



GRIFFITH JOURNAL OF
LAW & HUMAN DIGNITY

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#RIGHTSPLAINING: POLITICAL SPINERTIA OR A HISTORIC FUTURE FOR HUMAN RIGHTS IN AUSTRALIA?

BENEDICT COYNE*

Opening Speech for the Inaugural Australian Lawyers for Human Rights (ALHR) National Human Rights Conference at La Trobe University Law School City Campus, Melbourne, 17 February 2017 presented by ALHR national President Benedict Coyne, and setting the scene for the conference by focusing on current, hot-topical issues in human rights in Australia, and attempting to illuminate a path forward for positive progress on human rights as a means of addressing human wrongs!

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I INTRODUCTION

Australian Lawyers for Human Rights ('ALHR') was established in 1993 by Kate Eastman SC and is a national association of Australian solicitors, barristers, academics, judicial officers, and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees, a range of thematic national subcommittees and a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices, and protects universally accepted standards of

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human rights throughout Australia and overseas.

II THE CURRENT STATUS OF HUMAN RIGHTS IN AUSTRALIA

On 9 February 2017, at the annual Department of Foreign Affairs and Trade Human Rights Non-Governmental Organisation Forum at the National Museum of Australia in Canberra, Foreign Minister the Hon Julie Bishop MP stated:

The idea that humans have inherent rights because and by virtue of their humanity, in fact defines Australia's approach to the promotion and protection of human rights, both at home and abroad. The Australian Government remains committed to the United Nations, to its principles and its Charter.¹

Unfortunately, such sentiment flies hard and fast into the face of reality — perhaps of the “alternative fact” species of flying animal?

Attorney-General Brandis then made the very welcome, albeit overdue, announcement about ratifying the *Optional Protocol to the Convention against Torture*, by December 2017 with the words: ‘This will be an important reaffirmation of Australia's deep commitment to preventing torture and other mistreatment in our places of detention.’²

As he spoke those words:

- the most up-to-date figures record 390 people, including 45 children, detained on Nauru and 872 on Manus Island;³ as is now well known to us, the conditions of detention on those islands of despair were found by the former United Nations (UN) Special Rapporteur on Torture Juan Mendez in breach of the Convention Against Torture⁴ and by the Papua New Guinea Supreme Court in breach of the

¹ Julie Bishop, ‘2017 DFAT-NGO Forum on Human Rights’, (Speech delivered at the Forum on Human Rights, National Museum of Australia, Canberra, 9 February 2017).
<http://foreignminister.gov.au/speeches/Pages/2017/jb_sp_170209.aspx>.

² George Brandis, ‘2017 DFAT-NGO Forum on Human Rights’, (Speech delivered at the Forum on Human Rights, National Museum of Australia, Canberra, 9 February 2017)
<<https://www.attorneygeneral.gov.au/Speeches/Pages/2017/FirstQuarter/2017-dfat-ngo-forum-on-human-rights-national-museum-of-australia-canberra.aspx>>.

³ ‘ICC asked to examine offshore refugee camps’, *Sky News Australia* (online), 13 February 2017
<<http://www.skynews.com.au/news/top-stories/2017/02/13/icc-asked-to-examine-offshore-refugee-camps.html>>.

⁴ United Nations Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or punishment, Juan Méndez, 28th sess, UN Doc A/HRC/28/68/Add.1 (6 March 2015).

universal right to freedom from arbitrary detention;⁵

- the Global Legal Action Network (GLAN) in Collaboration with the Stanford Human Rights Clinic were in the final preparations for lodging yet another Communique in the International Criminal Court (ICC) (the fifth and counting) alleging Crimes Against Humanity by the Australian government and private corporations to warrant a *proprio motu* investigation by Chief Prosecutor Fatou Bensouda pursuant to article 15 of the Rome Statute;⁶ and
- the systemic abuse at juvenile detention centres around Australia continued, as did egregiously disproportionate rates of incarceration of indigenous children and adults in places of detention throughout Australia.

You could hardly script such aberrant contradictions between political statement and reality. As Orwell imparted, ‘doublethink’ means ‘the power of holding two contradictory beliefs in one’s mind simultaneously, and accepting both of them’.⁷ An acquired skill no doubt!

