



Human Rights: Philosophy and History

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INTRODUCTION

Student barristers often tell me that they want to practice 'Human Rights Law'. When asked 'What's that', they explain how these rights attach to the individual regardless of race, nationality, culture, background and so on but are very unsure of detail. So, in truth, are we all.

I found a short film by an American action group – 'United for Human Rights', that rather made the same point at [UNITED For HUMAN RIGHTS <http://www.humanrights.com/#/home>- first excerpt timer 0.00 - 0.40]

Should I have been downhearted at my students easy, if under-informed enthusiasm for a fashionable legal practice? Probably not. Their answers showed two things: first that they believe that there are rights of significance for human beings even if hard to define. Second that they would prefer to be in work that dealt with such rights rather than a commercial area of law concerned with the passage of money from pocket to pocket. A happy enough conclusion. The film made a rather tougher point pointing to why Human Rights law is not simply something to debate casually without regard to outcome or simply as a career choice: [<http://www.humanrights.com/#/homesecnd> excerpt timer 617 to 709].

In this and the next two lectures I hope – with you - to work out something of what Human Rights may mean for us now, as well as to ask whether they really exist as a separate species of right. If they do, where do they come from? And, significantly for us, has their development in the last few decades done for the bad or the good.

This discussion could hardly have come at a better time^[1] in light of the desire of some politicians and their electors to have no more to do with some forms, or formulations, of Human Rights believing them worthy of as much regard as 'Health and Safety' regulations and other un-English things emerging from a small continent cut off from the mainland of Britain.

The rights we consider are possible rights men, women and cross genders – humans - may have against other humans individually when they exercise kingly or dictatorial power, and when they form governmental bodies. They are not rights against nature or the animal kingdom. To state the obvious reminder, the numberless members of the animal kingdom have no rights of any kind against man who will kill to eat them if tasty and at fence them in or out of territory at his will.

Equally obvious is that humans, too, do not, as a matter of fact, have an unlimited right to live or roam free when by lawful war or capital punishment they may be killed or by due process imprisoned.

All rights are qualified, and – again obviously – variable over time. The founding document of today's human rights – the 1948 UN Declaration of Human Rights - is sometimes an uncomfortable read if considered against modern western views on marriage, homosexuality, rights of women or against non-western beliefs of Sharia law. Indeed the passage of a mere 66 years from the signing of that Declaration by the then 58 UN member states shows that it might never be signed now by a much enlarged UN of 195 Nations representing an international community more overtly diverse and with powerful religions adopting positions some consider extreme.

Nevertheless Human Rights are with us and are, until abandoned, 'universal'. That word is important. If accurate it would mean there can be nothing above universal law; how could there be? Nothing to say it is

wrong: no religion, no political creed, no philosophy. To maintain its universality it has to have precedence over other laws and states - large and small - are not always prepared that it should.

If Human Rights are universal – because they are part of the human’s very being or because they were conferred on humans by a God – then they will always have existed, even if unidentified, and will continue forever to exist in roughly the same form. This concept stimulates support for, and attack on, present Human rights law.

EARLY DAYS

There are many possible starting points for human activity that may reflect human rights. Some might go back 2000 years before Christ to the Pharaohs or the Babylonian King Hammurabi. Much commentary these days turns to one 6th BC object as being of critical significance. In 539 B.C., the armies of Cyrus the Great, the first king of ancient Persia, conquered the city of Babylon, in modern Iraq. A clay cylinder inscribed with a declaration of Cyrus in the Babylonian Language was buried beneath a building in Babylon, not to surface until 1879.[2]

The British Museum and The Iran Heritage Foundation[3] arranged very recently for the Cyrus Cylinder to go on much acclaimed tours both to Iran and America. This is how Timothy Potts, Director of the J. Paul Getty Museum explained its significance to his American audience during the tour.

