

03 December 2014

**Human Rights: Developments**

Professor Sir Geoffrey Nice QC

For those who struggled to hear bits of my lecture last month from a hotel room in Jerusalem – sorry.

In the first of three lectures dealing with Human Rights I reviewed *a* history to ask whether Human Rights exist as a different and special category of right.

In the second lecture I attempted to open discussion – that Sarah Clarke here in London was able to moderate with skill greater than mine on particular topics that are often controversial – on immigration, extradition, prisoner right to vote.

I thought I recognised Andrew Bunbury’s voice from afar and he subsequently told me that he did speak. His contribution – if it was as follows from an email he sent – was I thought deadly accurate on two points:

Speaking of Baroness Scotland saying that It has been the view of successive governments that prisoners convicted of a crime serious enough to warrant imprisonment *have lost the moral authority to vote*. Andrew observed:

‘I wonder what moral authority someone has who uses public funds to refurbish his duck pond. Losing one's right to liberty through being imprisoned does not mean one should lose other rights as well.’

‘It's a slippery slope’, he said to - a phrase we will hear later – ‘perhaps we should deny prisoners access to news on the grounds that they have no moral authority to be informed of what is happening in the world outside.  Why not remove their authority to have nourishing food and health care...’

Andrew came up with the idea (not knowing how original it is) that far from being denied the vote prisoners should actually be considered as a constituency in their own right (that word again) with the power to send their own MP to Westminster to promote their very special interests.  I am sure UKIP would not approve.

Andrew’s points remind us of how rights can only exist if they are enforced and protected. This can be a starting point for this evening’s lecture. An MP or two or three dedicated to the rights (and the wrongs) of prisoners might guarantee recognition that they have rights but also allow dispassionate consideration of what it is that brings people to prison. To get to the prisoner-free society we say we seek - although pretty obviously we don’t - then to have an MP or two or three of them devoted to visiting prisons very, very regularly and focusing on what brings people to prison, on the rights they have and how we can reduce their numbers by reducing the crimes of many kinds that take them there might be rather good for society. Rights, preservation of rights, duties that mirror rights are best shown to be connected; and the prisoner has no way of being recognised as a member of the society of which he is indeed a part save to the extent allowed by forlorn letters to the MP for whom he cannot vote.

And contemplation of one group that might form a constituency, how about another, say the disable, to have champions in parliament not just volunteers representatives in an overfull House of commons.

Duck ponds, grubby swimming pools and moats need no special constituency to care for them.

Today I conclude what I have to say on the subject by covering a few specific topics raised by audience members and one or two of my own. As originally planned there will be time for audience contribution. It would be reassuring to sense consensus at the end of this lecture. But I am not sure there will be.

The fact that I was able to enter Gaza a month ago (rather to my surprise) makes certain that I will deal with the legal issues of some at least of the Israel – Palestine conflicts in a lecture in the 2015 - 2016 series – which will end my term as Professor here.

But as part of tonight’s lecture – and while my memory is fresh of what I saw – there are a couple of points that can connect to Human Rights issues generally and to our efforts to understand how we use, or abuse, the term ‘Human Rights’.

For these purposes make every assumption favorable to Israel: that Gaza’s 1.8 million inhabitants are supporters of Hamas and Hamas are terrorists who send unguided rockets to Israel, almost none of which get through Israel’s Iron Dome defense, but never mind that. And there are tunnels from the blockaded prison statelet of Gaza to Israel and Egypt for the transport of goods but also through which Gaza military could pass to kidnap or commit suicide bombings.

There are, nevertheless, 1.8 million people left alive in the open prison, the 16th most crowded place on earth of 139 square miles (say 20 miles by 7 miles across)

‘Human Rights’ features high in the list of terms by which Gaza’s circumstances are described, not least by international bodies such as the UN Human Rights Council. But when they refer to such violations they speak of the complete blockade of 1.8 million people from the open seas, the skies and the surrounding land save when Israel opens the one unwelcoming crossing through which only a few can pass. And they speak of killings at random of innocent civilians – in the last attack over 25% of the over 1,000 fatal casualties were children.

