HSC LEGAL STUDIES

HUMAN RIGHTS

Southern Cross University
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Presented by

Keith Thomas
LSA President
Some points from a recent LSA inform night

Key components of the syllabus

Key aspects of the HR syllabus ('learn abouts')

Evaluating the effectiveness of Australia and global responses to enforcement & promotion of HR (Contemporary issues eg: Violation of gay rights in Russia & CROC, Child Soldiers)

Answering multiple choice questions

Answering short answer questions (including notes from the Marking Centre, candidate answers and timing for SA)
Some Points from a Recent LSA Information Night

- Candidates are good at: knowing & understanding Recognition of HR and promoting HR

- They are not so good at knowing & understanding Enforcing HR.

- Human trafficking, as opposed to child soldiers, lends itself to state sovereignty.
Principal focus:

Through the use of a range of contemporary examples, students investigate the notion of human rights and assess the extent to which legal systems embody such human rights and promote them in practice.
Themes and challenges to be incorporated throughout this topic:

- the changing understanding of the relationship between state sovereignty and human rights
- issues of compliance and non-compliance in relation to human rights
- the development of human rights as a reflection of changing values and ethical standards
- the role of law reform in protecting human rights
- the effectiveness of legal and non-legal measures in protecting human rights.
Themes and challenges to be incorporated throughout this topic:

In brief - be prepared for a Q from these:-
- state sovereignty & human rights
- compliance and non-compliance
- reflection of changing values and ethical standards
- role of law reform
- effectiveness of legal & non-legal measures
Things to focus on...

- It is important that students know the relevant international and domestic law (ie the law of the country you are using as an example).
- Students must be able to identify an issue, not just an example (ie asylum seekers, not ‘Australia’s treatment of refugees’) – they must know the general issue, as well as the specifics of an example.
- Students must be able to use their contemporary issue(s) to answer a broad range of HSC questions.
  – Not just ‘how effective are legal responses’.
- They need to be able to use their contemporary issue to address all of the themes and challenges and ‘students learn to’ questions.
I have included some content slides…but won’t spend too much time going through them!
What are Human Rights?

- Those rights that all human beings are entitled to simply because of their humanity. These rights transcend culture, ethnicity, religious orientation and nationality. They are inalienable and should not be taken away.

- Human Rights have developed over time, once people had no rights, they were in many ways property of the king, or tied to the land they lived on and the lord who held it.

- Over centuries the idea that people had “rights” that no one could take away progressing through Magna Carta and culminating in various documents such as the Rights of Man, and ending with the UDHR and the International Bill Of Rights.
Human Rights

Belong To All People - Universal

Cannot Be Taken Away - Inalienable

Are Dependent on One Another - Interconnected

Cannot Be Treated In Isolation - Indivisible

Should Be Respected Without Prejudice - Non-Discriminatory

http://everydaygynaec.com
What are Human Rights?

- There are **HARD** laws which are legally binding on parties to international treaties and UN Security Council Resolutions.

- Alternatively, a UN declaration is an example of a **SOFT** law.
Essential features of Human Rights? (there are 6!)

1. What we are ENTITLED to, not merely what we would like to have.
2. Rights are aimed at PROTECTING our most fundamental interests as individuals.
3. These entitlements are asserted against governments. (NOT ALL governments respect HR, but ALL should!)
4. These entitlements are UNIVERSAL: human beings, wherever they live, regardless of their differences (such as race, gender, religion) are ENTITLED to have their human rights respected.
Essential features of Human Rights? (continued...)

5. Which of our interests are fundamental enough to count as human rights? (Goals that governments should pursue for their people!)

- **Important liberties** - freedom of speech, freedom of association
- **Security rights** - not to be subjected to torture, inhumane / degrading treatment
- **Due process** - fair trial, procedural fairness
- **Political rights** - universal suffrage
- **Equality rights** - not to be discriminated against on the basis of gender, sexuality
- **Socio-economic rights** - housing, education, social security
6. When rights conflict with what is the majority’s interest / the public interest, it is generally more important to protect the rights than to do what is in the public interest.

- Utilitarianism v rights
- Rights are not necessarily absolute - Limits on freedom of speech, such as not inciting violent acts through speech
Essential features of Human Rights
(continued...)

- An example of the majority / public interest conflict!

Police capture a terrorist who had planted a bomb in a packed stadium. She won’t reveal where the bomb is. Her 5 year old daughter has been captured. Should the police torture the child to get the information from the terrorist?

The utilitarian view: YES! The suffering of all of the people in the stadium versus the torture of the child. What will cause the least suffering?

The human rights view: NO! The child has basic HR that should not be infringed. Rights should NOT be sacrificed for the public good.
Development of Human Rights

- Over time rights became identified and ascribed to different groups, the Magna Carta (which is celebrating its 800th birthday this year!) gives rights to the nobles of the time, but is an important step in acknowledging rights that people should have.

- Don't get too carried away with the idea that no rights existed before, in different cultures various codes and laws did identify rights, but often in a confused manner (or at least it would appear so to us today!).

- While the 10 Commandments can be seen as identifying a right to life, and security of property, the laws that surrounded them were pretty barbaric, and permitted slavery, stoning to death and worse.
The Universal Declaration of Human Rights

December 10th, 1948

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

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. Furthermore, no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence at the time when the act was committed. Nor shall a penalty be imposed which was not in force at the time when the act was committed.

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 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any restrictions which may be inconsistent with this Declaration.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals concerning any violation of the rights set forth in this Declaration. In this respect, any person held guilty of an offence shall be entitled to the right of []

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled to equal protection of the law without discrimination on any ground such as race, sex, language, religion or social origin.

Article 11. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 12. Everyone has the right to freedom of peaceful assembly and association.

