisions

The New Zealand Bill of Rights Act 1990 is based on the ICCPR adopted by the UN General Assembly in 1966,[122] and includes the right not to be tortured; the right to vote; freedom of thought, conscience and religion; freedom of association; freedom from discrimination; and the right of minorities to enjoy their culture, practise their religion and use their own language.[123]

While section 6 of the Bill of Rights Act 1990 directs the courts to interpret legislation in the manner most consistent with the rights contained in the Act, there is no provision in the New Zealand Bill of Rights Act 1990 which expressly enables a court to make a declaration of incompatibility in the event that legislation cannot be interpreted consistently with the

---

[117] Paul Rishworth, 'The New Zealand Bill of Rights', in Paul Rishworth et al (eds), *The New Zealand Bill of Rights,* 2003, p 5.
[118] Petra Butler, 'Cross-fertilisation of Constitutional Ideas: The Relationship between the UK Human Rights Act 1998 and the New Zealand Bill of Rights Act 1990', in Roger Hasterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitution and Comparative Perspectives,* 2013, p 252.
[119] ibid, p 253.
[120] Paul Rishworth, 'The New Zealand Bill of Rights', in Paul Rishworth et al (eds), *The New Zealand Bill of Rights,* 2003, p 7.
[121] Petra Butler, 'Cross-fertilisation of Constitutional Ideas: The Relationship between the UK Human Rights Act 1998 and the New Zealand Bill of Rights Act 1990', in Roger Hasterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitution and Comparative Perspectives,* 2013, p 253.
[122] Anthony Mason, 'Human Rights and Legislative Supremacy', in Roger Hasterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitution and Comparative Perspectives,* 2013, p 199.
[123] New Zealand Bill of Rights Act 1990.

recognised human rights.[124] Petra Butler, Associate Professor of Law at Victoria University of Wellington, argues that the Act was designed in this way in order to uphold the sovereignty of Parliament,[125] and Paul Rishworth, Professor of Law at the University of Auckland, agrees that the limitations inherent in the Act "were all conceived as limitations on judicial power in relation to legislation".[126] Furthermore, section 4 of the Act states that previous legislation is not implied to be repealed by the Bill of Rights if it is inconsistent with it, which, Rishworth argues, "might even be said to relegate the Bill of Rights to a status inferior to other enactments".[127]

Section 5 of the New Zealand Bill of Rights Act 1990 provides that rights may be subject to limits that are "demonstrably justified in a free and democratic society".[128]

The New Zealand Bill of Rights Act 1990 was amended by the New Zealand Bill of Rights Amendment Act 2011, which changed the right to a trial by jury from cases where the penalty is imprisonment for more than three months to imprisonment for two years or more.[129]

6.3 Bill of Rights Act 1990 in Practice: Impact and the Role of the Courts

Paul Rishworth writes that although the New Zealand Bill of Rights is not entrenched and is therefore theoretically subject to repeal by an ordinary majority, "any Government intent on repeal or restrictive amendment of the Bill of Rights is likely to suffer extreme political difficulty and opprobrium".[130] He further argues that, despite its being an ordinary statute, "constitutional significance has been attributed to the Bill of Rights", citing various criminal cases where the Bill of Rights was used to make decisions on the interaction between citizens and the state.[131] In addition, section 7 of the Act places an obligation on the Attorney General to report on inconsistencies between the Bill of Rights and bills introduced in the Parliament, which means that consideration is given to the Bill of Rights in the development of policy and drafting of legislation.[132]

According to Petra Butler, the execution of the courts' mandate under section 6 of the Act to interpret legislation in the way most consistent with the New Zealand Bill of Rights Act 1990 has been significantly shaped by the limits provided for in section 5.[133] However, consistent meanings are only given where it is reasonable, tenable or proper to do so. Butler argues that in examining the interaction between the New Zealand Bill of Rights Act 1990 and other