What topics feature under the same ‘Human Rights’ heading on the internet as topical for the UK: For example:

* 1. The United Nations has launched an investigation into whether Iain Duncan Smith's disability benefit changes may have led to "grave or systemic violations" of disabled people's human rights. This comes after a report last month by the Just Fair coalition suggested that the UK had descended from being an international leader in disability rights to being in danger of becoming a "systematic violator of these same rights"
  2. Since 2008, there has been an unprecedented rise in human rights violations globally – so an international Human Rights engaged here - up 70% according to a new report. Workers’ rights are seriously compromised with rural and indigenous communities facing land grabs and forced displacement amid growing demand for low-cost labour and resources,[[1]](#footnote-1)
  3. The UN Guiding Principles on Business and Human Rights ([UNGPS](http://maplecroft.com/themes/hr/)) led in September 2013 to the UK government set out the steps it would take to implement the UNGPs in [an action plan](https://www.gov.uk/government/news/uk-first-to-launch-action-plan-on-business-and-human-rights), the world’s first. This plan is broadly to be welcomed but The UNGPs recommend a “smart mix” of voluntary approaches and regulation and currently there is a marked absence of meaningful commitments to guarantee access to remedy for victims of business-related human rights abuses (again, sounds international).
  4. The Modern Slavery Bill will be amended to require large UK companies to report on the steps they are taking to identify and eradicate slavery in their supply chains following revelations about [slavery in the Thai fishing industry](http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour), which supplies prawns to UK supermarkets.
  5. Migrant domestic workers accompanying their employers to the United Kingdom are being subjected to serious abuses including forced labor, Human Rights Watch said in a report.
  6. The European Court of Human Rights and domestic Human Rights Act face ongoing political and media attack. The government failed to honor its promise to convene an independent judge-led inquiry into UK complicity in overseas rendition and torture, giving the task instead to a parliamentary committee lacking the necessary independence and transparency.
  7. Alleged mass phone and internet surveillance by a UK intelligence agency raised concerns about privacy rights in the UK and abroad and prompted a belated review by the deputy Prime Minister and calls for reform from the political opposition.
  8. Women seeking asylum are forced into poverty in the UK despite fleeing severe human rights abuses and situations of [gender-based persecution](http://www.unhcr.org/pages/49c3646c1d9.html%20http:/eige.europa.eu/content/what-is-gender-based-violence) in countries of conflict.
  9. Asylum seekers have no right to work in the UK and, with dropping levels of welfare support since 1999, they are one of the [most impoverished](http://www.jrct.org.uk/text.asp?section=0001000200030006) groups in the UK.

‘Human Rights, is used, whatever its history, to cover every unjust human suffering. All these topics are serious and some of them very serious. How do they compare with killing over 250 children in Gaza in 51 days by bombing? Also Human Rights abuses if not something much worse.

UDHR and the ECHR (Its protocol) covers freedom of movement. Freedom of movement benefits the person moving but also others – notably and often the family of those the person free to move can visit. And others

Trauma surgeon Mads Gilbert [Gilbert is a vocal critic](http://youtu.be/H9O3EcuuIuk) of the Israeli occupation of Palestinian territories and the blockade on the Gaza Strip. Photos and television footage of Gilbert in his light green surgical wear in Gaza’s Shifa hospital treating Gazans wounded and dying were broadcast internationally and often daily during the course of the war between Hamas and Israel.

In July Gilbert wrote a statement from Shifa in which he described the patients he treated as being innocent civilians. “We still have lakes of blood on the floor in the emergency room, piles of dripping blood soaked bandages to clear out. Cleaners are everywhere swiftly shoveling the blood and discarded tissues, hair, clothes, cannulas, and the leftovers from death – all taken away to be prepared again to be repeated all over.”

Israeli officials told Mads Gilbert that he was banned indefinitely when he tried to re-enter Gaza via the Erez crossing last month. Photograph: Mahmud Hams/AFP/Getty Images

When he returned last month to try and enter Gaza via the Erez crossing in Israel he was denied entry indefinitely.

The Israeli government now says Gilbert is banned from entering Gaza for security reasons.

“It is completely unacceptable to restrict the movement of humanitarian personnel – much needed in Gaza now after the last bombardment,” he said.

“I will not be stopped from returning to Gaza to do medical work. There are different attempts going on to conceal the reality on the ground for the good people of Gaza – this is one of them – and we must persist in resisting attempts to shutdown Gaza from the world

During the war, Gilbert charged that Israel was committing “state terrorism at the highest levels”.

An Israeli foreign ministry spokesman, Paul Hirschson, replied Dr Gilbert was “not on the side of decency and peace and he’s got a horrible track record. I wouldn’t be surprised if his acquaintances are among the worst people in the world.”

SO what Human Rights might be ‘engaged’ here? The rights of the sick and wounded, the right to travel, the right to free expression, freedom from prejudice against Palestinians, perhaps? Does it help the way we think o approach problems that have been dealt with throughout history by these new terms

And so to he villain of the piece:

The Human Rights Act 1998

An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights;

*Introduction*

The Convention Rights.