Article 13. Everyone has the right to a fair and public hearing by an independent and impartial tribunal in his case without delay.

Article 14. Everyone has the right to freedom to leave any country, including his own country, and to return to his country.

Article 15. Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. Everyone has the right to own property free from any arbitrary interference. This right includes the right to the profits of the property.

Article 17. Everyone has the right to freedom from interference with his privacy, family, home or correspondence. No search shall be made and no interference with his property except as provided by law and subject to the requirements imposed by law. The right of privacy includes the protection of personal and family life, home, the family, the home and the private life of individuals and the protection of the family and the privacy of the family life of the family.

Article 18. Everyone has the right to freedom of religion. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to manifest his religion or belief in public and private life.

Article 19. Everyone has the right to freedom of peaceful assembly and association.

Article 20. Everyone has the right to freedom of speech and of the press.

Article 21. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to hold opinions and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 22. Everyone has the right to participate in cultural life and to benefit from the scientific, educational, cultural and social life of the community. Everyone has the right to the recognition of the importance of his family life.

Article 23. Everyone has the right to just and equitable remuneration for the work he performs.

Article 24. Everyone has the right to have his claims recognized by law and to a fair and public hearing, without delay, by the competent national tribunals concerning any violation of the rights set forth in this Declaration.

Article 25. Everyone has the right to a standard of living adequate for the health of the individual and the family, including food, clothing, housing and a decent standard of living for himself and his family and to the right to subsistence, property, work and social and medical care and such other social security as is available.

Article 26. Everyone has the right to enjoy the benefits of science and cultural advancement and to the protection of his intellectual and artistic production.

Article 27. Everyone has the right to participate in the cultural life and to enjoy the benefits of science and cultural advancement and to benefit from the scientific, educational, cultural and social life of the community. Everyone has the right to the recognition of the importance of his family life.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. Everyone has the right to a standard of living adequate for the health of the individual and the family, including food, clothing, housing and a decent standard of living for himself and his family and to the right to subsistence, property, work and social and medical care and such other social security as is available.

Article 30. Everyone has the right to a standard of living adequate for the health of the individual and the family, including food, clothing, housing and a decent standard of living for himself and his family and to the right to subsistence, property, work and social and medical care and such other social security as is available.

Article 31. Everyone is entitled to participate in cultural life and to enjoy the benefits of science and cultural advancement and to the protection of his intellectual and artistic production.

Article 32. Everyone has the right to a standard of living adequate for the health of the individual and the family, including food, clothing, housing and a decent standard of living for himself and his family and to the right to subsistence, property, work and social and medical care and such other social security as is available.
The movement for the abolition of slavery

- System where individuals had no personal rights.
- Existed in the Americas and used extensively in the ancient Egyptian, Greek and Roman worlds where slaves could be bought and sold and were often physically, emotionally and sexually abused.
- Emancipation Act 1833 by the British abolished slavery throughout their colonies.
- The 13th amendment of the US constitution finally outlawed slavery in 1865, but discrimination continued to former slaves and descendants until 1960s (segregation).
Out of the industrial revolution emerged trade unions (18th century).

Associates of employees that were create to protect the rights of workers.

Based on strength in numbers theory...
Trade unionism

- French revolution threatened social revolution in Britain.
- Threat demolished by 1920’s when trade unions were given status to improve wages and conditions for workers.
- Trade unions were seen as revolutionaries intent on overthrowing social order. The Tolpuddle Martyrs were 6 unions ringleaders sentenced to NSW for 7 years.
- Unions led to creation of political parties e.g., ALP.
- Trade unions are now protected in the universal declaration of Human Rights stating that ‘everyone has the right to join unions for the protection of rights’.
Universal suffrage

- The right to vote
- Compulsory voting is relatively new
- In 1842 voters had restricted suffrage, votes had to be white, male and wealthy
- By 1890’s women suffrage societies formed aiming to give women the rights to vote
In 1894 South Australia first state in Australia to give women right to vote

By 1908 Victoria last jurisdiction in Australia to grant universal suffrage

This removed the political distinction between the sexes, and helped in recognising universal human rights.

Right to vote now protected under Article 21 (3) of the Universal Declaration of Human Rights
Universal Education

- The right of all to a basic education
- Before 19th century any kind of formal education was rare, few people could read or write
- By mid 1800’s there was a growing demand for people with more education to meet the requirement of globalised economy.
Universal Education

- United Nations recognises that education is a vital part in the alleviation of poverty and improving status of women.
- The UN has invested a great deal of money in improving the level of education throughout the world.
- The right to education is protected under article 26 (1) of the Universal Declaration of Human Rights.
State Sovereignty:

- Refers to the power of a state to have control over its territory and its subjects. In international law a ‘state’ is the equivalent of what we call a nation, or self-governing country.

- State sovereignty acts to stop states from acting within the boundaries of other states. It is important in the human rights area because it is state sovereignty that allows asylum seekers to gain political refuge. Conversely, because it restricts the actions of neighbours and other concerned states, it also allows human rights abuses to go unpunished within the boundaries of a state.
Natural Law Doctrine:

- Is law that derives from a higher power or ideals. It can be traced to the Middle Ages claim of the Catholic Church that it had the divine power to rule: its power was God-given. Although this is no longer the case, the reference to higher ideals and authorities still exists. This can be seen through:

  - The fundamental rights and wrongs people still believe exist - regardless of religion, all belief systems regard human life as sacred. Murder is always a crime.

  - Leaders are no longer absolute. If a government abuses the human rights of its citizens, bodies such as the UN can still be appealed to.
Distinguishing Between Moral, Customary and Legal Rights

- **Moral rights** are derived from the principles of how a person is to behave, and they come from religious systems. All religions have the same ideals at their core and these ideals can be called morals. Religious writings often deal with issues such as equality, human dignity, conscience and the need to care for the less advantaged.

