

Oxford Resources for IB
Diploma Programme



2024 EDITION

GLOBAL POLITICS

COURSE COMPANION



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4

Rights and justice

Learning outcomes

In this section, you will learn the following:

- the contested meanings of rights, political justice, social justice, liberty and equality
- interactions of political stakeholders and actors in rights and justice
- the nature, practice and study of rights and justice
- debates on rights and justice.

Key questions

- To what extent is there agreement on what constitutes human rights and justice?
- How are the limits to freedom agreed upon? What political impact does this have at a local, national, regional, international and global level?
- In what ways is equality a desirable goal for societies and humanity? To what extent is it possible to realize this goal?
- How do state and non-state actors deliver rights, justice, liberty and equality? To what extent are these effective?
- To what extent have we advanced human rights in global politics? What is “left to do”? Is there a risk of “backsliding”?
- To what extent is the complexity of human rights enforcement a hindrance to achieving universal human rights?
- Are there alternatives to universal human rights?
- How can international law be enforced without a world government and an international police force? In practice, what ways are there to protect rights?
- Why do states consent to and comply with international law? What happens if they do not consent and comply?
- What are the reasons why rights might not be protected, despite the best intentions?
- How effective is the monitoring of rights and justice? How can we assess if justice has been achieved?

Introduction

The ideal society, or a perfect world, has been envisioned by thinkers across the ages and from every corner of our planet. These hypothetical creations make assumptions about what humans are like, how we should be ruled (if at all), what we should be allowed to do and what is just and fair. These ideas compete with each other, contradict one another, and come in and out of fashion depending on the needs of the society in that specific location and time.

As a result, when you look at global politics case studies, these different ideas on rights and justice appear as perspectives. These differing perspectives critique ideas and approaches which might be viable and acceptable in one time and place but contested and rejected in another. Unpacking the reasons behind political decision making and perspectives is a challenging task. You must consider how history has shaped the political actions taken, and whether the impact and results achieved the desired aims or caused unintended consequences.

You should also consider how other structures, such as intergovernmental organizations (IGOs), non-governmental organizations (NGOs), and legal frameworks work to enhance rights and justice or restrict them.

An interdisciplinary approach is needed for the study of rights and justice, using methods and knowledge from geography, history, politics, religions, psychology, law, environmental studies, sciences, mathematics, and more. For example, analysing a violation of rights may include historical factors, such as colonial rule, but knowledge from a study of religions may also be applied to understand the moral rules applied by the actors involved.

It is important not to oversimplify the discussions on rights and justice globally, regionally, nationally and locally. There is never a single motivating factor or strict adherence to a theoretical perspective that motivates political actions. As layers of political issues related to rights and justice appear concurrently, and sometimes interact, isolating single causal factors has limited grounding in reality. Case studies help us seek out the nuances to claims on rights and justice in a specific context. It is important to conduct further research to support your case studies, and to find exceptions in approaches to rights and justice.

Objectivity in the study of rights and justice is difficult to achieve as we need to remove ourselves from our own worldview, biases, and cultural experiences, at the same time as understanding the extensive range of international agreements related to rights and justice which suggest more consensus than difference. However, engaging in the process will lead us to a better understanding of what factors will result in successful outcomes in the field of rights and justice.

ATL Thinking and communication skills

Before you start your study of rights and justice, consider the following:

1. Write down as many rights/human rights you can think of without referring to anything. For each right, state how you know it is a human right, that is, what evidence can you provide that humans can use/defend this right?
2. Write down as many ways to seek and achieve justice as you can think of. If you have any real-life examples of these, write them down.
3. Think of 10 states and rank them in order of best to worst for human rights without referring to any sources. How did you decide which states to choose and how to rank them?
4. Share your ideas with your peers. Try to agree how states should be ranked according to their human rights.

4.1 Contested meanings

If you asked people from all over the world to define rights, justice, liberty and equality, it is likely that they would give different answers. Although these terms often have a specific origin, there are many competing theories which challenge the original definitions. In addition, these terms are used and applied in many different contexts, which means there is likely to be a wide range of different interpretations based on factors such as geography and local culture.

Theories influence how we view and understand the world. Individual or group experiences lead thinkers to challenge the content of theories, add to them or construct new ones. This makes contested terms a “moving target” rather than a fixed idea against which to test real-world situations. This provides many opportunities for finding different perspectives about how to view and interpret the world.

Concept: Liberalism, realism, feminism and Marxism

Broad theoretical perspectives (such as liberalism, realism, feminism and Marxism) contain assumed definitions relating to rights, justice, liberty and equality. For example, liberals believe in the equal moral worth of each person, and this often leads to a focus on legal and political equality. In realism, equality of power between different political **actors** is “unnatural” and unachievable in the international system. Feminists predominantly believe in equal rights between men and women. For traditional Marxists, equality is predominantly viewed in economic terms.

Therefore, if you view the world through any of these theoretical lenses, this is likely to lead to disputes over the meaning of rights, justice, liberty and equality. These differences are in addition to contextual or experience-derived perspectives. If your personal definition of key terms overlaps with theoretical positions on the terms this does not necessarily make you a follower of that theoretical perspective. It is possible to have a “pick and mix” approach, resulting in a personalized selection of definitions or understanding of key concepts.

TOK

From your Theory of Knowledge lessons, you will be familiar with the exploration of knowledge questions. These are contestable questions about knowledge itself, such as: “What counts as good evidence for a claim?” During your subject studies, you are able to collect specific examples in order to help furnish your arguments from different points of view.

There are usually multiple plausible answers to a question, or competing interpretations and expectations. For example, if we pose the question “Should women have equal economic rights to men?”, people could give a variety of answers such as: “yes”, “sometimes”, “never”. Whether or not you personally agree with these points of view, it is important to acknowledge that there are different perspectives and examine the basis on which these claims are justified or unjustified. This should also lead you to question your own beliefs and the basis on which you justify your claims.