In this Act “the Convention rights” means the rights and fundamental freedoms set out in—

Articles 2 to 12 and 14 of the Convention,

*Legislation*

Interpretation of legislation.

So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights

Declaration of incompatibility.

...in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

*Public authorities*

Acts of public authorities.

It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

*Parliamentary procedure*

Statements of compatibility.

A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill—

make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (“a statement of compatibility”); or

make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.

The statement must be in writing and be published in such manner as the Minister making it considers appropriate.

PART I

The Convention Rights and Freedoms

*Article 2* Right to life Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

*Article 3* Prohibition of torture

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

*Article 4* Prohibition of slavery and forced labour. No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour.

*Article 5* Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

*Article 6* Right to a fair trial…………

*Article 7* No punishment without law

*Article 8* Right to respect for private and family life. Everyone has the right to respect for his private and family life, his home and his correspondence.

*Article 9* Freedom of thought, conscience and religion

*Article 10* Freedom of expression

*Article 11* Freedom of assembly and association

*Article 12* Right to marry Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

*Article 14* Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The First Protocol

*Article 1* Protection of property

*Article 3* Right to free elections

*PART 3* ARTICLE 1 OF THE THIRTEENTH PROTOCOL The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

It is over this Act that there is serious and clearly potentially significant political debate. To take the two parties definitely against it:

UKIP on Law and Order says:

* + 1. UKIP will withdraw from the jurisdiction of the European Court of Human Rights.
    2. UKIP will reverse the government’s opt-in to EU law and justice measures, including the European Arrest Warrant and European Investigation Order. We will replace the EAW with appropriate bi-lateral agreements.
    3. UKIP will not give prisoners the vote.
    4. We will repeal the Human Rights Act and replace it with a new British Bill of Rights. The interests of law-abiding citizens & victims will always take precedence over those of criminals.

The CONSERVATIVE PARTY spells out its concerns:

* + 1. The European Court of Human Rights has developed ‘mission creep’. Strasbourg adopts a principle of interpretation that regards the Convention as a ‘living instrument’. Even allowing for necessary changes over the decades, the ECtHR has used its ‘living instrument doctrine’ to expand Convention rights into new areas, and certainly beyond what the framers of the Convention had in mind when they signed up to it. There is mounting concern at Strasbourg’s attempts to overrule decisions of our democratically elected Parliament and overturn the UK courts’ careful applications of Convention rights.
    2. *For instance:*
    3. *The current dispute between the Court and the United Kingdom over voting rights for prisoners is one clear example. The issue of the franchise in elections was deliberately excluded from the text of the Convention. The Strasbourg Court has, however, now decided that it falls within the Convention’s ambit.*
    4. *Another clear example of ‘mission creep’ came in a 2007 ruling by the Court that required the UK Government to allow many more prisoners the right to go through artificial insemination with their partners, in order to uphold their rights under Article 8. This is not what the originators of the Convention had in mind when they framed that article.*
    5. *There have also been cases involving foreign nationals who have committed very serious crimes in the United Kingdom, but who have been able to use the qualified rights in the Convention, as interpreted by the rulings of the ECtHR, to justify remaining in the UK. These judgments have apparently overlooked the very clear qualifications in the Convention relevant to the legitimate exercise of such rights.*
    6. *In 2013 the Strasbourg Court ruled that murderers cannot be sentenced to prison for life, as to do so was contrary to Article 3 of the Convention. ThisArticle is designed to prohibit “torture” and “inhuman or degrading treatment or punishment.” For the Strasbourg Court, this entails banning whole life sentences even for the gravest crimes.*
    7. Our reforms will mean that:
       1. The European Court of Human Rights is no longer binding over the UK Supreme Court.
       2. The European Court of Human Rights is no longer able to order a change in UK law and becomes an advisory body only.
       3. There is a proper balance between rights and responsibilities in UK law.
       4. Our proposals are grounded in two basic legal facts.
       5. There is no formal requirement for our Courts to treat the Strasbourg Court as creating legal precedent for the UK. Such a requirement was introduced in the Human Rights Act, and it is for Parliament to decide whether or not it should continue. Many European countries, including Germany, do not place such a requirement on their national courts.

At the heart of our plan is a new British Bill of Rights and Responsibilities. It will ensure that Parliament is the ultimate source of legal authority, and that the Supreme Court is indeed supreme in the interpretation of the law. The key objectives of our new Bill are:

Repeal Labour’s Human Rights Act.