- A **customary right** derives from the practices of the family or society. These rights are not enforceable by law but are strongly felt by individuals.

- **Legal rights** are those enforceable by the law. Although they might differ from state to state, at their core is the belief in justice and the dignity of humankind.
There are two main categories of human rights:

- Civil and political rights.
- Economic, social and cultural rights.

Other categories of rights recognised by international law (treaties and conventions) include:

- Peace Rights
- Environmental Rights
- the Right to Self Determination (IP)
Civil and Political Rights

CIVIL RIGHTS - freedom of speech and freedom of movement

POLITICAL RIGHTS - being able to vote, participate in democracy
CIVIL and POLITICAL RIGHTS

Identified in the UDHR and the ICCPR.

- Where are they in Australia’s domestic law?
- These include a person’s right to:
  - life;
  - not to be tortured;
  - be free from slavery and forced labour;
  - be free from arbitrary arrest or detention;
  - freedom of movement and association;
  - privacy;
  - freedom of expression;
  - vote (universal suffrage).
Economic, Social and Cultural Rights

- Identified in the UDHR and the ICESCR.
- Where are they in Australia's domestic law?
- These include a person’s right to:
  - family life, and to look after their children;
  - work and to be treated fairly at work;
  - form and join a trade union;
  - an adequate standard of living, including adequate food, clothing and housing;
  - access to appropriate health care;
  - a basic education;
  - maintain their culture and language
  - access services regardless of their race, gender, age or disability.
Self-determination.

- Much conflict is occurring because of the desire of groups of peoples to achieve independence, e.g. Kurds, Karen, Southern Sudan. Today Southern Sudan is an independent nation, though under threat.
- The right of a people to determine their own destiny and government. Usually a concept applied to indigenous peoples, but one fraught with problems due to the notion of state sovereignty and the rule of law.
Environmental Rights:
- The right of a people to enjoy a clean and safe environment over time.
- “Environmental rights mean access to the unspoiled natural resources that enable survival, including land, shelter, food, water and air. They also include more purely ecological rights, including the right for a certain beetle to survive or the right for an individual to enjoy an unspoiled landscape”.

KEY ASPECTS OF THE HR SYLLABUS ('LEARN ABOUTS"

Healthy Environment Bill of Rights

All people have:

- The right to clean air
- The right to clean water
- The right to live, work, learn, and play in healthy and sustainable places
- The right to legal remedies for a racially discriminatory pollution burden
- The right to precautionary measures that require manufacturers to use safe and sustainable materials, processes, and products that eliminate or minimize toxic emissions & greenhouse gases
Peace Rights

- The right of a people to live their lives in peace, free from violence and fear from armed conflict.
- Third generation rights, more statements of hope, generally when people’s rights to peace or clean environments are breached there are more immediate issues to be confronted, such as their right to life, security of person, shelter and food. Darfur, Sub Saharan Africa in general, Chechnya.
The Magna Carta (1215)

The Magna Carta was drafted as a means of resolving a power struggle between King John of England and his nobles. John was an oppressive monarch who had little concern for his people. The nobles rebelled, and John was forced to sign the document limiting his power. These limits included:

- no interference in the church
- no right to introduce taxes without consulting Parliament
- no right to imprison a free man without trial
- no right to deny a person the right to travel
The English Bill of Rights (1688)
This document was established after King James attempted to force a new religious policy on Parliament. He was expelled from the throne and as part of the agreement offering the new King the throne, he was required to sign the Bill of Rights. It brought about an important, and permanent, transfer of power from the monarchy to the Parliament.

The United States Bill of Rights
(oh dear...doesn’t it have a lot to answer for??!!)
The Bill of Rights guarantees the protection of many basic rights, including those of freedom of speech, freedom of the press, freedom of assembly and freedom to petition the government for redress of grievances. It also contains the concept of double jeopardy and the right to bear arms.
Do you think the language in the second amendment is clear enough? .. you know about the right to bear arms?

Alright, we’re done!

Of course it’s clear! ...every American has the right to hang a pair of bear arms on their wall. How could that possibly be misconstrued?
The Declaration of the Rights of Man (1789)

Early in the French Revolution, the National Assembly (made up of the “common people”) proclaimed the Declaration of the Rights of Man. The rights it contained were said to apply to all people and not just citizens of France, ie it was the first attempt to develop universal rights. Among the rights it sought to protect were:

- the right to a democratic government
- the right to equality before the law
- the right to freedom of religion
- the freedom to openly express opinions
The horrors of WWII led to the establishment of the United Nations in 1945. In 1948 the Universal Declaration of Human Rights was proclaimed. It contained 30 articles which assert the right of all people to such things as:

- equality before the law
- education and work
- adequate health & standard of living
- freedom of speech
- freedom from torture, cruel and degrading treatment/punishment
- freedom to seek asylum in other countries in order to escape persecution
KEY ASPECTS OF THE HR SYLLABUS ('LEARN ABOUTS')

Promoting and enforcing Human Rights

- Examples are important, they help you understand the effectiveness of different institutions; have one for each institution and be able to explain it!
- How does the institution promote and enforce Human Rights, what does it actually do that improves awareness or protection of human right?
Promoting and enforcing Human Rights

- Amnesty International is an NGO (Non Government Organisation) It researches, publicises Human Rights abuses and breaches and provides a critique of different government’s performances in the field of promoting and enforcing human rights. In recent years it has been extremely critical of Australia's treatment of Asylum seekers, among other HR issues.
Promoting and enforcing Human Rights

The critical point is HOW does the institution promote and enforce HR? In Amnesty’s case through publicity, shaming governments through publicity. The recent Nigerian stonings are a case in point, but there are many others. Or **Malala Yousafzai**, the young Pakistani girl shot in the head, for advocating the right to education for women.
Promoting and enforcing Human Rights

- Incorporation of Human Rights into Australian law (NB different jurisdictions)
- Firstly, STATUTE and COMMON law.
- The Constitution granted the Federal government the power to legislate with regard to external affairs, interpreted by the High Court as the power to enter treaties, meaning that through this power the Federal Government could overrule state legislatures (Franklin River Dam Case, Wik). Wik is a big Human Rights case!
Promoting and enforcing Human Rights

- Teoh is seen as creating a legal intention to legislate for a treaty and thus has some legal power, still.