‘Inscribed with cuneiform script, the Cylinder records the conquest of Babylon in 539 B.C. by the Persian king Cyrus the Great (ruled 559–530 B.C.). Even before its discovery, Cyrus had been renowned as a benevolent and noble ruler. The Greek historian Xenophon (about 430–354 B.C.) presented him as an ideal leader in his *Cyropaedia*, while Old Testament texts praise Cyrus for bringing an end to the Jewish exile in Babylon. The Cylinder provides a valuable complement to this legacy, for it records — in Cyrus's own words — how, on taking control of Babylon, he restored religious traditions, and permitted those who had been deported to return to their settlements in and around Babylonia.

In taking Babylon, Cyrus brought what was recently the heart of a great kingdom into the growing Achaemenid Empire. Rather than imposing Persian practices on its peoples, however, he sought to uphold their traditions. This is evident from the Cyrus Cylinder itself. For one, the inscription was written in the local language, Babylonian. Moreover, by embedding this Cylinder in the foundations of Babylon, Cyrus was adhering to a standard practice in the region—intended to secure divine favor and record a ruler's achievements for posterity. In following an established custom, Cyrus set out to legitimize his newly acquired authority.

It was not just what Cyrus had inscribed on the cylinder but what he did that makes him a focus for those seeking the origins of Human Rights: He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality.

The Cyrus Cylinder includes the following text:

“I gathered together all their inhabitations and restored (to them) their dwellings. The gods of Sumer and Akkad whom Nabonids had, to the anger of the lord of the gods, brought into Babylon. I, at the bidding of Marduk, the great lord, made to dwell in peace in their habitations, delightful abodes.”

“May all the gods whom I have placed within their sanctuaries address a daily prayer in my favour before Bel and Nabu, that my days may be long, and may they say to Marduk my lord. May Cyrus the King, who reveres thee, and Camboujyah (Cambyases) my son...”

“Now that I put the crown of kingdom of Persia, Babylon, and the nations of the four directions on the head with the help of God (Ahura Mazda), I announce that I will respect the traditions, customs and religions of the nations of my empire and never let any of my governors and subordinates look down on or insult them until I am alive. From now on, till God grants me the kingdom favor, I will impose my monarchy on no nation. Each is free to accept it, and if any one of them rejects it, I never resolve on war to reign. Until I am the king of Persia, Babylon, and the nations of the four directions, I never let anyone oppress any others, and if it occurs, I will take his or her right back and penalize the oppressor.”

“And until I am the monarch, I will never let anyone take possession of movable and landed properties of the others by force or without compensation. Until I am alive, I prevent unpaid, forced labor. To day, I announce that everyone is free to choose a religion. People are free to live in all regions and take up a job provided that they never violate other’s rights.”

"No one could be penalized for his or her relatives' faults. I prevent slavery and my governors and subordinates are obliged to prohibit exchanging men and women as slaves within their own ruling domains. Such a traditions should be exterminated the world over."

"I implore to God to make me succeed in fulfilling my obligations to the nations of Persia, Babylon, and the ones of the four directions."

This ancient record has now been seen by enthusiasts as the world's first known charter of human rights. It is translated into all six official languages of the United Nations[4].

Cyrus the Great has his detractors, notably in Germany, who argue that he was every bit as despotic as any other land-grabbing leader.[5] UK, author and historian Tom Holland, who wrote about the rise of Cyrus in his book *Persian Fire*, suggests

"It's nonsense, absolute nonsense," "The ancient Persians were not some early form of Swedish Social Democrats" adding that conquering a huge empire in the ancient world did not come without a list of atrocities, and "he [Cyrus] staged several salutatory atrocities when he invaded."

He added that the UN's adoption of the cylinder stemmed in part from a desire to claim some eastern roots "when it is so Western in its philosophical underpinnings".[6]

These criticisms – even if true – may be irrelevant for our present purpose. If the way Cyrus was presented in biblical texts and by his decree on the Cylinder were in fact believed despite being self-generated untruths and applied by others then the text may have been for the good however much Cyrus may have been for the bad.

The UN has steadfastly promoted the relic as an "ancient declaration of human rights" since 1971, when then Secretary General Sithu U Thant was given a replica by the sister of the Shah of Iran and has had it on display at the UN building in NY.

