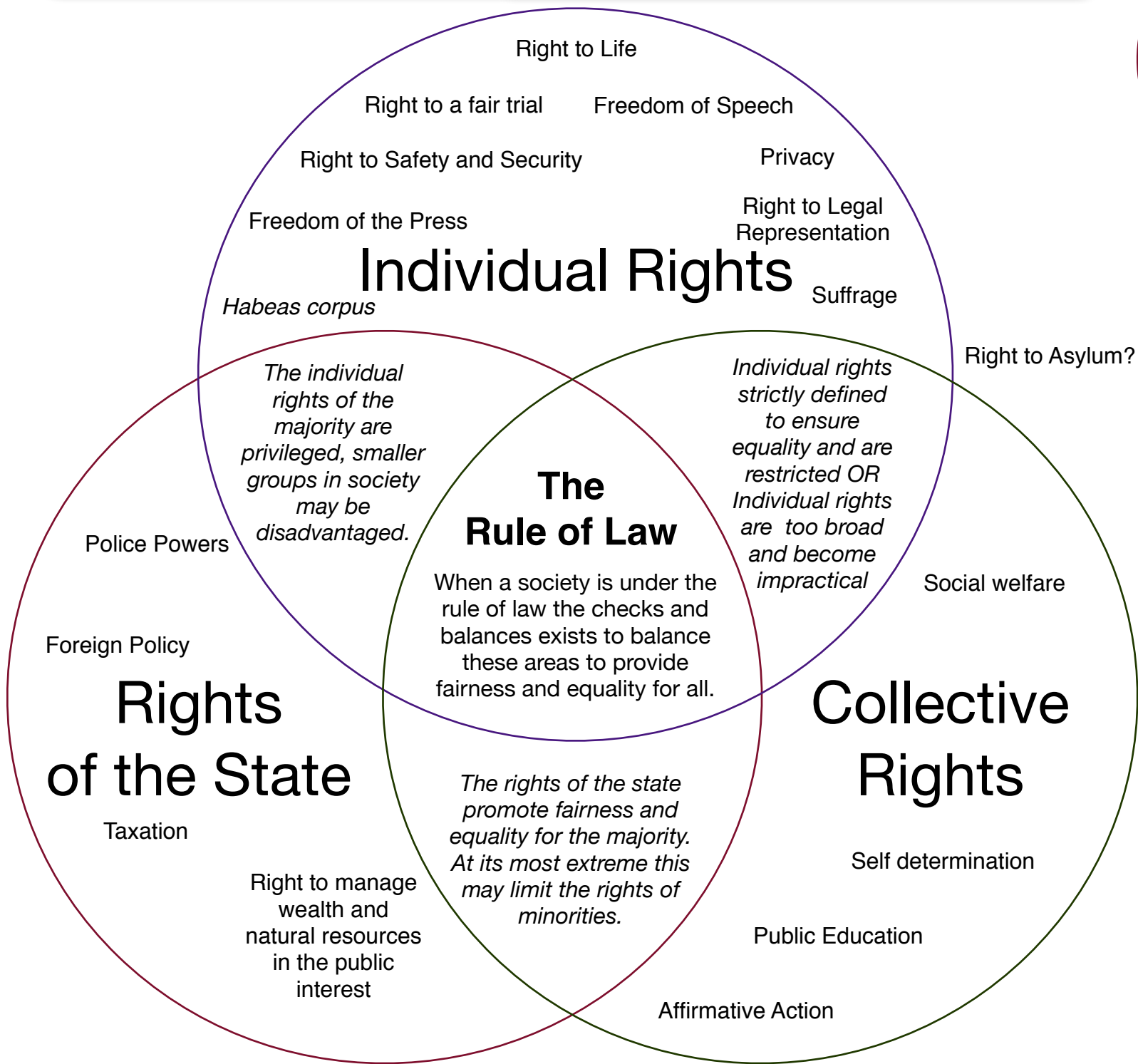


Protecting HRs Under Australian Law	International Agreements on Human Rights You Should Know:
Protections of rights under Australian law: - The Federal Constitution - Statute Law - Common Law - The Courts Can you provide an example or a case for each of the above?	Can you name and describe at least two rights each agreement promotes: - Universal Declaration of Human Rights (1948) - International Covenant on Civil and Political Rights (1966) - International Covenant on Economic, Social and Cultural Rights (1966) - Convention Relating to the Status of Refugees (1951)