Put the text of the original Human Rights Convention into primary legislation. There is nothing wrong with that original document, which contains a sensible mix of checks and balances alongside the rights it sets out, and is a laudable statement of the principles for a modern democratic nation. We will not introduce new basic rights through this reform; our aim is restore common sense, and to tackle the misuse of the rights contained in the Convention.

* + 1. Clarify the Convention rights, to reflect a proper balance between rights and responsibilities. This will ensure that they are applied in accordance with the original intentions for the Convention and the mainstream understanding of these rights.
    2. *For instance: We will set out a clearer test in how some of the inalienable rights apply to cases of deportation and other removal of persons from the United Kingdom. The ECtHR has ruled that if there is any ‘real risk’ (by no means even a likelihood)  
       of a person being treated in a way contrary to these rights in the destination country, there is a bar on them being sent there, giving them in substance an absolute right to stay in the UK. Our new Bill will clarify what the test should be, in line with our commitment to prevent torture and in keeping with the approach taken by other developed nations.*
    3. *The Convention recognises that people have civic responsibilities, and allows some of its rights to be restricted to uphold the rights and interests of other people. Our new Bill will clarify these limitations on individual rights in certain circumstances. So for example a foreign national who takes the life of another person will not be able to use a defence based on Article 8 to prevent the state deporting them after they have served their sentence.*
    4. Prevent our laws from being effectively re-written through ‘interpretation’. In future, the UK courts will interpret legislation based upon its normal meaning and the clear intention of Parliament, rather than having to stretch its meaning to comply with Strasbourg case-law.
    5. Limit the use of human rights laws to the most serious cases. The use of the new law will be limited to cases that involve criminal law and the liberty of an individual, the right to property and similar serious matters. There will be a threshold below which Convention rights will not be engaged, ensuring UK courts strike out trivial cases. We will work with the devolved administrations and legislatures as necessary to make sure there is an effective new settlement across the UK.

Abolition of this act is a serious and significant part of present political debate. Should it be?

Narinder Jit asked me to deal with one aspect of the Abu Hanza case and to discuss the extortionate costs associated with his human rights.  It would be useful, she says, to touch on how someone who is actively disregarding the human rights of others, could have so much public money spent on protecting his.

Hamza entered Britain on a [student visa](http://en.wikipedia.org/wiki/Student_visa) [[2]](#footnote-2). His initial reaction to life in Britain was to describe it as "a paradise, where you could do anything you wanted". He studied civil engineering at Brighton Polytechnic College. In the early 1990s, Hamza lived in [Bosnia](http://en.wikipedia.org/wiki/Bosnia_and_Herzegovina) under another name, and fought alongside [Bosniaks](http://en.wikipedia.org/wiki/Bosniaks) against [Serbs](http://en.wikipedia.org/wiki/Serbs) and [Croats](http://en.wikipedia.org/wiki/Croats) during the [Bosnian War](http://en.wikipedia.org/wiki/Bosnian_War).

Hamza, who has one eye and no hands, says he lost them fighting Soviet forces in Afghanistan

On 16 May 1980, Hamza married British citizen Valerie Fleming, a Roman Catholic [convert](http://en.wikipedia.org/wiki/Religious_conversion) to Islam, and they had a son, Mohammed Mustafa Kamel. In 1984, they divorced and he married a woman with whom he has seven children.

In 1999 Hamza's son Kamel, then 17 years old, was arrested in [Yemen](http://en.wikipedia.org/wiki/Yemen) with Hamza’s stepson Mohsin Ghalain and eight other men. All were tried and convicted of planning a terrorist bombing campaign which the prosecution alleged Hamza had sent the men to carry out. Kamel and Ghalain received prison sentences of three and seven years respectively.

Kamel, Ghalain, and Hamza’s son Mohamed Mostafa were convicted of fraud by a London court in 2009, and sentenced to prison terms. Another son, Yasser Kamel, was sentenced to youth detention in 2010, for violent disorder at anti-Israel protests in 2009. In 2012

Hamza’s son Imran Mostafa was convicted of armed robbery and illegal possession of a firearm with intent to commit an offence.[25]

Hamza was formerly the imam of [Finsbury Park Mosque](http://en.wikipedia.org/wiki/North_London_Central_Mosque), and a leader of the Supporters of Sharia, a group that allegedly believed in a strict interpretation of [Islamic law](http://en.wikipedia.org/wiki/Sharia). In 2003, he addressed a rally in [central London](http://en.wikipedia.org/wiki/Central_London) called by the Islamic [al-Muhajiroun](http://en.wikipedia.org/wiki/Al-Muhajiroun), where members spoke of their support for [Islamist](http://en.wikipedia.org/wiki/Islamist) goals such as the creation of a new Islamic [caliphate](http://en.wikipedia.org/wiki/Caliphate) and replacing the Western-backed Middle Eastern regimes.