The buried cylinder – to be read by the Gods – could not have affected subsequent thinking but the writings about Cyrus did.

Even if Cyrus was genuinely for the good does this different issue arise: was it a first charter of rights or was it was simply good advice for others to follow in governance. Was it something given to subjects not something taken because claimed by them as a right? Which leads to the question: can rights be given or must they be, as a minimum, asserted if not actually demanded or seized?

Cyrus's thinking, immortalised by Socrates's pupil Xenophon in his partly fictional 'Cyropaedia' may well have contributed to the idea of humans having rights that spread quickly to Greece and eventually to Rome where the idea developed that people tended to follow certain unwritten 'natural laws' in the course of life.

Cicero is known to have studied *Cyropaedia* and to have written favourably of the fictionalized Cyrus to his own brother – so broadcasting of Cyrus's ideas in the bibles and elsewhere was unavoidable.

AFTER ROME

The conception that humans had rights somehow penetrated the early middle ages or dark ages and Europe saw the first document famously to deal with such things in 1215, to be followed in Europe and America by others, all relevant to our quest for a sense of what Human Rights might be.

Magna Carta (1215), had little to do, initially, with the ordinary men and women - only the barons and their powers - when 15 June 1215, in a field close to the River Thames at Runnymede, King John I of England attached his Great Seal to a document drawn up by a group of the country's leading noblemen, collectively unhappy that their rights were being ignored by the monarch. [7]

This first proclamation that the subjects of the crown had legal rights and that the monarch – then indistinguishable from the state – could be bound by the law became the first document to set out the right of habeas corpus and started a tradition of civil rights in Britain that still exists today.

The Petition of Right (1628) ended a bitter contest between Parliament and King Charles I over his execution (by his favourite Buckingham) and funding for the Thirty Years War.

The Petition relied, inter alia, on a statute from Edward I's reign (1272-1307), commonly called *Statutum de Tallagio non Concedendo*, that no tallage [tax levied on peasant by lord or king] or aid shall be laid or

levied by the king or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

.....And whereas also by the statute called 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

IV. And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law.

X. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.\

The Bill of Rights 1689. The execution of Charles I in 1689 and the Commonwealth of Cromwell reflected many ideas of rights and perhaps the next document to regard followed four years after the death of the succeeding Charles II and one year after the 1688 Glorious Revolution that saw the end of the reign of King James in 1689 when the Bill of Rights was passed as part of the process whereby James II was deposed and William of Orange acceded to the throne. This codified the civil and political rights of all men, not just the lords and barons. It granted freedom from taxation by royal prerogative, freedom to petition the monarch, freedom to elect members of parliament without interference, freedom of speech and of parliamentary privilege, freedom from cruel and unusual punishments and freedom from "fine and forfeiture" without trial.

It ingrained a strong tradition of civil liberties in Britain, so much so, some say, that it was never considered necessary to have a formal, written constitution.

TO AMERICA

It is impossible to understand development of rights without regard to contemporary philosophers. Locke regarded certain rights that would have existed in the state of nature before man entered into society as self evidenced rights, especially the right to life, liberty, freedom from arbitrary rule and property. Locke died in 1704 but his ideas were significant in the rest of that century not least In the Congress of the United States where, on July 4, 1776, the unanimous Declaration of Independence of the thirteen united States of America stated:

'When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.-- That to secure these rights, Governments are instituted among Men, deriving their just powers from the

consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.....

To prove this, let Facts be submitted to a candid world.....

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.....For depriving us in many cases, of the benefits of Trial by Jury.....

[However lest we should forget how contextual rights may be in this passage that may reflect the state of mind that supported genocide they also said: 'He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.....A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.'

AND BACK TO PERSIA

Thomas Jefferson, Benjamin Franklin and other founding fathers read many ancient historical works in Greek and Latin.

"In the 18th century, that model of religious tolerance based on a state with diverse cultures, but no single dominant religion, became a model for the founding fathers,"

said Julian Raby, the director of the Freer and Sackler galleries hosting the Cyrus Cylinder exhibition.