It might seem convenient to have one definition or application of an idea, but this is not practical in the diverse, changing and complex world of global politics.

Key term

Actors: those with some political power and/or authority who engage in activities that can have a significant influence on decisions, policies, media coverage and outcomes.

Key terms

Individual rights: the rights needed by each individual to pursue their lives and goals without interference from other individuals or the government.

Group or collective rights: rights held by a group rather than by its individual members.

Civil liberties: freedoms from interference in the lives of individuals by other individuals or the government. These freedoms are often detailed in the constitution.

Civil rights: specific rights which are guaranteed by legislation, for example, a law making it illegal to discriminate against job applicants based on gender.

Codification: the process by which laws are collected and arranged in an orderly way to form the basis of rights in a society.

Morals: the value judgements and principles about right and wrong with respect to people's behaviour. They can be decided by individuals or society.

Norms: the standards of appropriate behaviour. There is no value judgement by the individual as there is with morals. Instead, society dictates what is acceptable.

4.1.1 Rights

When most people consider rights, they closely associate them with freedom and law. Different states grant different rights to their citizens. Rights can apply to an **individual** or to a **group**. Rights inform the structure of governments, the content of laws and people's ideas about morality. Therefore, accepting a set of rights means that you are endorsing a specific view of what may be done, what must be done and what must not be done in the context of a given society.

Rights include the freedoms entitled to individuals or groups to act in certain ways, which are sometimes called **civil liberties**. For example, many states have the freedom of assembly, whereby people have the right to gather to express, promote, pursue and/or defend common interests collectively. Rights also include the protection of individuals or groups from certain acts, also known as **civil rights**. For example, in some states people are protected from being arrested if there is insufficient evidence that they have committed a crime, or people are protected from being imprisoned without a fair trial.

In a society, there are laws to protect these rights and compensate people if their rights are violated. Rights can also be protected through an overarching state constitution. This is called **codification**. People in a position of authority within society, such as elected politicians and civil servants, choose the rights in a society through laws and the state constitution. Laws and interpretations of state constitutions can be challenged in court by members of civil society.

Rights reflect the **morals** and **norms** in a society. This means that they vary from state to state.

Although there are a lot of similarities between rights in different states, there are some large differences. For example, the right to keep and bear arms in the US, is a fundamental right protected by the Second Amendment to the US Constitution: "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."

However, in countries such as China, Cyprus and Malaysia there are strict laws to regulate the manufacture, sale, transfer, possession and modification of small arms. In many cases, only the military and police have the right to bear arms. Carrying a weapon (except in very rare cases) is a criminal offence. There are severe legal repercussions if you are caught with a gun, regardless of whether you say it was for your own protection or you were carrying it for someone else.

Human rights are considered to be universal rights, which means that, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status, they apply to all humans at all times. They are also inalienable, which means that they should not be taken away, except in specific situations and according to due process. They are also indivisible and interdependent. This means that one set of rights cannot be enjoyed fully without the other. For example, making progress in civil and political rights makes it easier to exercise economic, social and cultural rights.

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Vienna Declaration and Programme of Action, UN World Conference on Human Rights, 1993

Individuals, groups or governments from one part of the world can use these basic rules to criticize the standards followed by other governments or cultures. People within a state can use human rights to criticize their own government or those with power in their society. This process can help to achieve justice.

There are many influences which helped to create what we now term "human rights". Developments from ancient civilizations, such as the Babylonians, Mesopotamians, Egyptians, Indians, Chinese, Andeans, Greeks and Romans, as well as religious texts and practices, all contain references that have similarities to the human rights we recognize today. However, the term "human rights" as it is applied to contemporary politics and society is relatively recent. It came into common use in the 1940s, after the Second World War and as a result of the United Nations' Universal Declaration of Human Rights (UDHR). Before these events, the term was rarely used and there were no social movements that invoked human rights as their organizing principle.

Activity

1. Locate and download a copy of the UDHR and also download a translation in your language.
The UDHR is the most translated document in the world. How many languages is it available in?
2. Watch a video on the history of human rights.
In which national-level document do human rights often appear?
What has happened at a national and regional level as a result of the UDHR?
3. Discuss one of the following questions in a group of four:
Can you think of any ways in which you have defended or promoted human rights during your lifetime?
Every year on 10 December, the world celebrates Human Rights Day, the anniversary of when the United Nations General Assembly adopted the UDHR in 1948. How could this day be marked where you live?

As the popularity of the UDHR increased outside the confines of the United Nations, various **stakeholders** and organizations—both government and non-government organizations (NGOs)—saw a need to add rights that could relate to all the world's peoples. Social movements began to grow in the 20th century, with goals such as achieving equal participation by women in society and defending cultural rights for social groups. These social movements campaigned for the inclusion of their ideals in the declaration.

Key term

Stakeholder: a party with an interest in or a concern about something.

ATL Research and thinking skills

We commonly see references to human rights or criticisms of a lack of adherence to human rights principles in the real world. Link the issues shown figures 1 to 8 to an article in the UDHR. Find real-life examples of these in different contexts.



▲ Figure 1 Workers protesting about working conditions in the US



▲ Figure 3 Minority religious group protesting for equal rights to practise their religion in Ethiopia



▲ Figure 5 Girls and women demanding equal access to education in Afghanistan



▲ Figure 7 Climate change activists using disruptive methods to protest in the UK



▲ Figure 2 Students demanding cancellation of student loans in the US



▲ Figure 4 Low-income urban dwellers appealing against the destruction of their homes in India



▲ Figure 6 Prisoners protesting the conditions of their incarceration in the Philippines



▲ Figure 8 Intolerance of LGBTQ+ related issues in the US

Concept: Perspectives

Since academics come from all over the world, their perspectives may be influenced by a variety of cultural, social and religious factors and backgrounds. Being aware of different perspectives, and most importantly what grounds these perspectives, is key to engaging in analysis and evaluation. Cases should be analysed to avoid a superficial, anecdotal or journalistic narrative on issues.