- The Immigration Minister ordered that Mr. Teoh, a citizen of Malaysia and his family be deported on the basis of his heroin importation conviction. Teoh appealed the verdict to the Federal Court of Australia, which overturned the deportation order.

- Best interests of the child and international obligations. To what extent does the Convention on Rights of Child ("CRoC") apply in Australian law given that Australia has ratified the Convention but has not yet incorporated CRoC's provisions into its national law by statute. The Court held that the ratification created an expectation that in all actions concerning children, the best interests of the child would be a primary consideration.
Promoting and enforcing Human Rights

- High Court decision:
  The majority (Mason CJ, Deane, Toohey and Gaudron JJ) agreed with the Federal Court decision that there had been a breach of natural justice, as the Immigration department had failed to invite Teoh to make a submission on whether a deportation order should be made, contrary to the Convention on the Rights of the Child, which provided that in any administrative decision concerning a child, the child's best interests must be a primary consideration.

  Gaudron J, although in the majority, did not rely upon the Convention on the Rights of the Child to find in Teoh's favour. The fact that a child is an Australian citizen is enough to establish the principle that the best interests of children should be a primary consideration in the making of administrative decisions. Gaudron J held that whilst the decision-maker was not required to initiate inquiries, procedural fairness required them to inform Teoh that his children's best interests were not being taken into account as a primary consideration and offer him the opportunity to persuade them otherwise.
Postcript: “I was recently informed by a colleague involved in the Teoh litigation that Mr Teoh continues to reside in Perth, Western Australia. Of Mr Teoh’s children, the so called ‘seven little Australians’ within his care, only one continues to reside at home, and two of the children are involved with their father in a successful sushi-making business in Perth”. 

Wendy Lacey (Lecturer in Law, University of Adelaide)

Explanation of the difference between treaty ratification and enactment of its provisions 
KEY ASPECTS OF THE HR SYLLABUS
('LEARN ABOUTS')

Promoting and enforcing Human Rights


- http://en.wikipedia.org/wiki/Minister_of_State_for_Immigration_and_Ethnic_Affairs_v_Teoh
Constitutional protection

- The Australian Constitution offers limited protection, unlike that of the USA which includes a Bill of Rights.
- Our Constitution protects, in a limited way, Freedom of Religion, the right to vote, movement between states, the right to own property ("The Castle"), limited freedom of speech (political advertising)
- Common law - the best one is the Rule of Law, right to sue for a legal wrong, right to protection of property & person. Courts and Tribunals.
An Australian Bill of Rights or Charter of Rights?
A constitutional versus a statutory Bill of Rights?
### A Charter of Rights

**Arguments for**
- Recognise community values
- Improve protection
- Protect minorities
- Make government accountable
- Create a culture of respect for human rights
- Community support
- Reflect our international position
- All other democracies have one

**Arguments against**
- Current protections are adequate
- Could still be problems with/lack of enforcement
- The rule of law and democratic traditions are better protections
- Gives power to unelected judges
- Limits rights to what is included
- Leads to more litigation – costly and creates delays in the court system
- Too easy to change (statutory)
- Too hard to change (constitutional)
Promoting and enforcing Human Rights

Government bodies that protect human rights in Australia.

- **Courts**
- **Administrative Appeals Tribunal**
- **Human Right & Equal Opportunity Commission (HREOC) (Cth)**
- **Anti-Discrimination Board (NSW)**
- **Parliamentary Committees e.g. the Cth Human Rights Sub-Committee**
Promoting and enforcing Human Rights

Non Government Bodies that protect human rights in Australia:

- Australian Human Rights Information Centre
- NSW Council for Civil Liberties
- Human Rights Watch Australia
- Church groups
- Media
Promoting and enforcing Human Rights globally

Intergovernmental organisations

- Truth commissions, eg: Sierra Leone Truth & Reconciliation Commission

- HR Council of the UN and special rapporteurs
Promoting and enforcing Human Rights globally

Courts and Tribunals

- Ad-hoc tribunals, e.g.: ICT Rwanda & ICT (former) Yugoslavia
- ICJ
- ICC
The International Criminal Tribunal for the Former Yugoslavia

- Established by UNSC Resolution 827, passed on May 25, 1993;
- Located in The Hague, The Netherlands;
- To punish violations of international humanitarian law in Yugoslavia since 1991;
  - Mission:
    - to bring to justice persons allegedly responsible for serious violations of international humanitarian law;
    - to render justice to the victims;
    - to deter further crimes; and
    - to contribute to the restoration of peace by holding accountable persons responsible for serious violations of international humanitarian law.

SITE: HTTP://WWW.SLIDESHARE.NET/MINEKO/THE-AD-HOC-Tribunals-For-The-Former-Yugoslavia
Promoting and enforcing Human Rights globally

**Statutory authorities**

- UN Commissioner for HR
- Committees monitoring UN conventions, eg: HR Committee (monitors the ICCPR operation)
Promoting and enforcing Human Rights globally

NGOs

- Human Rights Watch
- Amnesty International
- International Committee of the Red Cross
- Medicines Sans Frontiers
Put simply, it depends on who you are. Asylum seekers and indigenous people argue with considerable justification that the legal system does not promote or enforce the basic human rights our country espouses. Add prisoners, the mentally ill, other minority groups and the picture is grim, but keep things in perspective!