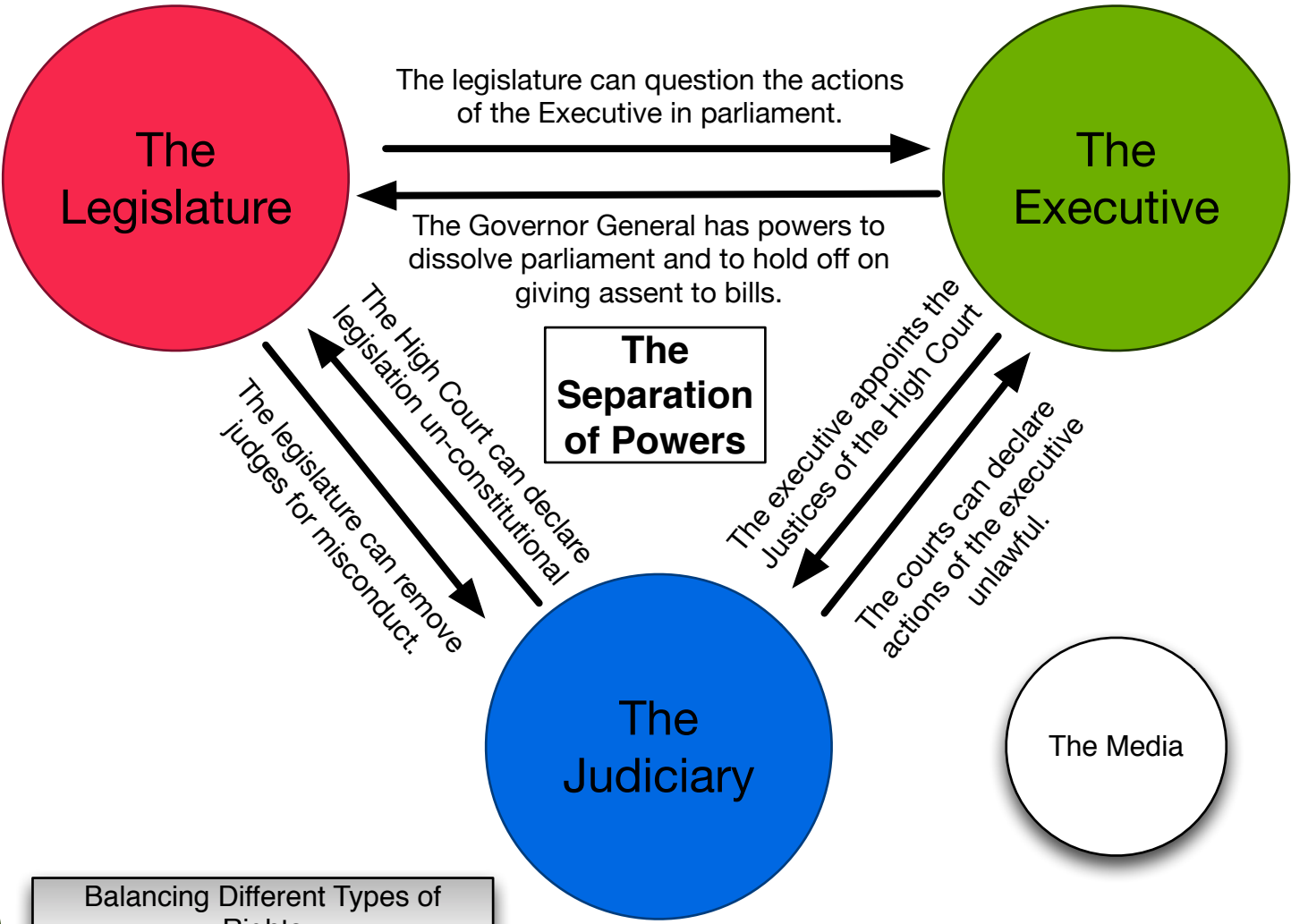


Rule of Law

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Rule of Law Human Rights Refugees



Balancing Different Types of Rights

The diagram to the left represents different types of rights and explains some of the possible consequences of making some types of rights more important than others. In practice it is very difficult to draw a distinction between individual rights and collective rights; however, looking at them in this way allows you to see the competing interests which the STATE (government) must balance to promote fairness and equality within society.