What different perspectives on the claims on human rights in the research task can you identify? What do the perspectives draw on to justify these claims? You could think about social and religious norms, historical precedents, legal precedents and theoretical positions.

In 1979, the Czech human rights official and law professor Karel Vašák proposed the division of human rights into three categories that correspond with the three prominent features of the French Revolution: liberty, equality and fraternity. Vašák suggested this would produce a set of principles that could be applied universally, and include all peoples regardless of religion, culture, location, gender or government. This takes us back to the fundamental aspect of rights: that they are part of each individual, cannot be differentiated by access to resources, or bought and sold, and that they are indivisible.

First-generation rights, or civil and political rights, correspond to the concept of *liberty*. These rights are grounded in the freedom of the individual to have opinions, to act politically, to engage in religion and, importantly, to assemble without interference. These also include freedom from torture and slavery, the violation of which is still common in all parts of the world.

Second-generation rights are the economic and social rights that correspond most closely to the concept of “equality”. These include the right to work, access to healthcare, a roof over one’s head, and food. They are sometimes referred to as “security-oriented rights” as they give individuals the security to live, work and support their families and communities.

Third-generation rights are sometimes referred to as cultural rights, corresponding to the concept of “fraternity”. These include the right to live in a reasonable environment, political rights and economic development. Third-generation rights most clearly include collective as well as individual rights, especially the formation of political parties and of economic development on all geographic levels.

A criticism of Vašák’s generations is that rights should be indivisible and that separating them into generations causes contradictions. Instead, rights are said to be interrelated and interdependent, and thus cannot be separated out according to the situation in which they are applied. It could also be argued that the rights are not universal, depending on the form of government or stage of industrial development. For example, some argue that the second-generation rights reflect socialist principles, which not all states subscribe to. Generally, a key issue is that human rights are defined as universal rights, but rights are mainly protected at a national level, and issues of justice are addressed at a national level. This means that the experience of human rights in different contexts is hugely varied.

Assessment advice

We use examples in global politics to illustrate points in paper 2 essays, or in short-answer questions when an example is required in paper 1. They are brief and do not require a depth of understanding of the issue. They have a focus on “what”. Case studies are an in-depth inquiry and they have a greater focus on “why”. These are more likely to be used in paper 3 responses or when a more in-depth response is required in paper 2.

The rights promoted by the French Revolution were specifically aimed at existing states and politics that have radically changed since then. Therefore, many debates look beyond Vašák's generations and specifically consider rights that apply to current situations, such as climate change and pollution. For example, states in the developing world could argue that they should have the same rights to pollute the atmosphere as the industrialized countries had. It could also be argued that a fourth generation of rights is required to address issues with rights in the digital era. Access to the internet in the modern world, and how lack of access may impact an individuals' or groups' ability to secure other rights, is a subject of debate. There are also debates around freedom to pursue and utilize scientific developments such as genetic engineering. The interaction of technology, governance and human rights is an unfinished project and therefore warrants discussion.

ATL Communication skills

1. Discuss the values and limitations of adding a fourth generation to human rights.
2. To what extent is adding to existing generations of rights practical and necessary?

TOK

With what certainty can we claim that human rights exist?

Concept: Power, sovereignty, legitimacy and interdependence

The idea of human rights, and the practice of working to achieve these rights, interacts with the four key concepts in global politics: power, sovereignty, legitimacy and interdependence.

Here are some questions to consider about these key concepts.

- In what ways can powerful states help and hinder the enforcement of human rights?
- When can state violence against civil society organizations be legitimate?
- How can we differentiate between legitimate state action in its own interest and abuse of human rights?
- How effective is mutual reliance between states and other political actors in helping to achieve universal human rights?

4.1.2 Justice (including political and social)

Justice is one of the most important moral and political concepts. It is at the heart of many political issues, and it has been a catalyst for change in the past and will be in the future. There are many claims regarding justice, and there are disagreements about what is fair, what is right and how justice should be achieved. The concept of justice is applied to individual actions, to laws and to public policies.

TOK

To what extent is it possible to know what is fair?

Activity

Access to justice, as well as being a central element of SDG 16 (Peace, justice and strong institutions), is crucial to the implementation of many of the other SDGs:

- SDGs 1 (no poverty) and 2 (zero hunger): rule of law and effective access to justice mean that labour contracts and environmental standards are respected which can increase farmer incomes and productivity.
- SDG 5 (gender equality): women, who often face multiple forms of discrimination, violence and sexual harassment, are particularly affected by legal exclusion.
- SDG 14 (life below water) and 15 (life on land): access to legal help can help communities to secure rights over common land, giving them more control over their livelihoods and greater incentives to preserve their environment.

1. What progress has been made with these goals?
2. To what extent does success depend on rights granted at a national level?
3. Does being able to seek justice through the judicial system increase success?
4. What barriers, apart from the judicial system, might inhibit progress?
5. What regional issues are preventing the progress towards sustainable development?
6. Is there a right to development?

It is common to hear the phrase "justice has been served" in relation to punishments and fair treatment in the legal system. This is the legal retribution for breaking laws in a society. This phrase is also used by those seeking revenge outside of the legal system. "Restorative justice" is a term associated with a meeting between victims of crimes and those responsible for the crime in order to repair and move forward. It can be used in schools, workplaces and the criminal justice system. As discussed in *2 Peace and conflict*, restorative justice is also used in post-conflict situations to try to "heal" the conflict and promote peace (through reconciliation and forgiveness). In global politics, the focus is on the social and political systems that help or hinder the delivery of justice.

Justice is a moral judgement that suggests that individuals should be treated in a way that is equitable and fair. Justice within a society and political system is often called "social justice". It involves benefits and rewards being distributed fairly among society. When political practices and institutions reflect and work towards fairness, this is known as **legal justice**. Laws should be written to allow for fair procedures for all citizens, but this does not necessarily guarantee social justice.