Australia does not have a Charter of Rights, a statutory guarantee of fundamental rights. Some nations do have them, but it is the application and enforcement of the Bill of Rights that matters.

There has been and continues to be vigorous debate about an Australian Bill or Charter of Rights, with political and legal heavyweights such as Bob Carr, Malcolm Turnbull, Geoffrey Robertson and many others active and public on the topic.
CHILD SOLDIERS - A CONTEMPORARY ISSUE

http://www.hrw.org/topic/childrens-rights/child-soldiers

http://www.youtube.com/watch?v=AR_Iz98KFL8
(25 mins)

Hands for Africa.org
(Sierra Leone)
http://www.youtube.com/watch?v=q9bcwb_cVMs
(8mins)
CHILD SOLDIERS - A CONTEMPORARY ISSUE

- [https://www.youtube.com/watch?v=wTmok2a](https://www.youtube.com/watch?v=wTmok2a) excerpt from Blood Diamonds
  Long sleeve or short sleeve - Blood Diamond (46secs)

- [https://www.youtube.com/watch?v=s90SRD5uJGg](https://www.youtube.com/watch?v=s90SRD5uJGg) “no hands, no voting” (1min)
CHILD SOLDIERS - A CONTEMPORARY ISSUE

Examples:
- ISIS
- Boko Harem
- Kony LRA (Uganda)

Statistic:
- 300,000

Used to:
- Fight
- Suicide bombers
- Spies
- Guards
- Sexual gratification
- Murder own family
A SCAFFOLD FOR A CONTEMPORARY HUMAN RIGHTS ISSUE

- What is the issue? Where does it occur? How prevalent/widespread is it?
- Is it covered by the UDHR or other instrument from the UN?
  - A Declaration?
  - A Treaty?
- What do NGOs suggest can be done?
- What, if anything is the:
  - International response?
  - Domestic response?
A CONTEMPORARY HUMAN RIGHTS ISSUE - RESOURCES

- [https://www.youtube.com/watch?v=s90SRD5uJGg](https://www.youtube.com/watch?v=s90SRD5uJGg) “no hands, no voting” (1min)
IN KONY’S SHADOW

The memory of a small but fanatical rebel group still casts a long shadow across the war-ravaged communities of northern Uganda. Long after it was driven out, many people still live in terror at the very mention of its name.

This is the story of Joseph Kony’s Lord’s Resistance Army and those it left behind – from children forced to become soldiers to civilians caught up in the conflict.

⚠️ WARNING! Website contains content readers might find disturbing.
A SCAFFOLD FOR A CONTEMPORARY HUMAN RIGHTS ISSUE

Past HSC Questions

2013: Question 24 (7 marks)
Explain how changing values have been reflected in the promotion and enforcement of ONE human rights issue.

2012: Question 22 (5 marks)
How has the promotion of ONE contemporary human rights issue been influenced by the media?

2011: Question 24 (6 marks)
With reference to ONE contemporary human rights issue, explain the role of state sovereignty in enforcing human rights.

Changing values
T/C
Promo & enforcement
ONE HR

Relate cause and effect; make the relationships between things evident; provide why and/or how

How?
Promo
ONE contemp HR issue media

Relate cause and effect; make the relationships between things evident; provide why and/or how

ONE contemp HR issue
State sovereignty enforcement
ANSWERING MULTIPLE CHOICE QUESTIONS
1. Which of the following developments was significant in the developing recognition of human rights universally?
   a) The abolition of slavery
   b) The development of trade unionism and labour rights
   c) The advent of universal suffrage
   d) All of the above

2. Which important human rights document contains 30 articles about a common standard for every individual and every organ of society to keep in mind?
   a) International Covenant on Civil and Political Rights
   b) International Covenant on Economic, Social and Cultural Rights
   c) Universal Declaration of Human Rights
   d) Universal Declaration of Individual and Refugee Rights
3. Where a human right is set out in an international instrument, the action that best ensures its protection in Australian law is for it to be?
   a) acknowledged  
   b) enacted 
   c) promoted 
   d) ratified

4. Which of the following human rights is expressly recognised in the Australian Constitution?
   a) Freedom of religion 
   b) Freedom of assembly 
   c) The right to marry 
   d) The right to education
ANSWERING SHORT ANSWER QUESTIONS (INCLUDING NOTES FROM THE MARKING CENTRE AND CANDIDATE ANSWERS)

General comments

 Candidates are reminded that they should be familiar with the terms used in the Legal Studies syllabus, have a clear understanding of the basic concepts, and read the whole question carefully.
What’s the Q?

Specific comments

Question 21

- In better responses, candidates identified two organisations, for example the International Committee of the Red Cross and Amnesty International.

- In weaker responses, candidates confused non-government organisations with other terms such as non-legal measures protecting human rights.
What’s the Q?

Specific comments

Question 22

- In better responses, candidates demonstrated an understanding that the key element of the right to self-determination is that it is a collective right for an identified group to manage an aspect of their internal affairs, and candidates expressed this succinctly. In the best responses, candidates pointed out that the right did not only attach to the ownership of land and that a group of peoples was not limited to indigenous peoples.

- In weaker responses, candidates wrote in very general terms, or identified the right as attaching to individuals and/or confused it with state sovereignty.
What’s the Q?

Specific comments

Question 23

- In better responses, candidates succinctly identified a relevant human right and set out the context for its legal recognition. In so doing, candidates clearly identified the point of legal recognition for the right. For example, universal suffrage in the Australian context was traced through the suffragette movement and its legal recognition through legislation and in the Australian Constitution.