On 4 February 2003 (after being suspended since April 2002), Hamza was dismissed from his position at the Finsbury Park mosque by the [Charity Commission](http://en.wikipedia.org/wiki/Charity_Commission), the government department that regulates charities in England and [Wales](http://en.wikipedia.org/wiki/Wales).

After his exclusion from the mosque, he preached outside the gates until May 2004, when he was arrested at the start of US extradition proceedings against him (see below).

Hamza publicly expressed support for Islamist goals such as creating a caliphate, and for [Osama bin Laden](http://en.wikipedia.org/wiki/Osama_bin_Laden). He wrote a paper entitled *El Ansar* (*The Victor*) in which he expressed support for the actions of the [Armed Islamic Group](http://en.wikipedia.org/wiki/Armed_Islamic_Group) (GIA) in [Algeria](http://en.wikipedia.org/wiki/Algeria), but he later rejected them when they started killing civilians. In one sermon relating to the necessity of Jihad, he said: "Allah likes those who believe in Him who kill those who do not believe in Him. Allah likes that. So if you Muslims don’t like that because you hate the blood, there is something wrong with you." He allegedly associated with [Abdullah el-Faisal](http://en.wikipedia.org/wiki/Abdullah_el-Faisal), a Jamaican Muslim convert cleric who preached in the UK until he was imprisoned for urging his followers to murder Jews, Hindus, Christians and Americans, subsequently being deported to Jamaica in 2007.

Arrest, charges and imprisonment

On 26 August 2004, Hamza was arrested by British police under section 41 of the [Terrorism Act 2000](http://en.wikipedia.org/wiki/Terrorism_Act_2000) which covers the instigation of acts of terrorism. Charges against him were dropped on 31 August 2004, but he was kept in jail whilst a US extradition case was developed and British authorities drew up further criminal charges of their own. Almost two months later, on 19 October 2004, Hamza was charged with fifteen offences under the provisions of various British statutes, including encouraging the killing of non-Muslims, and intent to stir up [racial hatred](http://en.wikipedia.org/wiki/Racism).[34] The trial commenced on 5 July 2005, but was adjourned, and not resumed until 9 January 2006. On 7 February 2006, he was found guilty on eleven charges and not guilty on four:

Guilty of six charges of soliciting murder under the [Offences against the Person Act 1861](http://en.wikipedia.org/wiki/Offences_against_the_Person_Act_1861); not guilty on three further such charges.

Guilty of three charges related to "using threatening, abusive or insulting words or behaviour with intent to stir up racial hatred, [contrary to section 18 (1) of the [Public Order Act 1986](http://en.wikipedia.org/wiki/Public_Order_Act_1986)]", not guilty on one further such charge.

Guilty of one charge of "possession of threatening, abusive or insulting recordings of sound, with intent to stir up racial hatred [contrary to section 23 of the Public Order Act 1986]".

Guilty of one charge of "possessing a document containing information likely to be useful to a person committing or preparing an act of terrorism" under the Terrorism Act 2000, s58. This charge under the Terrorism Act of 2000 related to his possession of an [*Encyclopedia of Afghan Jihad*](http://en.wikipedia.org/wiki/Encyclopedia_of_Afghan_Jihad), an [*Al Qaeda Handbook*](http://en.wikipedia.org/wiki/Al_Qaeda_Handbook) and other propaganda materials produced by Abu Hamza.

In sentencing, [Mr Justice Hughes](http://en.wikipedia.org/wiki/Anthony_Hughes) said Hamza had "helped to create an atmosphere in which to kill has become regarded by some as not only a legitimate course but a moral and religious duty in pursuit of perceived justice." Abu Hamza was sentenced to seven years' imprisonment.

Costs

On 18 January 2007, Lord Justice Hughes made an order for the recovery of the full costs of the court-appointed defence of the race-hate charges, estimated in excess of £1 million. This judgement was based on his view that "the story I have been told today (by Abu Hamza) is simply not true" that he [Abu Hamza] had no share in a £220,000 house in Greenford, west London. Hamza had claimed it belonged to his sister. The court also found that Abu Hamza was contributing £9000 a year for private education for his children.The [*Daily Mail*](http://en.wikipedia.org/wiki/Daily_Mail) reported in 2009 that the [TaxPayers' Alliance](http://en.wikipedia.org/wiki/TaxPayers%27_Alliance) estimated that the father-of-eight Abu Hamza had so far cost Britain £2.75 million in welfare payments, council housing and legal costs.