- An example of social justice would be women making up 50% of the elected representatives in a government.
- An example of legal justice would be a law requiring employers not to discriminate based on gender.

Political justice comprises fair political rights, such as political participation, and liberties, such as the right to form associations with others who think the same way (even if they threaten established powerful groups). The ability to join, challenge or influence those with political power is a key aspect of political justice. In the US and Europe, civil and political rights evolved in the 18th and 19th centuries (first generation), and economic, social and cultural rights in the 20th century (second generation). Political justice can be interpreted as a necessary step to achieving social justice. If someone thought that some political/ideological ideas should not spread, then it could be said they are working against political justice.

Key term

Legal justice: justice articulated through the means of laws to ensure fairness in a society.

The gap between ideas of justice and the justice experienced by people in the world is wide and uneven. Furthermore, the definition of justice depends on the understanding of other concepts such as equality. If you believe that humans have equal moral worth, rather than believing that some people are just naturally better or more deserving, this will influence your definition of justice. You might believe that we should have equal political and legal rights (to achieve justice), but that society is naturally unequal, and therefore redistributing goods and resources to achieve fairness is undesirable. For example, you might believe that the individual is responsible for things like medical coverage regardless of their income and that it is not the job of the state to intervene.

“Egalitarian justice” is an interpretation of justice that holds equality as the primary route to gaining justice. This is the idea that advantages must be equally distributed in society. It will normally focus on the equality of people’s experiences, but the agency of the individual will also have an impact on their own experience. This way of thinking about justice acknowledges that some lack of equality is unchosen and that to achieve justice these inequalities should be addressed.

Context can affect the outcomes of justice. The specific social, economic, legal and political structure within a state will likely mean that the resulting experiences will be different, even if ideas of justice are applied in the same way.

ATL Thinking skills

1. What is your vision of social justice?
2. Consider your response to the following quotes. What vision of social justice do they suggest?

Justice? You get justice in the next world, in this world you have the law.

A Frolic of His Own, William Gaddis, 1994

The opposite of poverty is not wealth. In too many places, the opposite of poverty is justice.

Bryan Stevenson, 2012

Justice is an approach to life, and fairness is a more tangible manifestation of it. If justice is the tree, fairness is the fruit.

Imam Omar Suleiman, 2021

Equal pay for women is a matter of simple justice.

Mary Anderson, 1950

Equality of opportunity is the essence of social justice.

Tony Honoré

3. What legal and political actions would need to be taken to make these visions a reality?
4. What barriers to achieving these legal and political actions might there be?

Some justice thinkers do not constrain their thinking to individual societies or states. **Cosmopolitan justice** theorists believe that the world constitutes a single moral community and that all people have obligations towards each other. To achieve this, there could be global institutions, and possibly a world government. However, many cosmopolitan political thinkers still see a separation of authority between global national and local levels as necessary. Cosmopolitan justice is strongly linked to the idea of human rights, with the belief that all humans have equal moral worth, regardless of where they are.

Our ability to know about peoples in places far away from ourselves, and an acceptance that we are living in a **post-Westphalian** world order, has led to an increase in arguments for cosmopolitan justice. This could be in relation to just conduct in war, globalization, economic integration or climate change. One interesting question posed by thinkers in this area is: “Is world justice possible without a world state?” (*Stanford Encyclopedia of Philosophy*, 2015). The idea that the state is the most important actor in global politics could be challenged by cosmopolitan ideas of justice.

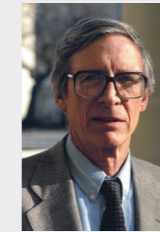
Key term

Cosmopolitan justice: a conception of justice in which everyone is a citizen of the world rather than a citizen of a nation state. All humans have equal moral worth and should enjoy equal consideration of their interests. To deliver justice, this means that we also have responsibilities beyond the state borders in addition to national or local responsibilities.

ATL Research skills

The philosophers John Rawls (figure 9) and Amartya Sen (figure 10) are considered to be two of the most influential thinkers on justice. Read the two extracts below and summarize their positions on justice.

By removing our knowledge of our place in society, natural assets and abilities, intelligence, and strength the principles of justice are chosen behind “a veil of ignorance”. The result is that this process guarantees the equal basic rights and liberties and provides fair equality of educational and employment opportunities.



A Theory of Justice, John Rawls, 1971

▲ Figure 9 John Rawls

The theory of justice must be more concerned with the elimination of removable injustices rather than defining a perfectly just society.



The Idea of Justice, Amartya Sen, 2009

▲ Figure 10 Amartya Sen

The idea of “ecological justice” considers our obligations to future generations, especially in relation to overusing finite natural resources. The idea of justice goes beyond what is right or fair now and considers the long-term negative consequences of actions. In the present day, ecological justice also relates to the negative ecological impacts experienced by specific species, society and groups within society. For example, proponents of ecological justice argue that rich industrialized countries should acknowledge their role in the current ecological crisis and that there is a moral obligation to take drastic and immediate action to remedy their impact.

This raises interesting questions such as whether financial compensation should be paid for past ecological destruction. If a crime is committed in the name of ecological justice, should this be punished? It also challenges those in power to consider the power relations between people who are alive now and the potential inhabitants of our planet in the future. It is an interesting thought experiment to imagine a policy being determined with equal weight being given to its current and future impact. What would be different about policy outcomes?

Key term

Post-Westphalian: the 1648 Treaty of Westphalia is normally accepted as the start of a global system based on the international law principle that each state has sovereignty over its territory and domestic affairs. This principal of non-interference has been altered since the end of the Cold War in the early 1990s, as the US and Western Europe began talking of a post-Westphalian order in which countries could intervene against other countries under the context of human rights abuses.

Activity

Read the extract below from the Bingham Centre.