The Cyrus model of governance may have influenced Jefferson's writing of the U.S. Constitution. Jefferson owned two copies of the Cyropaedia, the partly fictional biography of Cyrus written by Xenophon, a student of Socrates in the fourth century B.C. Jefferson instructed his grandson to read the book after mastering Greek.

Jefferson would have also been familiar with biblical references to Cyrus. Ezra and Chronicles both relate how Cyrus allowed the Jews in Babylon to return to Jerusalem and rebuild their temple. The cylinder's text seems to validate the biblical account.

AND SO TO FRANCE

The French Declaration of the Rights of Man and of the Citizen was approved by the National Assembly of France on August 26, 1789.

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:

Articles:

Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.

The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

3. The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.

4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.

11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

BACK TO AMERICA

The US Bill of Rights (1791)

THE PREAMBLE TO THE BILL OF RIGHTS

Congress of the United States begun and held at the City of New York, on Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers,

Amendment I - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II - 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.

Amendment V - nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury

DICTIONARIES

Browsing old encyclopedias and dictionaries can be a time consuming but sometimes interesting exercise in discovering how words have developed in their daily use.

The first edition of the Encyclopaedia Britannica published in 1771 by a Society of Gentlemen in Scotland says nothing that I can find about rights, rights of man or similar and does not deal with the philosophy of the Age of Enlightenment in which it was published and whose philosophers from Locke, Berkley and Hume in England or Montesque, Voltaire and Rousseau in France were fizzing with ideas about rights. But hardly surprising – the Britannica was, it seems, intentionally conservative and in part a defence against the heretical Encyclopédie of Denis Diderot that did include as contributors the French

philosophers and that was widely regarded as heretical in England. This is not entirely insignificant for my theme.

Beetons Dictionary, undated but I calculated shortly after 1860 had this (after dealing with rights somewhat discursively):

'Rights necessarily imply duties; for whatever is due to one man, or set of men is necessarily due from another.

Rights are further distinguished as

'natural or those which a man has as a natural or just claim to, as his life, liberty the produce of his labour; and adventitious or those derived from human appointments as the right of a king over his subjects , of a general over his soldiers etc. Everyone when he becomes a member of a civil community alienates a part of his natural rights'.

Lloyds Encyclopedic Dictionary of 1895 defines 'Natural Rights' as 'law: those relating to life and liberty'.

It defined Rights as 'that which is right or in accordance with the laws of God and other definitions focused on being in the right in law.'

Neither of these Encyclopedic dictionaries had the phrase human rights or Rights of man that I could find.

The printed version of the Shorter Oxford English Dictionary of 1968 had nothing under Rights or Human despite being printed 20 years after the 1948 declaration of Human Rights. The 2007 edition has human rights succinctly as

'held to be justifiably claimed by any person'.

THE 20th CENTURY

Fifty nations met in San Francisco in 1945 and formed the United Nations to protect and promote peace. The goal of the United Nations Conference on International Organization was to fashion an international body to promote peace and prevent future wars. The ideals of the organization were stated in the preamble to its proposed charter:

"We the peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."

The Charter of the new United Nations organization went into effect on October 24, 1945, a date that is celebrated each year as United Nations Day.

By 1948, the United Nations' new Human Rights Commission had captured the world's attention. Under the dynamic chairmanship of Eleanor Roosevelt—President Franklin Roosevelt's widow, a human rights champion in her own right and the United States delegate to the UN—the Commission set out to draft the document that became the Universal Declaration of Human Rights. Roosevelt, credited with its inspiration, referred to the Declaration as the international Magna Carta for all mankind. It was adopted by the United Nations on December 10, 1948.

In its preamble and in Article 1, the Declaration unequivocally proclaims the inherent rights of all human beings:

"Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people...All human beings are born free and equal in dignity and rights."

The Member States of the United Nations pledged to work together to promote the thirty Articles of human rights that, for the first time in history, had been assembled and codified into a single document. In consequence, many of these rights, in various forms, are today part of the constitutional laws of democratic nations.