Extradition to the United States.

On 27 May 2004, Hamza had been detained on [remand](http://en.wikipedia.org/wiki/Detention_of_suspect) by British authorities and appeared before [magistrates](http://en.wikipedia.org/wiki/Magistrate) at the start of a process to try to [extradite](http://en.wikipedia.org/wiki/Extradition) him to the United States. Yemen also requested his extradition. The United States wanted Hamza to stand trial for eleven counts relating to the taking of sixteen hostages in Yemen in 1998, advocating jihad in Afghanistan in 2001, supporting [James Ujaama](http://en.wikipedia.org/wiki/James_Ujaama) in an alleged attempt to establish a "terrorist training camp" in late 1999 and early 2000 near [Bly](http://en.wikipedia.org/wiki/Bly,_Oregon), Oregon, and of providing aid to al-Qaeda. Ujaama is a US citizen who had met Abu Hamza in England in 1999 and was indicted in the US for supposedly providing aid to al-Qaeda, attempting to establish a terrorist training camp, and for running a website advocating global jihad. Abu Hamza was in Britain throughout the relevant period.

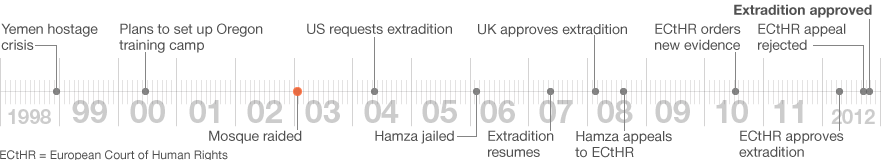
On 15 November 2007, British courts gave permission for Hamza's extradition to the US Abu Hamza appealed against this decision to the [European Court of Human Rights](http://en.wikipedia.org/wiki/European_Court_of_Human_Rights) (ECtHR). In the meantime, Hamza was kept in prison after the completion of his sentence.

On 8 July 2010, the [ECtHR](http://en.wikipedia.org/wiki/ECtHR) temporarily blocked Hamza's extradition to the United States to face terrorism charges until the court was satisfied that he would not be treated inhumanely.[45] The court based its judgement on ECHR which applies to British law. It is an absolute prohibition for a signatory to the ECHR to remove anyone to a place where they would be subject to inhumane or degrading treatment.[46] In past cases, the ECtHR has prevented the UK from deporting suspected foreign terrorists to places where they might be tortured. In Hamza's case, this has been extended to refusing extradition to a country where he might be jailed for life and where the prison regime is judged to be too harsh. The ruling would apply to any extradition to the US unless American authorities can guarantee in advance that the suspect will not be incarcerated in a so-called [supermax](http://en.wikipedia.org/wiki/Supermax) prison. The court said there should be further legal argument on whether life without parole would be a breach of human rights. The court asked for fresh submissions on whether Hamza, and other prisoners awaiting extradition, would face inhumane treatment in the US if they were sent there to stand trial.

On 24 September 2012, the court said he could be extradited to the US to face terrorism charges.[48] It based its decision on the fact that "not all inmates convicted of international terrorism were housed at [ADX](http://en.wikipedia.org/wiki/ADX_Florence) and, even if they were, sufficient procedural safeguards were in place, such as holding a hearing before deciding on such a transfer" and that "if the transfer process had been unsatisfactory, there was the possibility of bringing a claim to both the [Federal Bureau of Prisons](http://en.wikipedia.org/wiki/Federal_Bureau_of_Prisons)' administrative remedy programme and the US federal courts", referring to the [28 C.F.R.](http://en.wikipedia.org/wiki/Title_28_of_the_Code_of_Federal_Regulations) [542](http://www.law.cornell.edu/cfr/text/28/542) Administrative Remedy Program. On 26 September 2012, a High Court judge halted the extradition of Hamza to the US on terror charges after the cleric launched a last-ditch appeal. On 5 October 2012, the High Court granted the UK's government's request for Hamza to be extradited to the US The removal process took place that same evening, when Hamza was taken from [Long Lartin](http://en.wikipedia.org/wiki/Long_Lartin) jail to [RAF Mildenhall](http://en.wikipedia.org/wiki/RAF_Mildenhall) in Suffolk, where he was placed into the hands of the [US Marshals](http://en.wikipedia.org/wiki/United_States_Marshals_Service).