The importance of access to justice cannot be overstated. Access to justice is fundamental to the establishment and maintenance of the rule of law, because it enables people to have their voices heard and to exercise their legal rights, whether those rights derive from constitutions, statutes, the common law or international instruments. Access to justice is an indispensable factor in promoting empowerment and securing access to equal human dignity. Moreover, a mutually supportive link exists between, on the one hand, improving, facilitating and expanding individual and collective access to law and justice, and, on the other hand, economic and social development. This link is recognised internationally with access to justice likely to be included when the Member States agree on the UN development agenda for 2015–2030.

The International Access to Justice: Barriers and Solutions, Bingham Centre for the Rule of Law Report, 2014

What barriers may exist in a society which restrict access to justice? Try to think of examples of institutional barriers, social barriers and economic barriers.

Key terms

Positive liberty: the possibility of acting as you wish and have control of your life.

Negative liberty: the absence of barriers or obstacles restricting your ability to act as you wish.

ATL Research skills

Search online for the latest *Human Freedom Index* report. Note how it uses some of the terminology discussed in this chapter to explain the purpose of the report and the methodology used to rank states.

1. Examine the overall rankings. Does the order of states surprise you? Which states have been ranked differently from the last report? What factors changed their ranking?
2. Examine the regional section. Which regions rank highly for freedom? Why? Which regions have low rankings? Why?
3. Examine the country profiles for states you are interested in. What information can you find out about different categories of freedom?

4.1.3 Liberty

Liberty, or freedom, is a central concept to political life and is a popular topic in everyday discussion. The desire to have liberty is very strong. Therefore, the way this term is interpreted and defined can have important political implications. Some claim that freedom is the most important thing to work towards achieving. Whereas others would cite other concepts such as equality.

The terms “liberty” and “freedom” are frequently used interchangeably and, in many languages, the same word encompasses both. Politicians and other political actors use different definitions of liberty and freedom to justify a wide range of policies and political actions. Therefore, it is important to understand some of the terminology and ideas associated with this concept to be able to analyse political actions. You do not need to have an in-depth knowledge of political philosophy and theory, but it is important to understand that this concept has a variety of meanings. Many of these meanings compete with each other. Therefore, you do need to understand and have examples of different ideas about liberty/freedom in practice. It is also useful to know the difference between **positive** and **negative liberty**. Isaiah Berlin is a key political thinker in this area.

We use the negative concept of liberty in attempting to answer the question “What is the area within which the subject—a person or group of persons—is or should be left to do or be what he is able to do or be, without interference by other persons?”, whereas we use the positive concept in attempting to answer the question “What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?”

Two Concepts of Liberty, Isaiah Berlin, 1969

What you are, and are not, free to do is frequently discussed in the media. Sometimes the reason for political parties or NGOs forming is to bring about a particular change in the freedoms allotted to us. Consider recent protests around the world. How many of them were based on a call for action related to freedom or liberty?

ATL Thinking skills

1. How are power holders in any given society treated versus those with less power? To give people with less power the same level of freedom, what would need to be changed in the society? Very often, these changes are not attractive to the power holders. Can you think of examples of this?
2. Which is stronger, individual freedom or the collective freedom of a group? Why?
3. How is liberty measured? Is just “the availability of options” a valid way to measure freedoms? Do you actually to “possess” the freedom or just have it available?

“Individual freedom” is the idea that being an individual is more important than belonging to any social group, and freedom to think and act as you wish is an essential requirement to leading a good life. This idea is central to liberalism. However, it is not correct to interpret individual freedom as being able to do whatever you want. Your actions should not cause harm to others, and so there are limits.

Many interpret individual freedom as freedom from interference and intervention from the state. However, other proponents of liberalism (liberals) encourage some state actions in the lives of individuals to help them lead better lives, for example, compulsory education. Interventions like this can enable individuals to obtain freedom and lead a good life. The belief in individual freedom is a modern concept, and many institutions, laws and social practices in societies value it highly, such as in Switzerland, New Zealand and Denmark. However, in some contexts, actions associated with individual freedom are often interpreted as selfish. This can be based on political ideas or on social norms derived from historical conditions. Countries like Iran, Somalia and Saudi Arabia have more emphasis on community and collective rights.

4.1.4 Equality

Definitions of equality are often disputed. Inequality between individuals, groups and states is so common that trying to create equality might be imposing an abstract idea. The idea of equality can be confusing because sometimes we refer to individuals and sometimes to groups. Furthermore, we sometimes mean equality within a single society and sometimes we mean equality across state boundaries.

However, making societies less unequal is an appealing idea to many, and is a central idea in many political ideologies, but the meaning of it is often different. For example, liberals promote legal and political equality, and **equality of opportunity** in which people have the same opportunities to pursue freedom. This is linked to the idea of “meritocracy”. In the past, the social strata you were born into determined your life chances. Equality of opportunity means that individuals can go up, or down, in the social hierarchy based on their merits alone. This is sometimes referred to as “social mobility”. It often requires significant state intervention in the lives of citizens to achieve. Many states are selective in the areas in which they aim to deliver equality of opportunity.

Many conservative political ideologies contain the idea that humans are all different, and therefore favour social hierarchies and constructs. For example, although conservatives might be in favour of equality of opportunity, they may welcome economic inequality. On the other hand, socialists have a strong focus on social equality, in other words, the **equality of outcome**. Social inequality often requires a high degree of intervention to achieve the same outcome for all groups. Social equality on all levels can be impractical, and so states often choose certain areas for equality of outcome, such as education. Some believe this approach results in the state exerting too much power on the lives of individuals. In extreme cases, states have attempted an equal division of economic goods. Some would argue this outcome disincentivizes hard work and innovation.

Key terms

Equality of opportunity: the idea that the impact of an existing social hierarchy can be mitigated to give all individuals the same opportunities to succeed in life or the same starting point.