The UDHR is not a treaty, so it does not directly create legal obligations for States. The Declaration has however, had a profound influence on the development of international human rights law. It is argued that because States have constantly invoked the Declaration over more than 50 years, it has become binding as a part of customary international law.

On the same day that it adopted the UDHR, the United Nations General Assembly asked its Commission on Human Rights to draft a covenant on human rights, which could become a binding treaty. After six years of drafting and debate, in 1952 the General Assembly requested that the Commission on Human Rights draft two covenants rather than one. The covenants, International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were opened for signature in 1966 and entered into force in 1976.

The Commission on Human Rights was made up of 18 members from various political, cultural and religious backgrounds. Eleanor Roosevelt, widow of American President Franklin D. Roosevelt, chaired the UDHR drafting committee. With her were René Cassin of France, who composed the first draft of the Declaration, the Committee Rapporteur Charles Malik of Lebanon, Vice-Chairman Peng Chung Chang of China, and John Humphrey of Canada, Director of the UN's Human Rights Division, who prepared the Declaration's blueprint. But Mrs. Roosevelt was recognized as the driving force for the Declaration's adoption.

The Commission met for the first time in 1947. In her memoirs, Eleanor Roosevelt recalled how multinational and culturally diverse were the topics discussed from pluralisms and Confucian philosophy to Thomas Aquinas.

The first draft of the Declaration was proposed in September 1948 with over 50 Member States participating in the final drafting. By its resolution 217 A (III) of 10 December 1948, the General Assembly, meeting in Paris, adopted the Universal Declaration of Human Rights with eight nations abstaining from the vote but none dissenting. Hernán Santa Cruz of Chile, member of the drafting sub-Committee, wrote:

"I perceived clearly that I was participating in a truly significant historic event in which a consensus had been reached as to the supreme value of the human person, a value that did not originate in the decision of a worldly power, but rather in the fact of existing—which gave rise to the inalienable right to live free from want and oppression and to fully develop one's personality. In the Great Hall...there was an atmosphere of genuine solidarity and brotherhood among men and women from all latitudes, the like of which I have not seen again in any international setting."

The entire text of the UDHR was composed in less than two years. At a time when the world was divided into Eastern and Western blocks, finding a common ground on what should make the essence of the document proved to be a colossal task.

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights....

Article 2.

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

property, birth or other status.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

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

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 18.

Everyone has the right to freedom of thought, conscience and religion;

Article 19.

Everyone has the right to freedom of opinion and expression;.....

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family,.....

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The UDHR has inspired more than 80 international human rights treaties and declarations, a great number of regional human rights conventions, domestic human rights bills, and constitutional provisions, which together constitute a comprehensive legally binding system for the promotion and protection of human rights.

AND THUS TO EUROPE

And finally we come to Europe. Initially it was an Unofficial body – the European Movement that pressed for European Unity to avoid any repetition of what had just been experienced and that was- we should never forget – unimaginably the worst that man was known ever to have done to man. The Movement set about drafting a Human Rights Convention

Much is made these days of a prime mover being Sir David Maxwell-Fyfe, a very conservative MP, later Home Secretary and then Lord Chancellor (and head of the chambers of which I was member for a time and Head of chambers). He does seem an odd champion of Human Rights given the ease with which he turned down appeals for commutation of capital punishment sentences including of Bentley whose execution was against all advice even of his own officials and whose very conviction was overturned years later. But he had cross-examined Goering famously well and had a view of the past and future that drove him to understand the need for codification of the rights of the citizen generally.

It seems to me that rather than focus on the political colour of the participant (in a party political game) it is valuable to register how what was to develop was part of a national governmental process. This is what happened.

Following the draft convention of the informal body – that would have stood as precondition for entry to the new Europe – a governmental body of 10 states not including Germany drafted a treaty that created the Statute of the Council of Europe

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the Irish Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland announced:

‘Convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation;

Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy;

Have in consequence decided to set up a Council of Europe consisting of a committee of representatives of governments and of a consultative assembly, and have for this purpose adopted the following Statute.