---

[124] Anthony Mason, 'Human Rights and Legislative Supremacy', in Roger Hasterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitution and Comparative Perspectives*, 2013, p 200.
[125] Petra Butler, 'Cross-fertilisation of Constitutional Ideas: The Relationship between the UK Human Rights Act 1998 and the New Zealand Bill of Rights Act 1990', in Roger Hasterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitution and Comparative Perspectives,* 2013, p 253.
[126] Paul Rishworth, 'The New Zealand Bill of Rights', in Paul Rishworth et al (eds), *The New Zealand Bill of Rights,* 2003, p 3.
[127] ibid, p 2.
[128] New Zealand Bill of Rights Act 1990, s 5.
[129] New Zealand Bill of Rights Amendment Act 2011, s 4.
[130] Paul Rishworth, 'The New Zealand Bill of Rights', in Paul Rishworth et al (eds), *The New Zealand Bill of Rights,* 2003, p 4.
[131] ibid, p 11.
[132] ibid.
[133] Petra Butler, 'Cross-fertilisation of Constitutional Ideas: The Relationship between the UK Human Rights Act 1998 and the New Zealand Bill of Rights Act 1990', in Roger Hasterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitution and Comparative Perspectives,* 2013, p 255.

legislation, New Zealand courts give more regard to adhering to and preserving parliamentary sovereignty than UK courts do in interpreting the Human Rights Act 1998.[134]

In July 2015, the New Zealand High Court, which has "general jurisdiction and responsibility" for the administration of justice throughout the country, [135] made the country's first ever declaration of inconsistency with the New Zealand Bill of Rights Act 1990 in the case of *Taylor* v *Attorney General*.[136] The case was brought by five serving prisoners, who argued that the blanket ban on prisoner voting that had been in force since the enactment of the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 breached the right to vote in section 12(a) of the New Zealand Bill of Rights Act 1990. The High Court held in favour of the prisoners and made a declaration of inconsistency, stating that the legislation was both inconsistent with the Bill of Rights Act 1990 and could not be justified under the Act. In July 2015, in response to the judgment, a government spokesperson stated that Parliament had considered the Bill of Rights implications when it voted for the measure, and "the finding that a piece of legislation breached the Bill of Rights Act does not invalidate the legislation".[137] As at February 2016, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 was still in force.

[134] Petra Butler, 'Cross-fertilisation of Constitutional Ideas: The Relationship between the UK Human Rights Act 1998 and the New Zealand Bill of Rights Act 1990', in Roger Hasterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitution and Comparative Perspectives,* 2013, p 255.
[135] New Zealand Ministry of Justice, 'High Court', accessed 4 February 2016.
[136] New Zealand High Court, 'Taylor v AG: Prison Voting Law Inconsistent Bill of Rights', 24 July 2015.
[137] Claire Trevett, 'Prisoners Should Be Allowed to Vote: High Court', *New Zealand Herald*, 24 July 2015.

7. South Africa

7.1 Historical Background

The South African Bill of Rights is part of the Constitution of the Republic of South Africa, which was adopted in 1996. The need for an entrenched bill of rights was agreed by the African National Congress (ANC) and the then Government at the Convention for a Democratic South Africa in 1991, when the need to establish a multi-party democracy in a united South Africa was also agreed.[138] However, the talks broke down over disagreements concerning the nature of a future constitution-making body and the extent of federalism.[139] The ANC and National Party Government began negotiations again with the Record of Understanding on 26 September 1992, which provided for an elected constituent assembly to draw up a constitution and the establishment of an interim government of national unity.[140]

An interim Constitution, which included a bill of rights, was adopted in December 1993, and came into force with the first national elections in April 1994.[141] The interim Constitution provided for the creation of a final constitution within two years from the first sitting of the newly-elected National Assembly. The interim Constitution stipulated that a new constitution would have to be voted for by two-thirds of the Members of the Constitutional Assembly, composed of both Houses of the new legislature, in order to pass.[142] The new Constitution, which included a more expansive bill of rights than was present in the 1993 interim Constitution,[143] passed the threshold and was adopted by the Constitutional Assembly in 1996, coming into effect on 4 February 1997.[144]

7.2 South African Bill of Rights: Provisions

The South African Bill of Rights is contained in chapter 2 of the country's Constitution.[145] The Bill of Rights is composed of sections 7–39 of the Constitution, 27 of which list the protected rights and six of which govern the manner in which the Bill of Rights operates and how it can be enforced by the courts. Chapter 8 of the constitution contains rules relating to the jurisdiction of the courts in constitutional matters and the remedies that courts may grant when a provision of the Bill of Rights has been violated.[146] It provides for a Constitutional Court, which is the highest court in all constitutional matters.