Equality of outcome: the idea that everyone should get the same outcomes in a society, or the same end point.



▲ **Figure 11** The symbol of justice, Lady Justice, is often depicted wearing a blindfold to represent the equality applied in most legal systems

In the social and political context, we often think of equality as all parties' perspectives receiving equal consideration, unless special consideration is required. This form of equality is expressed through laws and voting rights. Legal equality is the central political principle behind most modern legal systems (figure 11). Phrases such as "equality before the law" mean that the law will be applied equally regardless of who you are. This process of treating everyone the same is referred to as "formal equality". It is criticized as it often does not take account of the natural inequalities in society or political systems.

The idea of equity means that sometimes people need to be treated differently to provide equality of opportunity. For example, more money might need to be spent on flood defences for a community that are naturally more impacted by the effects of climate change.

These ideas appear in article 1 of the UDHR: "All human beings are born free and equal in dignity and rights" and in article 7: "All are equal before the law and are entitled without any discrimination to the equal protection of the law." They also appear in article 26 of the International Covenant on Civil and Political Rights: "All people are equal before the law and are entitled without any discrimination to the equal protection of the law."

These documents do not include articles that set out material equality (economic equality), although a focus on equal living standards is featured in the UDHR, International Covenant on Economic, Social and Cultural Rights and the UN Sustainable Development Goals (SDGs). Second- and third-generation human rights have a focus in these areas.

Substantive equality is a fundamental aspect of human rights law that is concerned with equitable outcomes, and equal opportunities, for disadvantaged and marginalized people, and groups, in society. Policies, procedures and practices used by states and private actors should address and prevent systematic discrimination to achieve equal results of basic human rights. Substantive equality takes an equality-of-opportunity approach with adjustments that factor in the situation or circumstances of individuals and groups. Theorists, such as Sandra Fredman, propose a four-dimensional approach:

1. **Redress disadvantage.** This starts with acknowledging that the relationships between certain groups in society are not equal. It also has a focus on the disadvantaged group(s) and the detrimental consequences attached to that status. It is a targeted approach to recognizing and addressing disadvantage, rather than starting from a point of neutrality and assuming all are equal or similar to the dominant group in society.
2. **Address stigma, stereotyping, prejudice, and violence.** The principal that all individuals are equal is widely accepted and it suggests that you do not need to earn equality, you have it by nature of being human. However, all societies have forms of identifying individuals and groups in a negative way, which is often the root of inequality.
3. **Enhance voice and participation.** Political participation counters political exclusion. If you are not represented in the political system, then your interests may be overlooked and rights to equal concerns violated. A practical way to do this is through quotas for certain groups such as women or indigenous groups. Social participation and inclusion counters social exclusion. A harmonious society will advantage all groups and will enhance the solidarity within a society.
4. **Accommodate difference and achieve structural change.** Social structures need to be changed to accommodate difference. Avoiding change will mean that differences remain detrimental, and equality cannot be achieved. For example, this could be in the form of altering the built environment, changing the working day, acknowledging the festivals of minority religions or teaching in other languages.

Case study

Substantive equality in Canada

The territory that is now Canada had been inhabited by indigenous people since around 40,000 years ago (although this is the subject of debate). More recently, other groups have migrated to Canada, including people from Europe, Asia, Africa and the Middle East. Canada is a liberal democracy, so protection of individual rights is a strong feature of the political and legal system. However, collective rights are also protected. The Canadian constitution has provisions for the preferential treatment of under-represented groups in some cases (for example, guaranteed seats in parliament) and identical treatment of under-represented groups in other cases to allow them to flourish (for example, state funding for minority schools). You can find the 1982 Canadian Charter of Rights and Freedoms, which forms part of the Canadian constitution, online. This is frequently cited in legal challenges through the court system.

Indigenous groups in Canada (known as the First Nations) have the collective right to fish for food, social and ceremonial (FSC) purposes. This is protected under section 35 of the Constitution. Licensed indigenous harvesters can catch what is needed for themselves and their community for FSC purposes. FSC fishing rules do not allow fishers to sell what they catch.

First Nations children in Canada have their human rights protected by the child-first principle called "Jordan's Principle". It is named after Jordan River Anderson, a child from the Norway House Cree Nation born with multiple disabilities, who died after federal and provincial governments could not agree on which government should pay for services.



▲ **Figure 12** A First Nations man fishing in British Columbia, Canada

Whatever the meaning of equality, it is quite clear that equality existing on paper is very different to achieving it in reality. Equality of capability approaches, such as Amartya Sen's, measure the extent to which an individual has the real opportunity, or capability, to achieve equality. However, it is not always easy to measure these capabilities.

In many cases, we celebrate differences between individuals and groups in a society, and the right to act on these differences could be positive for individual freedom. Protests are often organized in support of individuals and groups who believe they deserve special considerations that are not currently being recognized. Other individuals and groups may end up supporting counter-protests on the grounds that fairness or justice in society would be undermined if such special considerations were granted.

TOK

"When there are competing definitions of concepts (for example, rights, justice, liberty and equality), the most widely accepted definition should be accepted." Discuss this claim.

4.2 Interactions of political stakeholders and actors

There are a wide variety of stakeholders and actors involved in interactions related to rights and justice.

4.2.1 The state and national governments

The law is a set of rules created by state institutions that apply within the territorial boundary of the state. The laws created have sanctions which are recognized by the state and enforced by state-authorized bodies. Laws and moral values both set out acceptable behaviours within society. However, moral values do not always get transformed into laws. Historically, the moral and religious values of a society influenced the development of law. Today, lawmakers are often elected politicians, although in some places religious leaders or a monarch may also write laws. Table 1 compares laws and morals.

Law	Morality
Sanctions are invariably imposed for the infringement of a legal obligation.	There is no official sanction for immoral behaviour, although society often creates its own form of censorship.
Law is deliberately changed by parliament and/or the courts.	Morality cannot be deliberately changed, rather it evolves slowly.
Legal principles need to incorporate a degree of certainty.	Morality is invariably much more flexible and variable.