- In weaker responses, candidates often tended to discuss a human rights issue rather than identify an actual human right. Some candidates made reference to the recognition of a human right by the international and/or domestic community but did not clearly outline how this was manifested in the legal recognition of that right.
What’s the Q?
With reference to ONE contemporary human rights issue, explain the role of state sovereignty in enforcing human rights.

Specific comments  Question 24

- In better responses, candidates incorporated a contemporary issue to support their explanation and recognised both the positive and negative impacts that state sovereignty may have in enforcing human rights. For example, on the positive side, states may choose to pass and enforce domestic laws that protect human rights. Conversely, states may choose to ignore the international community and deny human rights to their citizens.

- In weaker responses, candidates either did not link the contemporary issue to state sovereignty and its role in enforcing human rights or did not consider state sovereignty at all. In some responses, candidates considered state sovereignty but its role in enforcing human rights was given limited treatment.
ANSWERING SHORT ANSWER QUESTIONS (LET’S ANSWER A COUPLE!!)
LSA HSC Trial Question 2013 Q21

Question:
Outline ONE example of law reform that has assisted in the protection of a specific human right.

Answer points:
✓ -
✓ -
✓ -
✓ -
✓ -
ANSWERING SHORT A Q’S

LSA HSC Trial Question 2013 Q21

Outline ONE example of law reform that has assisted in the protection of a specific human right.

Marking criteria:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Marks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clearly sketches in general terms an example of law reform that has assisted in the protection of a specific human right</td>
<td>2-3</td>
</tr>
<tr>
<td>Attempts to outline an example of law reform or how a specific human right is protected</td>
<td>1</td>
</tr>
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</table>

Notes:
- The question states “has assisted”. This is past tense.
- This is an open-ended sort of question, with so many possible answers.
- Areas covered by some of my students included aspects of family law, rather than aspects of the Human Rights topic.
LSA HSC Trial Question 2013 Q21

Sample answer 1:

- In the case of Toonen v Australia (1994) an activist for the rights of homosexuals claimed the Tasmanian Criminal Code, which criminalised all sexual contact between consenting male adults in private, breached article of the International Covenant on Civil and Political Rights (ICCPR).

- The then Australian Attorney-General stated that "The government takes seriously its obligations under the Covenant", and that "all Australian governments ... have a corporate responsibility to ensure Australia's record on human rights is not tarnished internationally as a result of a particular law within a jurisdiction'.

- He called on the Tasmanian government to amend the laws in question. The Commonwealth government exercised the external affairs power to override the Tasmanian government. The relevant sections of the criminal code were removed.
Sample answer 1:

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2002) was developed in response to concern over the harm done by the use of child soldiers. It was felt that the CROC’s ability to protect the rights of children would be strengthened by creating international law specifically outlawing child soldiers. This is the most important and comprehensive treaty on the issue of child soldiers to date and has been ratified by more than 130 countries.
Sample answer 1 (CONTINUED...):

- Key aspects of the Protocol include:
  - Article 1: Countries should take steps to ensure that members of their defence force who are under 18 do not take an active part in hostilities.
  - Article 2: Countries will not conscript people into their defence force under the age of 18.
  - Article 3: Where countries allow people under the age of 18 to join their defence force, they must take genuine steps to ensure that the recruitment is voluntary, that their guardians are informed and give consent and that the young person is made aware of their duties.
Other areas could that could have been examined include:

- The 1986 reform to the Education Act (NSW) 1900 which outlawed caning in NSW public schools, protecting children’s rights not to be victims of corporal punishment.
- The abolition of slavery.
HSC Question 2014 Question:
Outline how one international human rights document contributes to the development of human rights. (3mks)

Answer points:
- 
- 
- 
- 
-
HSC Question 2014 Question:
Outline how one international human rights document contributes to the development of human rights. (3mks)

Sample answer (BOS): The Universal Declaration of Human Rights protects the right to freedom of speech and equality. It promotes a range of human rights for all individuals under international law regardless of any recognition under domestic law.
HSC Question 2014 Question:
Outline how one international human rights document contributes to the development of human rights. (3mks)

Other documents that could have been used include:

- The International Covenant on Civil and Political Rights (ICCPR)
  Obligates nations to work to respect the civil and political rights of individuals, such as: gender equality, right to fair trial, presumption of innocence until proven guilty, right to freedom of movement and assembly. The ICCPR outlaws slavery and torture.

- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
  Binding international treaty creating duties for nations to respect individual’s economic, social and cultural rights.
HSC Question 2014 Question:
Outline how one international human rights document contributes to the development of human rights. (3mks)

Notes from Marking centre:
• Candidates showed strength in these areas:
  • naming an international human rights document - for example, the UN Convention on the Rights of the Child
  • indicating the rights protected by the named international human rights document and how the document is applied.
• Candidates need to improve in these areas:
  • understanding that a ‘contribution’ could include raising awareness of human rights issues or influencing the development of the law.

Source:
Outline how one international human rights document contributes to the development of human rights. (3mks)

Marking criteria:

- Names ONE international human rights document OR lists rights
- Outlines the contribution of this document to development of human rights
  - 3 marks
- Names ONE international human rights document
- Outlines features of this document
  - 2 marks
- Names ONE international human rights document OR makes general statements about human rights
  - 1 mark
Sample answer points:

- Reports on human rights are received by the United Nations General Assembly, which can initiate studies and make recommendations to assist in ‘realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion’.

- **UN Human Rights Council (UNHRC).** Aims to address global HR violations. Has recently developed complaints procedures, periodic reviews and set up an advisory committee.

- **Special rapporteurs** may be sent to investigate and report on human rights issues. If a state seeks to suspend its responsibilities under an international treaty in a state emergency it must notify the Secretary-General. (Blake - special reporters!?)