Abu Hamza arrived in the US on the morning of 6 October 2012 to face eleven charges relating to hostage taking, conspiracy to establish a militant training camp and calling for holy war in [Afghanistan](http://en.wikipedia.org/wiki/Afghanistan). He appeared in the [United States District Court for the Southern District of New York](http://en.wikipedia.org/wiki/United_States_District_Court_for_the_Southern_District_of_New_York) on 6 October and was then taken into custody. He appeared in court again on 9 October and pleaded not guilty to eleven charges. On 14 April 2014 his trial opened with jury selection.

On 19 May 2014, Abu Hamza was found guilty of terror charges, and will be sentenced on 9 September by Judge [Katherine B. Forrest](http://en.wikipedia.org/wiki/Katherine_B._Forrest). British Home Secretary [Theresa May](http://en.wikipedia.org/wiki/Theresa_May) said that she was "pleased" that Abu Hamza has "finally faced justice". Abu Hamza's defence lawyer claimed "beliefs are not a crime" and indicated that an appeal would be lodged. Hamza could face a life term in prison when he is sentenced in September 2014.



Discuss?

A question raised by Professor Anders Hansson takes us to another document of some interest and to a thorny problem:

The CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Explanation provided by the European Commission that is keen for this Charter to be better known and better (ie more) used by European citizens:

* 1. The Charter of Fundamental Rights of the EU brings together in a single document the fundamental rights protected in the EU. The Charter contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. Proclaimed in 2000, the Charter has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.
  2. Why the EU Charter of Fundamental Rights exists
  3. The rights of every individual within the EU were established at different times, in different ways and in different forms.
  4. For this reason, the EU decided to clarify things and to include them all in a single document which has been updated in the light of changes in society, social progress and scientific and technological developments: this document is the [Charter of Fundamental Rights of the European Union](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF) .
  5. It entrenches:
  6. all the rights found in the case law of the Court of Justice of the EU;
  7. the rights and freedoms enshrined in the European Convention on Human Rights
  8. other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments
  9. The Charter sets out a series of individual rights and freedoms.
  10. The Charter is a very modern codification and includes 'third generation' fundamental rights, such as: data protection;
  11. guarantees on bioethics; and transparent administration
  12. The Charter is consistent with the [European Convention on Human Rights](http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/) adopted in the framework of the Council of Europe: when the Charter contains rights that stem from this Convention, their meaning and scope are the same.
  13. When the Charter applies
  14. The provisions of the Charter are addressed to:
  15. the institutions and bodies of the EU with due regard for the [principle of subsidiarity](http://europa.eu/legislation_summaries/glossary/subsidiarity_en.htm) the national authorities only when they are implementing EU law
  16. For example, the Charter applies when EU countries adopt or apply a national law implementing an EU directive or when their authorities apply an EU regulation directly
  17. In cases where the Charter does not apply, the protection of fundamental rights is guaranteed under the constitutions or constitutional traditions of EU countries and international conventions they have ratified.
  18. The Charter does not extend the competence of the EU to matters not included by the Treaties under its competence.On 1 December 2009, with the entry into force of the [Treaty of Lisbon](http://europa.eu/lisbon_treaty/index_en.htm)
  19. the Charter became legally binding on the EU institutions and on national governments, just like the [EU Treaties](http://europa.eu/abc/treaties/index_en.htm) themselves.
  20. The Charter strengthens the protection of fundamental rights by making those rights more visible and more explicit for citizens

Where have all he Human Roghts gone

Its PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER I

Article 1 Human dignity is inviolable. It must be respected and protected.

Article 2 Right to life Everyone has the right to life.

No one shall be condemned to the death penalty, or executed.

Article 3 Right to the integrity of the person Everyone has the right to respect for his or her physical and mental integrity. In the fields of medicine and biology, the following must be respected in particular: the free and informed consent of the person concerned, according to the procedures laid down by law, the prohibition of eugenic practices, in particular those aiming at the selection of persons, the prohibition on making the human body and its parts as such a source of financial gain, the prohibition of the reproductive cloning of human beings.

MITOCHONDRIAL REPLACEMENT

Baroness Ruth Deec, previous holder of this professorship but also previous chair of Human Fertilisation and Embryology Authority describes it to me as same fertilise yok, different whit

In a [blog post for the *Huffington Post*](http://www.huffingtonpost.com/stuart-a-newman/mitochondrial-replacement-ethics_b_2837818.html) last week, Stuart Newman—professor of cell biology at New York Medical College—wrote that a new form of genetic therapy, if approved for use in human embryos, “will facilitate a new form of eugenics.”