▲ **Table 1** Differences between law and morality. Source: *Legals Skills and Debates in Scotland*, The Open University

ATL Thinking and communication skills

1. Can you think of any laws in your area or region that are based on morality?
2. Discuss how and why laws on morality might be problematic.

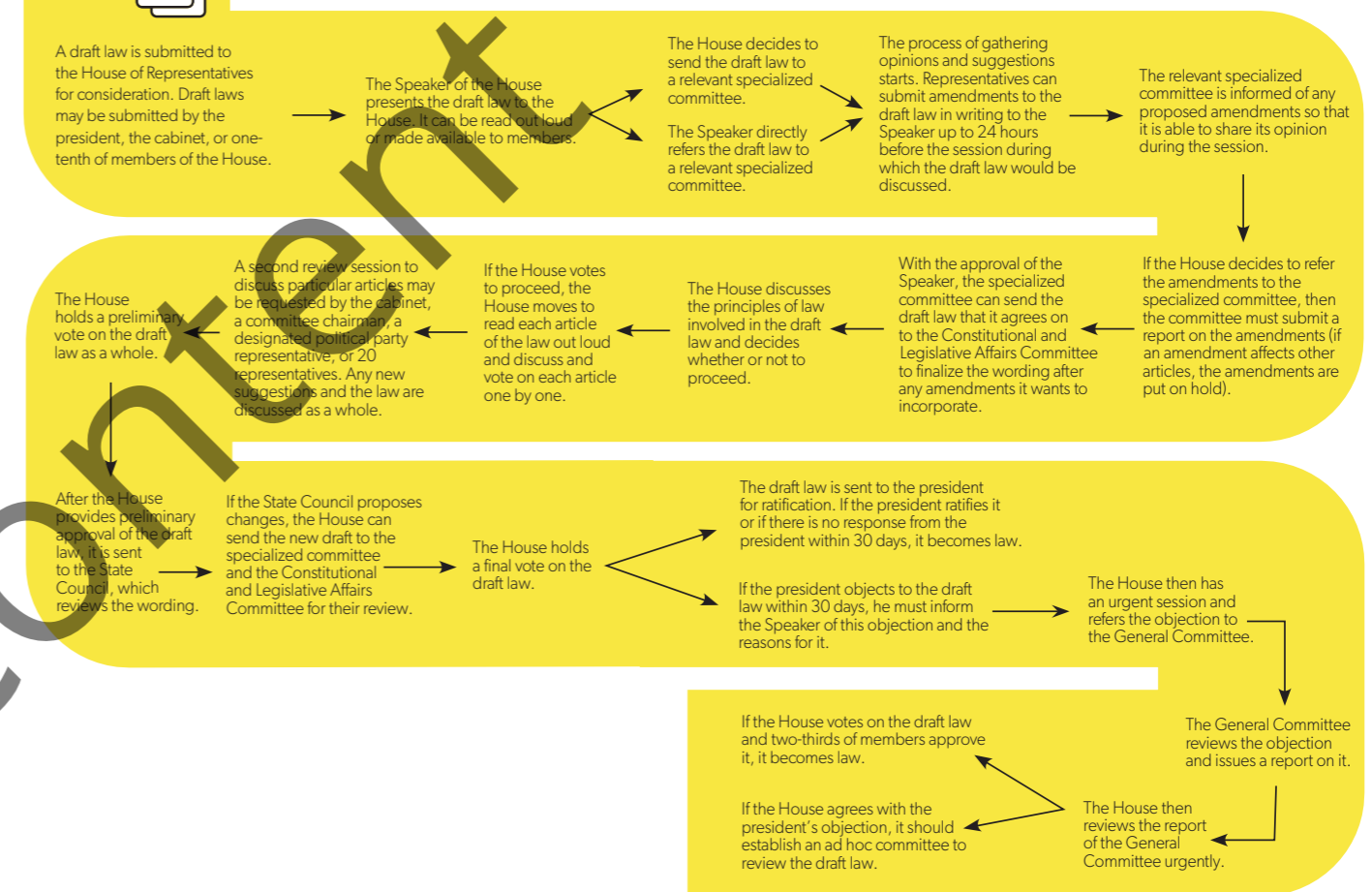
TOK

Are political judgements a type of moral judgement?

State constitutions and documents, such as a bill of rights, establish the foundation of rights, laws and authority in a state. The process of collecting laws together to form the basis of a constitution is called codification. New laws have to comply with the existing standards agreed in the state constitution. This process has a very long history dating back to 2000 BCE, with the *Code of Ur-Nammu* in Ancient Sumer. Three centuries later, the Babylonian king Hammurabi enacted his own code, which provides some of the earliest examples of the doctrine of "lex talionis", or the laws of retribution (an eye for an eye). The *Code of Hammurabi* also features one of the earliest examples of the law where an accused person is considered innocent until proven guilty.

The context within which laws are made is very important and this accounts for variation between states. In most states there are several stages in the law-making process. This is to ensure that those in power at different levels agree with the new law, and see it as necessary, workable and compatible with the legal code. Figure 13 shows the process in Egypt.

HOW DOES A BILL BECOME A LAW IN EGYPT?



▲ **Figure 13** The process by which a bill becomes law in Egypt. Adapted from the Tahrir Institute for Middle East Policy (TIMEP)

ATL Research skills

1. What is the law-making process in your area or region?
2. Does your country have a codified constitution?
3. Does your country have a bill of rights?
4. In your country, how long on average does it take for a law to come into force?
5. Compare and contrast your findings with your peers.

Key terms

Citizen: a person within a society of free people, who collectively possess sovereignty.

Subject: one who is under the power of another. Subjects look up to a master who often has a religious and/or hereditary authority.