The Separation of Powers and the Rule of Law

The rule of law requires the use of power to be controlled by law. The separation of powers ensures that no arm of government has too much power and that there are checks and balances on the use of power. The separation of powers ensures that government remains accountable to the people. A government which follows the law, and is accountable, transparent with access to the courts is more likely to provide fairness and equality to citizens.

The Australian Constitution and Human Rights

The Australian Constitution does not contain as many express rights as the United States constitution as it was believed that operation of the separation of powers and the courts would be sufficient to protect the rights of citizens

s51 (xxxii), the government has the right to acquire your property, but only on ‘just terms’

s80 right to trial by jury if charged with an indictable offence and the sentence is greater than 2 years.

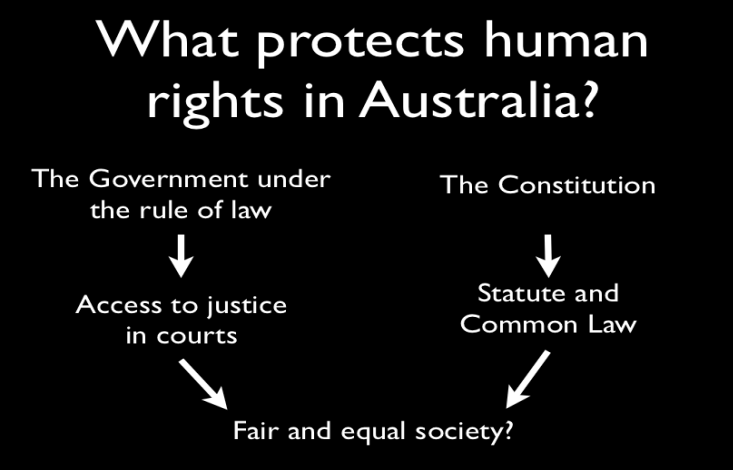
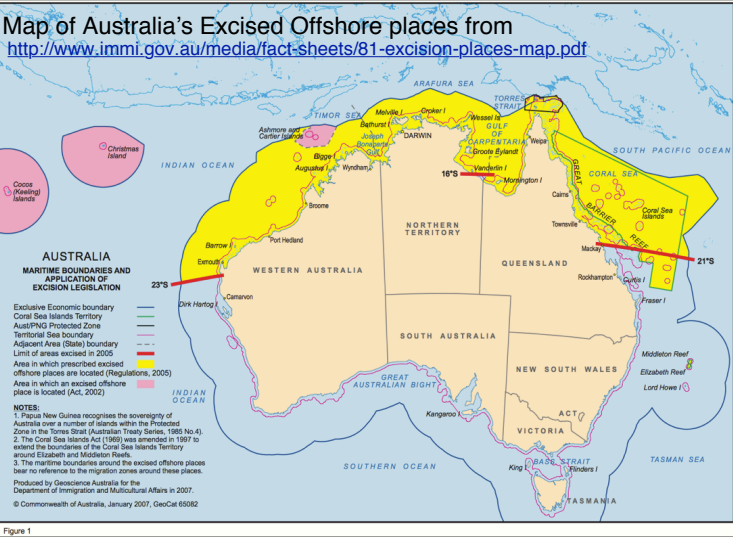
s116 freedom of religion - the Federal Government cannot make laws to establish or impose religion on citizens; or prevent the exercise of religion.

s117 states laws cannot discriminate against people from other states

Refugee Convention (1951)

What is a refugee?

'A person who owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social or political opinion, is outside the country of his/her nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country.'



The Rights of Refugees Under the Convention

Article 31 - prevents states from punishing those seeking asylum for unauthorised entry, and allows for freedom of movement, except while deciding on their refugee status

Articles 32 and 33 the right not to be returned (refoulment)