The South African Bill of Rights includes many fundamental individual rights, including the right to equality before the law, human dignity and life.[147] It also includes certain socio-economic rights, such as the right to adequate housing and to health care, food, water and social services.[148] The South African Bill of Rights not only protects individuals from the State, but in certain circumstances protects individuals against abuses of their rights by other individuals and

---

[138] Heinz Klug, *The Constitution of South Africa*, 2010, p 25.
[139] ibid, p 26.
[140] ibid, pp 27–8.
[141] ibid, p 23.
[142] ibid, p 28.
[143] ibid, p 114.
[144] ibid, p 6.
[145] Constitution of the Republic of South Africa 1996, chapter 2.
[146] Johan de Waal, 'Constitutional Law' in C G van der Merwe and Jacques E du Plessis (eds), *Introduction to the Law of South Africa*, 2004, p 87; and Constitution of the Republic of South Africa 1996, chapter 8.
[147] Constitution of the Republic of South Africa 1996, chapter 2, s 9–11.
[148] ibid, s 26–7.

private institutions.[149] Advocate of the High Court of South Africa, Johan de Waal, argues that this is in contrast to many bills of rights in other countries, which are confined to regulating the relationship between the individual and the State. The South African Bill of Rights also contains rights which are not only individual but communal; for example, section 23(4) states that trade unions and employers associations have the right to determine their own administration, programmes and activities, to organise, and to form and join a federation.[150]

Section 36 defines the criteria that must be considered when weighing the conflict between rights, or between a person's rights and the Government's need to exercise its power in a particular circumstance.[151] It states that a right may only be limited "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors". Section 37 explains when, and under what conditions, a state of emergency may be declared and fundamental rights suspended.[152]

Section 74 of the South African Constitution stipulates that the Bill of Rights may be amended by a bill if at least two-thirds of the Members of the National Assembly and six of the provinces in the National Council of Provinces vote in favour of the change.[153]

7.3 Bill of Rights in Practice: Constitutional Court

Interpreting and applying section 36, the general limitations clause, has two steps in practice. De Waal writes that "if it is argued that conduct or a provision of the law infringes a right in the Bill of Rights, it will first have to be determined whether that right has in fact been infringed and thereafter whether the infringement is justified".[154] According to de Waal, "the burden of proof is on those who seek to justify the limitation of a right rather than those who are claiming the right".[155] In particular, the Constitutional Court has upheld the right to life and right to human dignity as central to the "value order" established by the Bill of Rights.[156] In *S v Makwanyane*, the Court ruled that the death sentence could not be allowed under the Constitution, stating that the rights to life and dignity are "the most important of all human rights" and represent "the ultimate limitation of state power".[157]

While the Bill of Rights relates to private as well as public bodies, in enforcing these rights there is a recognition that obligations on private bodies are different to public bodies; for example, private hospitals are not under the same obligation as public hospitals to provide basic health care to all.[158] According to de Waal, there have been few applications of the Bill of Rights to disputes between private parties.

---

[149] Johan de Waal, 'Constitutional Law' in CG van der Merwe and Jacques E du Plessis (eds), *Introduction to the Law of South Africa*, 2004, p 89.
[150] Constitution of the Republic of South Africa 1996, chapter 2, s 23(4).
[151] Heinz Klug, *The Constitution of South Africa*, 2010, p 117; and Constitution of the Republic of South Africa 1996, chapter 2, s 36.
[152] Constitution of the Republic of South Africa 1996, chapter 2, s 37.
[153] ibid, s 74(2).
[154] Johan de Waal, 'Constitutional Law' in CG van der Merwe and Jacques E du Plessis (eds), *Introduction to the Law of South Africa*, 2004, p 94.
[155] Heinz Klug, *The Constitution of South Africa*, 2010, p 117.
[156] Johan de Waal, 'Constitutional Law' in CG van der Merwe and Jacques E du Plessis (eds), *Introduction to the Law of South Africa*, 2004, p 95.
[157] ibid, p 96.
[158] ibid, p 89.