The technique in question, called mitochondrial replacement, prevents diseases from being passed from mother to child through the DNA of the mother’s mitochondria—the energy harvesting organ of the cell. By swapping out an embryo’s faulty mitochondria with healthy ones from a donor, the technique could prevent the child from developing conditions such as deafness, epilepsy and early dementia.

But Newman insists that the technique couldn’t be properly controlled because of the mess that evolution has made of the human genome.

Organisms differ from machines or computers by being products of evolution rather than design. But complexity that has accumulated over billions of years does not come with blueprints or instruction books, and cannot be reconfigured with predictable outcomes. Although rejection of the realities of evolution is generally considered to be a sign of scientific ignorance, it unfortunately characterizes the thinking of some professional biologists who are strongly influenced by engineering disciplines.[[3]](#footnote-3)

At a short debate in the House of Commons on ‘Mitochondrial Transfer (Three-Parent Children) Jacob Rees-Mogg highlighted the risk that use of the techniques would infringe the Charter saying that humans are all different (ie wrong to select) in some ways) and that this could be the start of a slippery slope.

Discuss, not so much the scientific detail but more how can it be that Human Rights or rights may have to be engaged on behalf of this species of unborn child against the possibility that contrary to the Ruth Deech approach there may be untold Rees-Moggian changes?

Lord Bingham died recently. He was a popular, extremely intelligent, courteous judge who had filled all the high judicial offices in the land. There are very many judgments of Lord Bingham’s which have shaped the law and will continue to be cited as authoritative expressions of legal principle for decades, if not centuries, to come. There are two particularly significant ones for us. In the first he held that the internment of foreign terror suspects in Belmarsh prison was discriminatory and in breach of the [right to liberty](https://www.liberty-human-rights.org.uk/human-rights/human-rights/the-human-rights-act/what-the-rights-mean/article-5-right-to-liberty.php). In the second he ruled that evidence obtained by torture was not admissible in legal proceedings. Both involved forensic legal analysis, but also courage and an unwavering belief in the rule of law.

Giving the [keynote speech](https://www.liberty-human-rights.org.uk/media/articles/pdfs/lord-bingham-speech-final.pdf) at Liberty’s 75th Anniversary Conference he expressed dismay that anyone would seek to remove or weaken such fundamental rights as [the right not to be subjected to inhuman or degrading treatment or punishment](https://www.liberty-human-rights.org.uk/human-rights/human-rights/the-human-rights-act/what-the-rights-mean/article-3-no-torture-inhuman-or-degrading-treatment.php), [the right to liberty](https://www.liberty-human-rights.org.uk/human-rights/human-rights/the-human-rights-act/what-the-rights-mean/article-5-right-to-liberty.php), [the right to a fair trial](https://www.liberty-human-rights.org.uk/human-rights/human-rights/the-human-rights-act/what-the-rights-mean/article-6-right-to-a-fair-hearing.php)…

* 1. “Which of these rights, I ask, would we wish to discard? Are any of them trivial, superfluous, unnecessary? Are any of them un-British? There may be those who would like to live in a country where these rights are not protected, but I am not of their number.”

One view of Lord Bingham is that believes that [human rights](http://www.theguardian.com/law/human-rights) are universal and non-negotiable. He formed a badly needed bulwark against the excesses of the "war on terror" and methodically dissected and discredited successive affronts to the British system of due process. His dedication to untangling and clarifying the meaning of the rule of law, (culminating in the publication of [The Rule of Law](http://www.guardian.co.uk/books/2010/feb/07/rule-of-law-thomas-bingham) this year), clarifies the simple but crucial principles that must underpin the law, including that it must be accessible, affordable, applied equally to all and afford adequate protection of human rights.

Lord Bingham was a proud and staunch defender of the much misunderstood and maligned [Human Rights Act](http://www.theguardian.com/law/human-rights-act). When addressing Liberty's 75th anniversary conference last summer, he asked of its detractors which right exactly they would do away with. "To life or to a fair trial? To protection from torture, inhuman or degrading treatment?"

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1. According to the [2014 Human Rights Risk Atlas](http://maplecroft.com/themes/hr/) published by risks analytics firm Maplecroft. [↑](#footnote-ref-1)
2. History courtesy Wikipedia - believed accurate for the purpose [↑](#footnote-ref-2)
3. http://www.geneticliteracyproject.org/2013/03/18/neo-eugenics-an-evolutionary-argument-against-mitochondrial-replacement-therapies/ [↑](#footnote-ref-3)