Terminology for Asylum Seekers/ Refugees

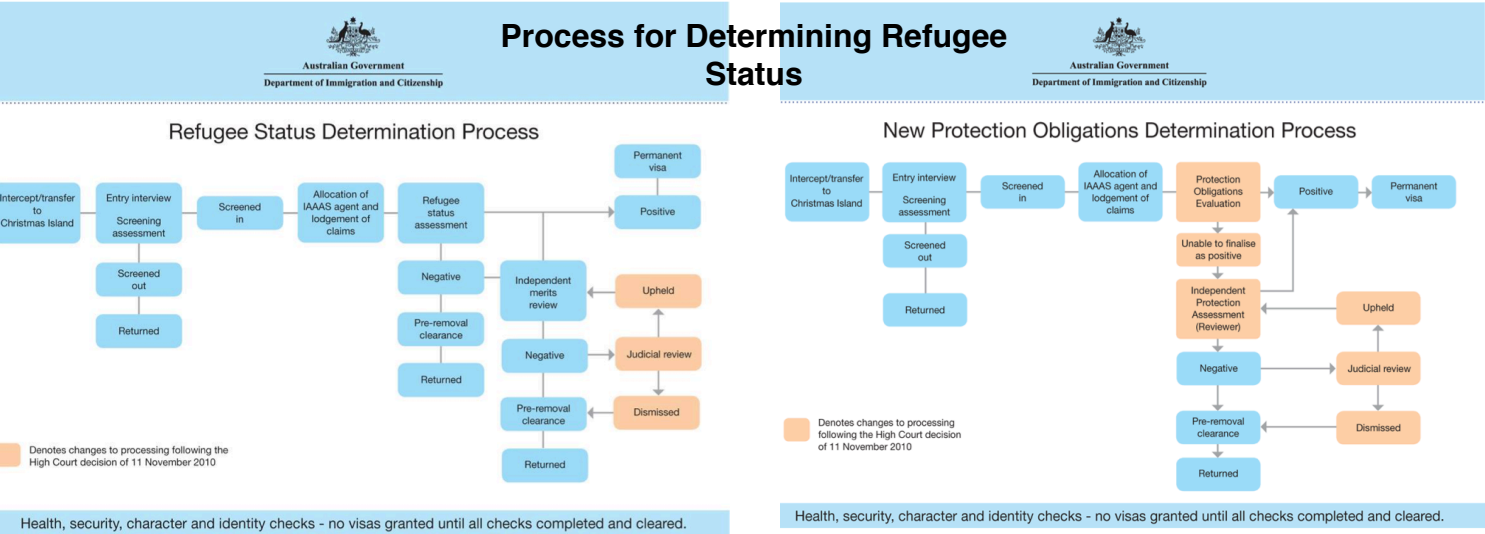
Asylum seeker - a person who has fled their country seeking refugee status

Irregular Maritime Arrivals (IMAs) - an asylum seeker who arrives in Australia via boat who does not have a visa

Unlawful non-citizens - a person who enters Australia without a visa and who is not a citizen.

Offshore entry person - someone who enters Australia at an excised offshore place and beomes a unlawful non-citizen.

Refugee - a person who is granted a permanent protection visa.



Before High Court decision

Minister Can Lift the Bar:

MIGRATION ACT 1958 - s46A

Visa applications by offshore entry persons

(1) An application for a [visa](#) is not a valid application if it is made by an [offshore entry person](#) who:

- (a) is in Australia; and
- (b) is an [unlawful non-citizen](#).

(2) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to an [offshore entry person](#), determine that subsection (1) does not apply to an application by the person for a [visa](#) of a class specified in the determination.

- High Court Cases
- 1) *Plaintiff M 61/2010E v Commonwealth; Plaintiff M 69 of 2010 v Commonwealth* (2010) HCA 41
 - The High Court acted as a check on the power of the Executive
 - It interpreted the Migration Act in a way that protected human rights
 - All IMAs have the right to judicial review of their application if the Minister chooses to consider them for Refugee status under s46A of the Migration Act
 - 2) *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011)
 - The Minister’s interpretation of s198A of the Migration Act was invalid because it was based only on the assumption that Malaysia would protect the 800 sent there
 - This was not good enough for the High Court to accept that Malaysia passed the test set out in s198A
 - The decision granted a permanent injunction preventing the plaintiffs or any other asylum seekers from being sent to Malaysia
 - Which human rights did the High Court protect?

After High Court decision

Who's Who in Immigration Law?

- The Minister for Immigration and Citizenship
- Department of Immigration and Citizenship Officials
- Justices of the Federal Magistrate's Court, Federal Court and High Court.

Minister can send asylum seekers to a declared country if:

Migration Act 1958 (Cth) s198a:

‘(3) The Minister may:

- (a) declare in writing that a specified country:
- (i) provides access, for persons seeking asylum, to effective procedures for assessing their need for protection; and
- (ii) provides protection for persons seeking asylum, pending determination of their refugee status; and
- (iii) provides protection to persons who are given refugee status, pending their voluntary repatriation to their country of origin or resettlement in another country; and
- (iv) meets relevant human rights standards in providing that protection; and

(b) in writing, revoke a declaration made under paragraph (a).