Section 39(2) places a general duty on every South African court to "promote the spirit, purport and objects of the Bill of Rights when interpreting any legislation".[159] As a result, statutes are interpreted in such a way as to avoid conflict with the Bill of Rights. If an inconsistency is found between the Bill of Rights and State conduct or legislation, "the remedy […] is the invalidation of the conduct or the law".[160] For example, in *Dawood* v *Minister of Home Affairs*, the Constitutional Court invalidated a provision of the Aliens Control Act 1991 that made it difficult for foreigners to live with their spouses while awaiting an immigration permit on the grounds that it conflicted with the right to human dignity, which the Court interpreted as affording protection to the institutions of marriage and family life.[161]

[159] Johan de Waal, 'Constitutional Law' in CG van der Merwe and Jacques E du Plessis (eds), *Introduction to the Law of South Africa*, 2004, p 91.
[160] ibid, pp 91–2.
[161] ibid p 97.

8. Australia

8. 1 Australian Constitution

The Australian Constitution was drafted at a series of constitutional conventions held in the 1890s.[162] Each Australian colony sent delegates to the conventions. By 1898 they had formed and agreed on a draft constitution which was taken back to their respective colonial Parliaments to be approved. During the conventions the delegates debated whether a bill of rights should be adopted.[163] However, these proposals were rejected and did not form part of the final agreement. The final draft of the Constitution was approved following referendums in each of the colonies between June 1899 and July 1900.[164] It was passed by the British Parliament as part of the Commonwealth of Australia Constitution Act 1900, and took effect on 1 January 1901.

The High Court of Australia (highest court of appeal) was established in 1901, and was subsequently given the power to consider Commonwealth or State legislation and to determine whether such legislation was within the powers granted in the Constitution to the relevant tier of government.[165] The High Court can invalidate any legislation or parts of legislation that it finds to be unconstitutional. The Australian Constitution can be changed by referendum according to the rules set out in section 128 of the Constitution.[166] A proposed change must first be approved as a bill by the Federal Parliament. It is then sent to the Governor-General in order for a writ to be issued so a referendum can occur.

8.2 Australian Constitution and Human Rights

According to the Australian Human Rights Commission, Australia has no single document which sets out the human rights that are protected in its country.[167] The Commission states that instead a number of rights can be found in the Constitution, common law and in the legislation passed by the Commonwealth Parliament and state and territory parliaments.

However, the Commission states that there are five explicit individual rights set out in the Constitution. The rights are:[168]

- Right to vote.
- Protection against acquisition of property on unjust terms.
- Right to a trial by jury.
- Freedom of religion.
- Prohibition of discrimination on the basis of state residency.

Nevertheless, it argues that the High Court of Australia has found that "additional rights for individuals may be necessarily implied by the language and structure of the Constitution".[169] For

[162] Parliamentary Education Office, 'The Australian Constitution', accessed 1 February 2016.
[163] Australian Human Rights Commission, 'How are Human Rights Protected in Australian Law', accessed 1 February 2016.
[164] Parliamentary Education Office, 'The Australian Constitution', accessed 1 February 2016.
[165] ibid; and High Court of Australia, 'Role of the High Court', accessed 3 February 2016.
[166] Australian Constitution, s 128.
[167] Australian Human Rights Commission, 'How are Human Rights Protected in Australian Law', accessed 1 February 2016.
[168] ibid.
[169] ibid.

instance, in 1992, the Court ruled that Australia's form of parliamentary democracy, which is dictated by the Constitution, requires a degree of freedom for individuals to discuss and debate political issues.