- **The United Nations Security Council’s Principal role is the maintenance of peace.** Involved in humanitarian actions in the wake of the collapse and subsequent break-up of Yugoslavia, the civil war in Somalia and the ongoing conflict between Israel and Palestine.
Explain how the United Nations contributes to the protection of human rights.

Some more sample answer points:

- The Security Council may take action to restore peace and in this way assist in the protection of human rights. Along with peacekeeping, the Security Council has involved itself in international humanitarian work. It has forces in trouble spots around the world as peacekeepers, truce observers and relief workers.

- The Security Council passes resolutions condemning violations of human rights, particularly with respect to the right to life and genocide. It frequently calls on states to respect human rights; this may be regarded seriously by states, in view of the Council’s power to impose sanctions.

- States have signed numerous international agreements creating concrete legal obligations, including the UN Charter of Rights.

- Prosecution of international criminals in the ICC (The Hague). 190 prosecutions.
An actual student response...

The establishment of the United Nations General Assembly and the Universal Declaration of Human Rights has given the international community voice in regard to human rights. The Universal Declaration of Human Rights along with the ICCPR and ICSECR have outlined a number of HR and fundamental freedoms that belong to all human beings. Some of these include the right to education, work and the right to adequate living.

The UN has also contributed to the Human Rights Council and discusses / monitors HR abuses world-wide.

The ICJ, which is the judicial organ of the Un, is responsible for the prosecutions of international criminals, including those that breach human rights laws.

From: Upendra/ ’Wendy’

Explain how the United Nations contributes to the protection of human rights.
LSA HSC Trial Question 2013 Q23

Question:
To what degree is state sovereignty essential to effectively promote and enforce human rights?

Answer points:
✓ -
✓ -
✓ -
✓ -
✓ -
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<th>Marks</th>
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<td>6-7</td>
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<td>Makes a clear and informed judgment about the degree to which state sovereignty effectively promotes and enforces human rights</td>
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</tr>
<tr>
<td>A specific example utilised</td>
<td></td>
</tr>
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<td>Demonstrates some understanding of the role of state sovereignty in the effective promotion and enforcement of human rights</td>
<td>3-5</td>
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<tr>
<td>Makes a judgment about the degree to which state sovereignty effectively promotes and enforces human rights</td>
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<td>Demonstrates limited understanding of the role of state sovereignty</td>
<td>1-3</td>
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<tr>
<td>May comment on state sovereignty in relation to human rights</td>
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</table>
To what degree is state sovereignty essential to effectively promote and enforce human rights?

LSA HSC Trial Question 2013 Q23

Notes:
If you are asked to what degree or to what extent you are being asked to make a judgement (evaluate!).
To what degree is state sovereignty essential to effectively promote and enforce human rights?

Sample answer points:

- Within states, governments can ignore international treaties/conventions and allow human rights to be infringed. Such governments may rely on state sovereignty to perpetuate mistreatment of their own citizens.

- State sovereignty may be utilised as a type of shield against the international community when gross atrocities have been committed with impunity and with no means of recourse for individuals or groups within a nation-state.
To what degree is state sovereignty essential to effectively promote and enforce human rights?

LSA HSC Trial Question 2013 Q23

Sample answer points:

- When a nation-state signs an international treaty or convention, they create concrete legal obligations. Such treaties, like the ICCPR, have been ratified by 165 nation-states. Even though state sovereignty exists, being a signatory to such a treaty involves periodic reporting, to the HRC, and allowing domestic citizens an avenue to complain about mistreatment.

- Within Australia, due to state sovereignty, citizens have their basic human rights protected through the Toonen V Tasmania (1994) case (see above) and many other cases.

- North Korea and Cambodia - anti-freedom, Russia anti-gay legislation. Syria.

- States are countries not continents.

- Child soldiers (Congo, Sierra Leone and Uganda)
To what degree is state sovereignty essential to effectively promote and enforce human rights?

LSA HSC Trial Question 2013 Q23

An actual student response...

State sovereignty works both for and against the promotion of HR. First and foremost, state sovereignty is the notion that a nation can govern itself without external influence from other countries. What makes a state is the following: defined territorial borders and a permanent population.

With that, state sovereignty means that a HR body such as the UN or even other countries cannot interfere or force another country to sign or ratify international agreements / laws as HR bodies solely rely on the willingness of states to co-operate. Without the co-operation of nation-states, nothing can be done to enforce treaties or international laws because they are not domestically enforceable.

An example of this is in Sierra Leone, where HR were constantly in violation and nothing could be done because of the idea of state sovereignty (child soldiers). Toonen v Australia is an example of eventual HR protection within Australia.
HSC Trial Question 2014 Q22

Question:

Explain how human rights are protected by the Australian constitution.

Answer points:

- 
- 
- 
- 
- 
-
## HSC Question 2014 Q22

### Marking criteria:

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<th>CRITERIA</th>
<th>MARKS</th>
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<td>Demonstrates a clear understanding of how the Australian Constitution protects human rights</td>
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</tr>
<tr>
<td>Demonstrates some understanding of how the Australian Constitution protects human rights</td>
<td>4</td>
</tr>
<tr>
<td>Attempts to explain how the Australian Constitution relates to human rights</td>
<td>3</td>
</tr>
<tr>
<td>Makes general statements about the Australian Constitution and/or human rights</td>
<td>1-2</td>
</tr>
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</table>
HSC Question 2014 Q22

Explain how human rights are protected by the Australian constitution.

Sample answer (BOS):
The Australian Constitution expressly/explicitly recognises some human rights including the right to vote because it allows people to participate in federal elections. It also protects an individual’s freedom of religion from government interference. The Constitution also provides an accused person the right to trial by jury for serious offences. There is also an implied right to freedom of speech recognised by the High Court in its interpretation of the Constitution. The separation of powers between the judiciary, legislature and executive, as outlined in the Constitution, protects individuals against the arbitrary exercise of government power.
The Australian constitution offers a very limited protection of only a few human rights.