Article 1

The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safe-guarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.

This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms.

Convention for the Protection of Human Rights
and Fundamental Freedoms enacted in Rome on 4 November 1950

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

ARTICLE 1: Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I 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

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.

ARTICLE 5: Right to liberty and security

1. 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:

ARTICLE 6: Right to a fair trial

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

The convention allowed the individual to petition directly to Europe for relief against violations by her / his own state and to do so through a mechanism that led to the ECHR. The convention being treaty based meant that it contained the maximum maximum acceptable to the state willing to go least far [8] and although the UK was the first state to ratify the Convention it was unwilling to accept the right of individual petition, against which it lobbied hard, until January 1966.

The Convention and the Court became victims of their own success as the ability to turn to it became better understood and in the first 15 years of its operation it managed 1 case a year. BY 1995 60 cases a year with a total of only 100 judgments until 1985. In the 10 following years 550. The court has developed extraterritorial jurisdiction for territory under a member state's control out of Europe. The Convention itself has been followed in other conventions and its decisions cited widely around the world.

The Human Rights Act 1998 incorporates the Convention into UK Law and – once domestic rights through the domestic / national court system are exhausted – can take her / his case to Europe for a determination. And it is here that the present debate has become highly politicized

The Conservative Party is clear....the present position under the European Court of Human Rights and the Human Rights Act is not acceptable. The next Conservative Government will make fundamental changes to the way human rights laws work in the United Kingdom, to restore common sense and put Britain first. Our reforms will mean that:

The European Court of Human Rights is no longer binding over the UK Supreme Court.

The European Court of Human Rights is no longer able to order a change in UK law and becomes an advisory body only.

There is a proper balance between rights and responsibilities in UK law.

Our proposals are grounded in two basic legal facts.

There is no formal requirement for our Courts to treat the Strasbourg Court as creating legal precedent for the UK.In all matters related to our international commitments, Parliament is sovereign.

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.

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.

UKIP: Law and Order will withdraw from the jurisdiction of the European Court of Human Rights.

UKIP will not give prisoners the vote.

1. – 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 Gresham audience is not an audience of lawyers or philosophers but of the people who have through the processes of democracy to decide what philosophers may explain contemporaneously or later to have been in operation in their minds or to have decided by lawyers what is the law's prevailing understanding of their entitlements and rights.

I cannot conclude this survey of our human rights by suggesting that the long history should, or should not, be brought to an end by a party political decision to maintain respect for the Convention and the ECHR on the same basis as we might change the speed limit from 30 to 20 mph. It is necessary to say a little more about competing theories and where you can find them

First the enthusiastic post WWII advance of Human Rights Law has not been without serious challenges rooted in suspicion that it supports western power's economic interests and fails to pay proper regard to interests other than of the state. Thus, as long ago as the 50th anniversary of the 1948 Declaration it was noted that in 1997 the Malaysian Prime Minister Mahathir bin Mohamad urged the U.N. to mark the fiftieth anniversary of the Declaration of Human Rights by revising or, better, repealing it, because its human rights norms focus excessively on individual rights while neglecting the rights of society and the common good. Australia's former prime minister Malcolm Fraser dismissed the declaration as reflecting only the views of the Northern and Eurocentric states that, when the declaration was adopted in 1948, dominated the General Assembly. Former German Chancellor Helmut Schmidt, too, says that the declaration reflects "the philosophical and cultural background of its Western drafters" and has called for a new "balance" between "the notions of freedom and of responsibility" because the "concept of rights can itself be abused and lead to anarchy." [9]

More recently Professor Connor Gearty of the LSE in discussing whether Human Rights are Truly Universal observed that:

'the hit list of early human rights documents is a hymn to the civilising progress of what we now think of as western statehood: Magna Carta in 1215, the American Declaration of Independence in 1776, the French Declaration of the Rights of Man and of the Citizen in 1789, and so on. Even the critique of human rights that was so powerful in the 19th century is an argument from within the intellectual culture: it is the work of Bentham, of Burke and of Marx rather than of scholars and Thinkers or even of activists drawn from outside the North altogether.