The Australian Human Rights Commission Act 1986 details the powers and functions of the Australian Human Rights Commission as the agency responsible for monitoring and promoting human rights protection.[170] The Commission also has responsibilities under the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992, and the Age Discrimination Act 1996.

8.3 Recent Proposals for an Australian Bill of Rights

Background: State and Territory Proposals

Although Australia does not have a federal bill of rights, one Australian state, Victoria, and one territory, the Australian Capital Territory (ACT), have introduced a statutory model. According to Alice Donald, Senior Research Fellow at London Metropolitan University, since 2002, several Australian States or Territories have conducted inquiries into the protection of human rights.[171] Each was run by an independent committee and involved public engagement. In Victoria, Tasmania, Western Australia and the ACT the inquiries recommended the adoption of some form of bill of rights.

The ACT and Victoria implemented the recommendations: the ACT passed the Human Rights Act 2004, and Victoria enacted the Charter of Human Rights and Responsibilities Act 2006.[172] Both Acts protect many of the rights identified in the ICCPR.[173] Furthermore, they each contain an obligation on legislators to prepare statements of compatibility; an interpretive mandate for courts and a power to make declarations of incompatibility; and an obligation on public authorities to act consistently with human rights.[174] Tasmania and Western Australia deferred action pending a national consultation on the issue, which had been commissioned by the Federal Government.[175]

Federal Consultation on National Bill of Rights

On 10 December 2008, the Federal Government set up the National Human Rights Consultation (NHRC) Committee, to inquire into and report on human rights protection in Australia.[176] The NHRC consulted with community and interest groups and recommended the Government introduce a statutory bill of rights that was based on a model similar to the New

---

[170] Australian Human Rights Commission, 'How are Human Rights Protected in Australian Law', accessed 1 February 2016.
[171] Alice Donald, 'A Bill of Rights for the United Kingdom? Lessons from Overseas', in Roger Masterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitutional and Comparative Perspectives*, 2013, p 286.
[172] ibid, pp 286–7.
[173] Simon Evans and Julia Watson, 'Australia Bills of Rights', in Roger Masterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitutional and Comparative Perspectives*, 2013, p 224.
[174] ibid.
[175] Alice Donald, 'A Bill of Rights for the United Kingdom? Lessons from Overseas', in Roger Masterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitutional and Comparative Perspectives*, 2013, p 287. At the time of writing neither had introduced a bill of rights.
[176] Anthony Mason, 'Human Rights and Legislative Supremacy' in Roger Masterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitutional and Comparative Perspectives*, 2013, p 202; and Australian Government Solicitor, 'Report on the National Human Rights Consultation Released', 23 October 2009.

Zealand Bill of Rights Act 1990 (NZ), Human Rights Act 1998 (UK), Human Rights Act 2004 (ACT) and Charter of Human Rights and Responsibilities Act 2006 (Victoria).

It recommended that the obligation to comply with the recognised rights should be imposed only on federal authorities, and that the rights recognised by a statutory bill of rights, ie a Human Rights Act, should be confined to civil and political rights taken from the ICCPR.[177] It further stated that some rights should be subject to general limitation. The NHRC considered that the power to make a declaration of incompatibility should be confined to the High Court of Australia. It also proposed that any federal Human Rights Act should require statements of compatibility for all bills introduced into the Federal Parliament before its third reading.[178]

In 2010, the Federal Government announced that it would not implement the recommendations to enact a federal Human Rights Act. The Government indicated that it would take steps to implement other recommendations set out in the report. On 21 April 2010, the Government published the *Human Rights Framework for Australia*, which "reflect[ed] the key recommendations made by the NHRC, including the need for greater human rights education".[179]

The Framework set out five key Government commitments. The Government stated it would:[180]

- Promote awareness and understanding of human rights in the community.
- Enhance support for human rights education, including in primary and secondary schools.
- Continue to engage with the international community to improve the protection and promotion of human rights.
- Introduce legislation to establish a Parliamentary Joint Committee on Human Rights which would provide greater scrutiny of legislation for compliance with Australia's international human rights obligations under the seven core UN human rights treaties to which Australia is a party.
- Review legislation, policies, and practices for compliance with the seven core UN human rights treaties to which Australia is a party.

