

# A Bill of Rights: informing the debate

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# Bills of Rights: all party agreement

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- ‘A Bill of Rights and Duties [to] give people ... a framework for giving effect to our common values’
- A ‘modern Bill of Rights to define the core values which give us our identity as a free nation’
- A ‘new Bill of Rights’ to ‘entrench the rights presently enshrined in the ECHR in the British constitutional framework’



# Bill of Rights: the original

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- ‘An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown’.
- Also resolved the supremacy of Parliament, the constitutional powers of the monarchy and the established religion.

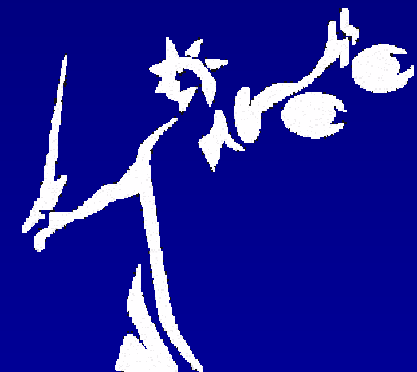


# The six step roadmap

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Decide:

- Objective (cf South Africa, EU, Northern Ireland)
- Content
- Legislative form
- Judicial entrenchment
- Process
- Desirability



# Content

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- MUST BE 'ECHR PLUS' but MIGHT
- Strengthen, modernise or make more explicit ECHR rights
- Guarantee 'traditional' British rights (jury trial, legal aid, medical care??)
- Articulate socio-economic aspirations (SA?)
- Implement international treaties
- Follow international examples – the paradox of the European Charter

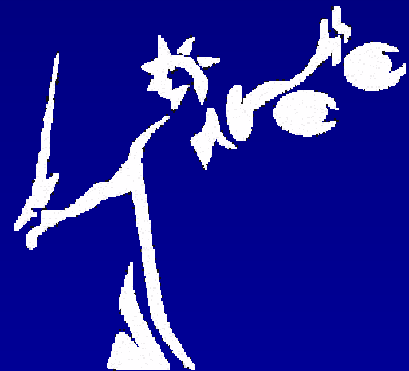


# Content: rights and duties?

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- Respect and forbearance
- Equality
- But must avoid qualification of ECHR right

Use a preamble?



# Content: uncontroversial example

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- South Africa: ‘Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been adversely affected has the right to be given written reasons’ (Art 33)
- EU: right to ‘affairs handled impartially, fairly and within reasonable period of time’ – to be heard, access to file, obligation for reasons (Art 41)
- UK Ombudsman’s six principles of good administration



# Form – special legislative options

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- Amend Parliament Acts
- Special majority vote in the UK Parliament
- Referendum
- Declaration against amendment

But would require a degree of consensus and attract a degree of controversy.



# Form – judicial enforcement

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- Supreme Court strike down power
- Parliamentary override
- Judicial declaration of incompatibility with legislative response (HRA)
- Parliamentary override
- Interpretative statute only

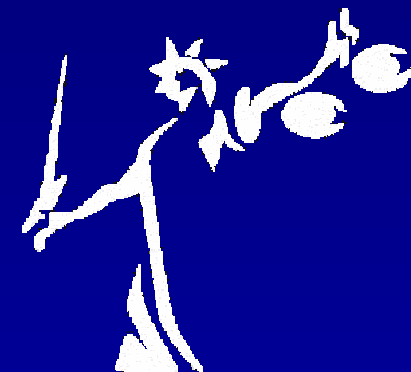
BUT HRA very suitable mechanism for ECHR rights in tune with common law.



# Process: a series of questions

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- Are we seeking a degree of consensus?
- How open a debate do we need?
- Who or what is leading on this debate?
- What importance and weight are we giving it?
- What is our time scale – Northern Ireland v Victoria?
- Above all, what is our objective?



# Is this debate worthy of its title?

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- Yes if it extends rights and understanding about them.
- Yes if a political consensus develops on existing or extending rights
- Yes if it leads to mature debate on constitution
- BUT not if it leads to confusion of rights and duties, perpetuates unease with HRA, raises hostility to the judiciary, there is inadequate consensus and a bill of rights becomes a political battleground.

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