The philosophy of human rights is even more clearly narrowly focused. The development of the notion of objective right, the idea of a natural law determining right behaviour which stood above the people of the world and ordered their conduct, found expression through the intellectual work done in the dominant states and institutions of the early medieval period; the close connection between these writers and the centres of contemporary power has been such that their influence has continued to be felt. The power of the Roman Catholic Church may have been severely affected by schism and secularism but its hold on the Global North remains sufficiently strong for the writings of St Paul, St Augustine and St Thomas Aquinas to have entered into and to have remained embedded within that culture's mainstream.....

And it is quite clear that the idea of human rights was central to the democratising and hence to the ethical foundations of many of these new national powers. The long drawn-out English revolution of 1642-1689 which prepared the way for British power was ultimately resolved by a conscious reliance on the supposed natural right of Englishmen to do away with a regal power that was not to their fancy: in this way could economic self-interest be camouflaged by an apparently universalist ethic.

In 1789, the French Declaration of the Rights of Man and of the Citizen was even clearer on how it was the demand for human rights that propelled its people into revolt. As the opening words of that stirring document put it, 'The representatives of the French people, organised in National Assembly, considering that ignorance, forgetfulness, or contempt of the rights of man are the sole causes of public misfortunes and of the corruption of governments, have resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of man.'

The European nations that turned their attention to global domination in the 19th century were not merely selfish entities in search of prosperity at the expense of others: they saw themselves as ethical movements, forces for good in the world, civilisers with the right (and only) God and the right (and only) philosophical foundation in (their version of) human rights.[10]

Sir John Laws, an extremely well respected senior member of the Court of Appeal in his third Hamlyn lecture draws on immense experience and wide learning to explain how the common law of England has in fact often drawn on material from other countries, sometimes undetected. It has a catholicity to be encouraged:

Just as with the European Union, the resulting fears and resentments may undermine the confidence which thinking people ought to have in the common law's catholicity, for our common law principles with a European source, most notably proportionality, have their parentage in Strasbourg as well as Luxembourg. But if we can make the law of human rights truly our own, perceived and rightly perceived as a construct of English law, we shall quell these fears of the incoming tide and so protect the common law's catholicity, and at the same time keep control of the proper place of human rights, and so protect the common law's restraint.

The historic role of the law of human rights is the protection of what are properly regarded as fundamental values. It is not to make marginal choices about issues upon which reasonable, humane and informed people may readily disagree. Certainly there will come a point – and it is a very important point – where the law of human rights must be allowed to say, Thus far but no further. Fundamental values possess at the very least an irreducible minimum. Torture, the suppression of free speech, or disregard of due process are not matters of legitimate disagreement, but of shame.

.....The Strasbourg case law is not part of the law of England; the Human Rights Convention is. The Convention can be and should be a great force for good in this jurisdiction; as I said in Lecture II, it puts more teeth in the common law's mouth. If we develop it according to the methods and principles of the common law, it will enrich us. Any threat to the common law's catholicity will be dissipated.

...As I said in Lecture I, the challenge in the end is simply expressed: it is to keep the constitutional balance, and thus to give the principles of the common law – reason, fairness and the presumption of liberty – as big a space as possible. It is no easy challenge. Because our law is constantly renewed by the force of fresh examples, because it reflects and moderates the temper of the people as age succeeds age, because it builds on the experience of ordinary struggles, its principles will always be buffeted by events. In their different ways the confrontation of extremism, and the absorption of law from Europe (the subject of these last two lectures), press upon the constitutional balance. But if we keep faith with it, we shall enjoy a noble inheritance, and may anticipate a tranquil future.

Roger Scruton a lawyer and philosopher whose lecture from which I quote should, as with the lecture of Sir John Laws be read in full not least for the elegance of the writing catches the popular sentiment with.