Rights and justice vary greatly from state to state, and region to region. An example of this is whether the people of a state are considered a **citizen** or a **subject**. In some parts of the world, the transformation of a state's people from subjects to citizens is considered an example of gaining rights and justice. Being a citizen of a state means that you have the legal rights afforded by that state and you can seek justice for infringements of these legal rights.

Concept: Legitimacy

When the population of a state agrees with the authority of the state and its institutions, the state has legitimacy. If they agree with the norms (fundamental ideas or basic rules) then this is described as "normative legitimacy". If they agree with the way justice is followed up on, then this is "procedural legitimacy".

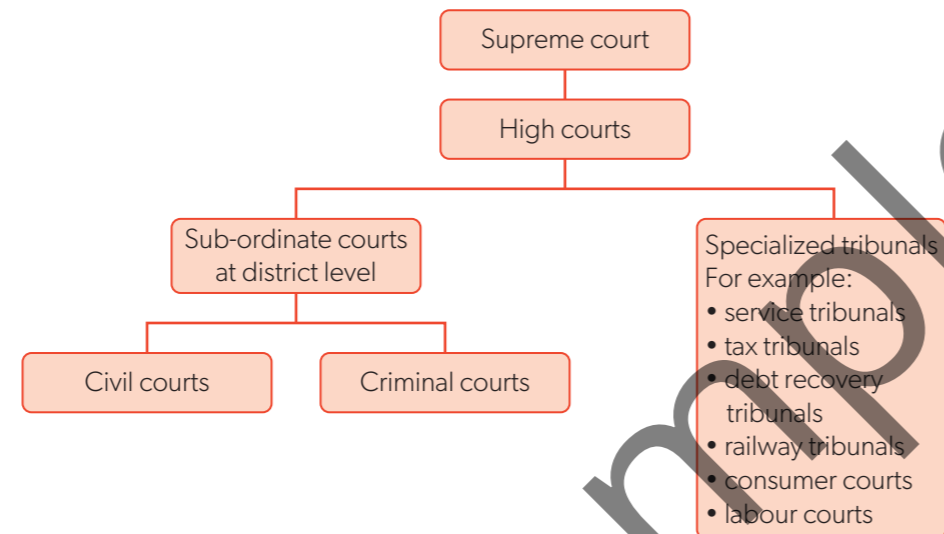
ATL Research skills

Are people in your area or region subjects or citizens? Can you be both? What are the key historical dates in the process?

Compare and contrast your findings with your peers.

Judicial systems

The judicial system is the structure by which violations of rights and laws are addressed in the hope of attaining justice. The structure of the judicial system is different for each state. A common feature is that there is a hierarchical structure and many attempts to prove innocence or guilt. This is to help give legitimacy to the judicial system and ensure fairness (justice) for those engaged with the legal process. Figure 14 shows the system in India.



▲ Figure 14 Hierarchy of the judicial system in India

Justice for the victims and due process for the accused are considered to be important aspects of a fair society. Not many people in the world would claim "I do not want justice". However, the concept of justice is hard to define. The norms in each society vary, and so the outcome of justice is unlikely to be the same for each individual or in each situation. This means that outcome of justice could be very different in different contexts. The easiest way to think about justice might be "fairness in the process of achieving rights". This means that the outcome may not be the same for each individual; however, the process leading to the outcome should be fair within the context. For example, in some US states, justice for victims of violent crime might be **capital punishment** for the offender. However, justice for victims of violent crime in Finland might be the **rehabilitation** of the offender in an open prison.

Key terms

Capital punishment: the process of sentencing convicted offenders to death for the most serious crimes (capital crimes) and carrying out that sentence.

Rehabilitation: the process of re-educating those who have committed a crime and preparing them to re-enter society. The goal is to address all of the underlying root causes of crime in order to ensure inmates will be able to live a crime-free lifestyle once they are released from prison.

Case study

Justice in Finland

In Finland, there is more focus on rehabilitation than retribution. Therefore, for minor crimes, probation and community service are often used as punishments. Sentencing criminals to a closed prison is seen as a last resort. Open prisons, where prisoners have minimal supervision, are favoured. Prisoners usually have to work and be self-sufficient by cooking and cleaning. This is seen as a better way to prepare criminals for when they rejoin society and to prevent them from committing crimes again.

The lengths of prison sentences in Finland are exceptionally short compared to other countries. Life sentences are given for murder, but prisoners are given probation at the earliest opportunity, often after only 10 years. As of 2022, Finland has the lowest incarceration rate in the EU, with an estimated 51 people per 100,000 in some form of prison. This compares with 74 in neighbouring Sweden, and

177 in Lithuania, which has the EU's highest rate of incarceration. The most recently available data suggests that the reoffending rate in Finland is also very low, at 38% (United Kingdom was 48%, and in Sweden it was 61%).

Violent crime is relatively rare in Finland, and guns and other weapons are tightly regulated. There have been some isolated attacks involving knives and guns and some terrorist incidents by radicalised individuals. The first recorded terrorist attack in Finland was in 2017. Finland's traditionally soft approach to sentencing criminals has been challenged by the rise in violent extremism. Perceived issues around immigration, integration and security have led to calls for a rethink to the approach to justice. The government response was to launch the "National Action Plan for the Prevention of Violent Radicalisation and Extremism" in 2019.



▲ Figure 15 Suomenlinna Island, Finland, has hosted an "open" prison since 1971

ATL Research skills

1. What is the judicial system in your area or region?
2. Is there a separation between civil and criminal cases? Are there any other types of legal systems?
3. What is the highest court called?
4. How long on average does it take for the legal process to be completed and a defendant to be found innocent or guilty?
5. In your country, what is the outcome of justice (for example, the likely punishment if the defendant is found guilty) area or region for these offences?
 - Murder
 - Bank robbery
 - Accidental killing
 - Breaking labour laws on working hours
 - Racial abuse (verbal abuse)
6. Compare and contrast your findings with your peers.