The Parliamentary Joint Committee on Human Rights was established by the Human Rights (Parliamentary Scrutiny) Act 2011.[181] The Committee has the following functions:[182]

- To examine bills and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue.

---

[177] Anthony Mason, 'Human Rights and Legislative Supremacy' in Roger Masterman and Ian Leigh (eds), *The United Kingdom's Statutory Bill of Rights: Constitutional and Comparative Perspectives*, 2013, p 202.
[178] ibid, p 203.
[179] Commonwealth of Australia, *Human Rights Framework for Australia*, 21 April 2010, pp 1–3.
[180] ibid, p 3.
[181] Parliament of Australia, 'Parliamentary Joint Committee on Human Rights', accessed 1 February 2016.
[182] ibid.

- To examine acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue.

- To inquire into any matter relating to human rights which is referred to it by the Attorney-General, and report to both Houses of the Parliament on that matter.

The Committee is required to report on each of these matters to both Houses of Parliament.

Human rights were defined in the Human Rights (Parliamentary Scrutiny) Act 2011 as the rights and freedoms contained in the seven core human rights treaties to which Australia is a party.[183] These treaties are:

- International Covenant on Civil and Political Rights

- International Covenant on Economic, Social and Cultural Rights

- International Convention on the Elimination of All Forms of Racial Discrimination

- Convention on the on the Elimination of All Forms of Discrimination against Women

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Convention on the Rights of the Child

- Convention on the Rights of Persons with Disabilities

[183] Parliament of Australia, 'Parliamentary Joint Committee on Human Rights', accessed 1 February 2016; and Australian Human Rights Commission, 'Common Law Rights, Human Rights Scrutiny and the Rule of Law', accessed 1 February 2016.

9. Bills of Rights in the UK

9.1 Historical Declarations of Rights

Magna Carta

The first document in British history to state the principle that the King and his government were not above the law is a document now known as Magna Carta, or the 'Great Charter', issued by King John in 1215.[184] The Charter was issued following an uprising against King John led by a group of barons, and set out 63 clauses defining the rights and responsibilities of the King, his barons and a number of other groups including the Church and the City of London. Although most of the clauses in Magna Carta related to specific grievances against the King, it "established for the first time the principle that everybody, including the king, was subject to the law".[185] For more information on Magna Carta, please see the House of Lords Library briefing written for its 800th anniversary, *A Brief History of the Magna Carta*.[186]

Bill of Rights, 1689

A further statement of limitations on the powers of the monarch came in the form of the Bill of Rights of 1689. The Bill of Rights was a statute that emerged from the Glorious Revolution of 1688–89, which resulted in the exile of King James II and the accession to the throne of William of Orange and Mary. The Bill of Rights has been described as "a declaration of existing law" rather than a statute of substantively new measures, and was intended to prevent future monarchical abuses.[187] Ann Lyon, Lecturer in Law at the University of Wales, describes its most important elements as the formal abolition of the monarch's powers to suspend and dispense with laws, a clear statement that the raising of revenues for the Crown and the maintenance of a standing army in peacetime required the permission of Parliament, and a guarantee of freedom of speech in debates and other proceedings in Parliament. The Bill of Rights also contained a requirement for Parliaments to be held frequently; a declaration that parliamentary elections should be free; prohibition of excessive fines or surety for bail; and prohibition of cruel and unusual punishments.