And that is what we have been seeing. The ordinary Italian wakes up one morning to discover that the crucifix on the wall of his child's classroom has been condemned as a violation of human rights. The ordinary Englishman wakes up to discover that the failed asylum-seeker who negligently ran over his daughter has a human right not to be deported to his home country and meanwhile to be maintained indefinitely at the taxpayer's expense. The ordinary Belgian has been told that saying the truth about radical Islam in public violates the human rights of his fellow citizens. The ordinary Pole has discovered that his country's abortion laws violate the human rights of women under the European Convention, which says nothing about the rights of the unborn child. The Catholic Church in Britain has been told that its policy of putting children for adoption only with heterosexual married couples is a violation of the human and legal rights of homosexuals. And so on. The cases (all recent) are controversial. But they have the accumulative effect of undermining the conception of human rights. That conception was supposed to provide a neutral standpoint outside legal and moral controversies, from which the legitimacy of any particular decision can be evaluated. In fact it is now used to take sides in political controversies, and usually the side congenial to liberals and offensive to conservatives. And since nobody who makes use of the conception, so far as I can see, ever asks how a right can be justified, I cannot help feeling that they have no greater trust in the notion than I have. They don't seem to care about the nonsense, so long as they can make use of the stilts.

He earlier in the lecture explain how that [anti authoritarian – and a world without duty] makes it look as though human rights are to be understood always as fundamental liberties — freedom rights which we respect by leaving people alone. The doctrine of human rights is there to set limits to government, and cannot be used to authorize any increase in government power that is not required by the fundamental task of protecting human freedom. The original text of the European Convention on Human Rights certainly suggests that this is so; and the rights there specified spell out implications of those rights — to life, liberty and the pursuit of happiness — advocated in the American Declaration of Independence.

However, the search for liberty has gone hand in hand with a countervailing search for 'empowerment'. The negative freedoms offered by traditional theories of natural right, such as Locke's, do not compensate for the inequalities of power and opportunity in human societies. Hence egalitarians, who dislike hierarchies of every kind, have begun to insert more positive rights into the list of negative freedoms. The liberty rights specified by the various international Conventions have therefore been supplemented by certain claim rights — rights which do not merely demand non-encroachment from others, but which impose a positive duty on others. This is particularly apparent in the UN Declaration of Human Rights, which begins with a list of freedom rights and then suddenly, at article 22, begins making radical claims against the State — claims which can be satisfied only by positive action from government. Here is article 22:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

There is a weight of political and social philosophy behind that article. Contained within this right is an unspecified list of other rights called 'economic, social and cultural', which are held to be indispensable not for freedom but for 'dignity' and the 'free development of personality'. Whatever this means in practice, it is quite clear that it is likely to involve a considerable extension of the field of human rights, beyond those basic liberties acknowledged in the American Declaration. Those basic liberties are arguably necessary for any kind of government by consent; the same is not true of the claims declared in section 22 of the UN Declaration.[11]

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[1]Entirely by chance given that lecture titles have to given at least a year in advance

[2]By Assyro-British archeologist Hormuzd Russam in excavation of Mesopotamia carried out for the British Museum.

[3]IHF America is a nonprofit organization whose core mission is promoting and preserving Persian culture, history, languages, and art. It grows out of 18 years of cultural work by the Iran Heritage Foundation in England.

[4]Its provisions parallel the first four Articles of the Universal Declaration of Human Rights.

[5]Ancient History Professor Josef Wiesehöfer derided it as "a propaganda inscription" . "It has become a very celebrated document but Cyrus himself ordered it done, trying to make himself appear righteous. The real king was not more or less brutal than other ancient kings of the near east, like Xerxes, but he was cleverer." See following footnote for secondary source

[6]The Telegraph, Harry de Quetteville 16 Jul 2008

[7]Terry Kirby theguardian.com, Thursday 2 July 2009 16.56

[8]Human Rights and Criminal Justice, Emmerson et al 2012 1-11

[9]<http://www.foreignaffairs.com/articles/56666/thomas-m-franck/are-human-rights-universal>

[10]http://www.conorgearty.co.uk/pdfs/Chapter_29_UniversalityFINAL.pdf

[11]<http://www.morec.com/scruton/nonsense.html>