It provides Australians with the right to vote (s 24), the right to acquisition of property and not to be discriminated against (s117) and the right to freedom of religion (s 116).

As the constitution is an entrenched instrument which can only be changed by a referendum (where a majority of voters in a majority of states have to say “yes” to make a constitutional change) it is a very inflexible alternative.
As such, very few human rights are protected by the constitution and perhaps a Bill of rights, or at least a Charter of Rights, is required to protect more rights of Australian citizens. Such rights could include: freedom of association, the right to legal representation and so on.

The High Court has previously found certain rights to be implied in the Constitution. In *McGinty v. Western Australia* (1996) Justice Dawson of the High Court stated that ‘whilst implications can be and have been drawn from the Constitution, it is clear beyond question that implications may only be drawn’. In *Lange v. Australian Broadcasting Commission* (1997) the High Court upheld that the freedom of communication between candidates and the electorate was central to representative government but that freedom was not absolute. The civil law of defamation would still apply.
Explain how human rights are protected by the Australian constitution.

HSC Question 2014 Q22

NOTES from the MARKING CENTRE

Candidates showed strength in these areas:

- identifying the rights expressly protected in the Australian Constitution
- describing the impact of the separation of powers (legislature, judiciary and executive) and division of powers (federal, state and local) in protecting human rights
- describing the role of the High Court in enforcing constitutional human rights protections and interpreting the Australian Constitution
- identifying express and implied rights and explaining the differences between them.

Candidates need to improve in these areas:

- explaining how the Australian Constitution protects human rights rather than merely identifying the rights that are protected.

The Australian constitution offers limited protection of human rights. It has provided Australians with the right to vote (S24), the right to acquisition of property and not to be discriminated against (S117) and the right to freedom of religion (S116).

A bill of rights or at least a charter of rights may be required to provide more human rights protections for Australian citizens. Such rights may include the right to legal representation. Moreover, the division of powers and the separation of powers in the constitution play a vital role in protecting and promoting human rights. The independence of judiciary ensures rule of law thus protects human rights. The division of power also ensures human rights by limiting the power of the Commonwealth.

(By Yuji)
The short answers (and multiple choice) sections are where candidates can save time for their essays.

A rough guide of timing for short answer responses in legal is:
- 3mks Q = 3mins
- 5mk Q = 5mins
- 7mk Q = 7 mins

That’s 15 mins instead of the allotted 30.
Some Key Points on Human Rights from Our Former LSA President, John Andrews:

- Know the syllabus: PF, T&C, Learn Abouts and Learn Tos.
- Break down PF into what YOU NEED TO KNOW and what YOU NEED TO DO.
- T&C: The development of HR as a reflection of changing values and ethical standards. We used to think it was ethical to brand people, to whip people, to hang people...not any more. Our standards reflect the development of human rights.
- William Wilberforce was able to convince the British to outlaw slavery because it was morally and ethically wrong.
- Universal suffrage - an Australian innovation.
- Universal education - jurisdictional - Pakistani (like Malala) and Afghani females denied rights
Afghan officials say woman (Farkhanda) set on fire by angry mob did not burn Koran (Los Angeles Times)
Some key points on human rights from our former LSA President, John Andrews:

- Formal statements: ICCPR and ICCESCR
- Self-determination - universal HR that generally applies to indigenous people
- Right to life is protected instate jurisdictions under the Crimes Act.
- State sovereignty - protects and permits abuses of human rights at the same time.
- 1 million Syrians refugees in Lebanon. Hundreds of thousands of African refugees as well.
- Enacting domestic legislation (Australia law) must occur after a treaty is signed for it to be put into effect
- With a Charter of Rights - court interpretation is key.
- Child Soldiers - HR breaches - safe & security of person, right to security of person right to education
- Diplomatic pressure, sanctions, intervention
SOME KEY POINTS ON HUMAN RIGHTS FROM OUR FORMER LSA PRESIDENT, JOHN ANDREWS:

- Don’t forget Human Rights Watch: http://www.hrw.org/

- And Human Rights Watch Australia: http://www.hrw.org/asia/australia
Ratification

Enactment

Using an example, explain how human rights are incorporated into Australian domestic law. 4mks

Australia is a dualist (not a “monist”) system, meaning that once an international treaty/document/convention has been signed (ratified) by Australia, it must then be incorporated within Australian law (enacted - legislation must be made or amended containing reference to the action in the treaty). This will not happen automatically, like in a “monist” system country. The Australian Commonwealth parliament will generally either:

- pass legislation that mirrors the words from the treaty, such as when Australia ratified the Rome Statute of the International Criminal Court in 2002 it’s Commonwealth Parliament introduced the International Criminal Court (Cth) 2002) OR:

- it will amend an existing law. For example, when Australia ratified CROC in 1989, it then amended the Family Law Act in 2006 to incorporate the notion of “the best interest of the child” from CROC.
A FINAL WORD ON HUMAN RIGHTS

- HSC candidates need to know this unit well.
- The 5 multiple choice questions are often difficult. Often, experienced markers don’t agree with the exam committees answers....and that never makes life easier for you guys answering these sort of Q’s under exam conditions.
- 3-4 short answers allows good candidates to drop a 3-4 marks (1 in each question) and all of a sudden a 15/15 mark student has a maximum of 11/15 or 12/15.
- Study hard, prepare soundly and good luck!!!
Isn’t it great that we have a course in the curriculum that allows study of, and focus on, HR?!

A FINAL WORD ON HUMAN RIGHTS

"TO DENY PEOPLE THEIR HUMAN RIGHTS IS TO CHALLENGE THEIR VERY HUMANITY."

NELSON MANDELA
1918 - 2013