European Convention of Human Rights

In 1950, the UK signed the ECHR, which came into effect in 1953.[188] In ratifying the Convention, the UK committed to securing and guaranteeing the fundamental civil and political rights defined in the Convention for everyone within their jurisdiction, not only their nationals.[189] The ECHR also established an international judicial body, the ECtHR, with jurisdiction to rule in cases concerning whether or not states had fulfilled their undertakings under the ECHR. The UK's acceptance of the jurisdiction of the ECtHR has been controversial, with some arguing that it undermines the sovereignty of Parliament.[190] This is because, under Article 46 of the ECHR, the UK has undertaken to abide by the final judgment of the ECtHR in

---

[184] UK Parliament, 'Magna Carta', accessed 3 February 2016.
[185] British Library, 'Magna Carta: An Introduction', accessed 29 January 2016.
[186] House of Lords Library, *A Brief History of the Magna Carta*, 29 January 2015.
[187] Ann Lyon, *Constitutional History of the United Kingdom*, 2003, p 254.
[188] Eleni Frantzou, 'Human Rights and British Values: The Role of the European Convention on Human Rights in the UK Today', *UCL Policy Briefing*, December 2013, p 1.
[189] European Court of Human Rights, 'The European Convention on Human Rights', accessed 3 February 2016.
[190] Eleni Frantzou, 'Human Rights and British Values: The Role of the European Convention on Human Rights in the UK Today', *UCL Policy Briefing*, December 2013, p 2.

any case to which it is a party.[191] However, others have argued that because Parliament can decide to withdraw from the ECHR and the jurisdiction of the ECtHR, it remains sovereign.[192]

The issue of parliamentary sovereignty has been highlighted in cases concerning prisoner voting. In 2005, the ECtHR found that the ban on prisoner voting contained in the UK's Representation of the People Act 1983 breached article 3 of the first protocol to the ECHR.[193] The same conclusion was reached in a number of subsequent cases on the same issue.[194] Neither the Labour Government in power at the time, nor the subsequent Coalition Government, amended the legislation. In July 2015, Prime Minister, David Cameron, stated in Parliament that "issues such as prisoner voting should be decided in this House of Commons".[195] On 9 December 2015, the Council of Europe's Committee of Ministers adopted Interim Resolution CM/ResDH (2015) 251, which called on the UK to respond to the ECtHR's judgments regarding prisoner voting and stated its intention to revisit the cases in December 2016.[196]

Human Rights Act 1998

In its manifesto ahead of the 1997 general election, the Labour Party included a commitment to introduce legislation to incorporate the European Convention on Human Rights into United Kingdom law.[197] This was done in the form of the Human Rights Act 1998, which allows anyone in the UK to rely on rights in the ECHR before the domestic courts.[198] Under the Human Rights Act 1998, all public bodies and other bodies carrying out public functions have to comply with the Convention rights.[199] It also includes a provision that "so far as it is possible to do so", legislation must be read and given effect in a way which is compatible with the Convention rights. [200] If the court decides that a provision in primary legislation is incompatible with a Convention right, it may make a "declaration of that incompatibility", however this does not affect the validity of the legislation or require the Government to change it.[201]

9.2 Recent Proposals for a British Bill of Rights

Labour Government, 1997–2010

In the years since the passing of the Human Rights Act 1998, there have been calls for a British bill of rights, either to replace or build on the Human Rights Act 1998. In 2006, David Cameron, as leader of the Conservative Party, called for the Human Rights Act to be replaced

---

[191] Eleni Frantzou, 'Human Rights and British Values: The Role of the European Convention on Human Rights in the UK Today', *UCL Policy Briefing*, December 2013, p 2; European Convention on Human Rights, article 46; and Gatestone Institute, European Court Undermining British Sovereignty, 17 January 2014.
[192] Eleni Frantzou, 'Human Rights and British Values: The Role of the European Convention on Human Rights in the UK Today', *UCL Policy Briefing*, December 2013, p 2; and Colm O'Cinneide, *The Human Rights Act and the Slow Transformation of the UK's 'Political Constitution*, 2012.
[193] *Hirst v United Kingdom (No 2)*, 6 October 2005.
[194] European Court of Human Rights, *Prisoners' Right to Vote*, February 2015.
[195] HC *Hansard*, 8 July 2015, col 311.
[196] Council of Europe Committee of Ministers, Interim Resolution CM/ResDH(2015)251, 9 December 2015; Further information on the issue of prisoner voting in the UK can be found in the House of Commons Library briefing, *Prisoners' Voting Rights: Developments Since May 2015*, 12 January 2016.
[197] Secretary of State for the Home Department, *Rights Brought Home: The Human Rights Bill*, October 1997, Cm 3782.
[198] House of Commons Library, *A British Bill of Rights?*, 19 May 2015
[199] Human Rights Act 1998, s 6.
[200] ibid, s 3(1).
[201] ibid, s 4(1–6).

with a "modern British bill of rights" that "balances rights with responsibilities".[202] In 2007, the then Labour Government published a green paper entitled *Governance of Britain* which suggested adding to the "rights and freedoms" contained in the Human Rights Act 1998 by introducing a "Bill of Rights and Duties", which would "provide explicit recognition that human rights come with responsibilities and must be exercised in a way that respects the human rights of others".[203]

Coalition Government, 2010–2015

The Conservative Party manifesto ahead of the 2010 general election reiterated the party's commitment to "replace the Human Rights Act with a UK bill of rights" in order to "protect our freedoms from state encroachment and encourage greater social responsibility".[204] However, the 2010 Liberal Democrat manifesto included a statement that a Liberal Democrat government would "ensure that everyone has the same protections under the law by protecting the Human Rights Act".[205] The Coalition Agreement between the two parties, which provided the basis for the 2010–15 Government, stated that the Government would:

> […] establish a Commission to investigate the creation of a British bill of rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties. We will seek to promote a better understanding of the true scope of these obligations and liberties.[206]

In March 2011, the Coalition Government established the independent Commission on a Bill of Rights. In its briefing *A British Bill of Rights?*, the House of Commons Library summarised the outcome of the Commission's work: "the Commission failed to reach a consensus and there were no significant developments towards a bill of rights in the 2010–15 Parliament following its report".[207]

Conservative Government Elected in 2015

The 2015 Conservative Party general election manifesto again included a commitment to abolish the Human Rights Act and introduce a British bill of rights to "break the formal link between British courts and the ECtHR, and make our own Supreme Court the ultimate arbiter of human rights matters in the UK".[208] The Labour Party manifesto stated that the party would "stand up for citizens' individual rights, protecting the Human Rights Act and reforming, rather than walking away from, the European Court of Human Rights".[209] In their manifesto, the Liberal Democrats stated that they would "protect the Human Rights Act and enshrine the UN Convention on the Rights of the Child in UK law", as well as "pass a new Freedoms Act, to protect citizens from excessive state powers".[210]

---

[202] David Cameron's Speech to the Centre for Policy Studies, 'Balancing Freedom and Security—A Modern British Bill of Rights', *Guardian*, 26 June 2006.
[203] HM Government, *The Governance of Britain*, July 2007, Cm 7170.
[204] Conservative Party, *An Invitation to Join the Government of Britain*, 2010, p 79.
[205] Liberal Democrats, *Manifesto 2010*, p 94.
[206] HM Government, *The Coalition: Our Programme for Government*, May 2010.
[207] House of Commons Library, *A British Bill of Rights?*, 19 May 2015, p 12.
[208] Conservative Party, *Manifesto 2015*, 2015, p 60.
[209] Labour Party, *Manifesto 2015*, 2015, p 67.
[210] Liberal Democrats, *Manifesto 2015*, 2015, p 114.

In evidence given to the House of Lords EU Justice Sub-Committee in February 2016, the Secretary of State for Justice, Michael Gove, stated that "we envisage that all the rights in the Convention would be contained in the British bill of rights but there may be a difference of emphasis for some of them".[211] In response to a question about whether "a British bill of rights would still be subject to the primacy of European law", Mr Gove replied that it would be. In December 2015, Michael Gove stated that the Government expected to publish a consultation paper on a new bill of rights in 2016.[212]

[211] Kate Allen, 'Tories Back Away from Human Rights Pledge', *Financial Times,* 2 February 2016.
[212] House of Lords Constitution Committee, *Oral Evidence Session with the Rt Hon. Michael Gove MP, Lord Chancellor and Secretary of State for Justice*, 2 December 2015, p 16.