To know and not to know, to be conscious of complete truthfulness while telling carefully constructed lies, to hold simultaneously two opinions which cancelled out, knowing them to be contradictory and believing in both of them, to use logic against logic, to repudiate morality while laying claim to it, to believe that democracy was impossible and that the Party was the guardian of democracy, to forget, whatever it was necessary to forget, then to draw it back into memory again at the moment when it was needed, and then promptly to forget it again, and above all, to apply the same process to the process itself — that was the ultimate subtlety; consciously to induce unconsciousness, and then, once again, to become unconscious of the act of hypnosis you had just performed.⁸

Whilst the tones of disingenuous Brandis-ian and Bishop-ian doublespeak might sound *prima facie* alluring to the eager-green-shoot human rights advocate, sadly in the real

⁵ *Namah v Pato* [2016] PGSC 13; SC1497 (Supreme Court of Papua New Guinea) <<http://www.paclii.org/pg/cases/PGSC/2016/13.html>>.

⁶ Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002); See Global Legal Action Network, Communication made to International Criminal Court requesting investigation of Australia and corporate contractors (14 February 2017) <<http://www.glanlaw.org/single-post/2017/02/13/Communication-made-to-International-Criminal-Court-requesting-investigation-of-Australia-and-corporate-contractors>>.

⁷ George Orwell, *1984* (Penguin, 1992) ch 3.

⁸ *Ibid.*

world of contemporary Australia — outside the insulated bubble of Canberran UN Human Rights Council candidacy aspirations — we find ourselves in a crisis of history, a time when human rights norms and their protective institutions are under significant threat.

These are dark times for human rights in Australia and the world. Increasingly, we behold the un-righteous rise of right wing nationalists trumpeting a new era of anti-rights with leadership hostile to established international human rights law norms and institutions, including the United Nations and its many and various bodies. The ascension of an Alt-Right, who are not interested in truth, evidence or facts, makes the job of a legal advocate increasingly challenging in a “post-truth” “alternative fact” dystopia. The silver lining of course is that the more extreme the rhetorical pendulum swings, the more opportunities there are for all of us to stand up, speak out, and robustly reaffirm the value of basic human rights and fundamental freedoms as the building blocks of our “fair go”, lucky country, ANZAC-spirited way of life.

Lest we never forget that Colonel Hodgson, a Gallipoli Survivor, was one of the eight members of the Universal Declaration of Human Rights drafting party under Eleanor Roosevelt.⁹ Not only did Hodgson champion the rights of small nations, as did the famous Doc Evatt,¹⁰ but he and Indian social activist and educator, Hansa Mehta (who was renowned for changing Eleanor Roosevelt’s preferred phrase ‘all men are created equal’ to ‘all human beings’), argued robustly for a World Court of Human Rights — for what indeed is the point of having rights if they cannot be enforced?¹¹ We have not established a World Court of Human Rights... yet!

III GUARDIANS OF THE STORIES

As advocates, we are all the guardians of the stories of human rights. That is our sacred duty and solemn quest, especially in times when the currency of human rights is being crudely corrupted by the emergence of entities like the so-called Human Rights Law

⁹ See generally Mary A Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001).

¹⁰ Referring to the famous Australian Herbert Vere Evatt who was a former High Court judge, former federal Attorney-General and an early President of the United Nations General Assembly (third session – September 1948 to May 1949) who oversaw the adoption of the *Universal Declaration on Human Rights* on 10 December 1948.

¹¹ Mary A Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001) 38.

Alliance ('HRLA'), backed by the Australian Christian Lobby ('ACL'), who take their lead from the American Defence League.¹² The HRLA appears to be on a mission to dismantle established standards of international human rights law under the guise of "human rights" — a somewhat tragic Trojan horse of very thin veneer.

Notwithstanding that we are rapidly descending neck-deep into doublespeak, I take heart in the fact that the worth of human rights terminology is so compelling that its detractors would use it as strong PR currency. Exposing their core contradictions should not be difficult. We must just persist in telling and retelling history's stories and learnings of human rights. Educate, educate, educate, and then educate some more.

Professor Yuval Noah Harari, the famous historian, in his recent TED talk,¹³ 'Why Humans Dominate Planet Earth?', states:

All the huge achievements of humankind throughout history, whether it's building the pyramids or flying to the moon, have been based *not* on individual abilities, but on this ability to cooperate flexibly in large numbers.

Now cooperation is, of course, not always nice; all the horrible things humans have been doing throughout history — and we have been doing some very horrible things — all those things are also based on large-scale cooperation. Prisons are a system of cooperation; slaughterhouses are a system of cooperation; concentration camps are a system of cooperation. Chimpanzees don't have slaughterhouses and prisons and concentration camps.¹⁴ (emphasis added).

Harari then focuses on our capacity to tell and believe in stories about 'fictional realities' (as opposed to objective realities), including nation-states, corporations, the international monetary economic system and human rights.¹⁵ Now I do not fully accept Harari's premise that human rights are mere non-objective fictional narratives, for the

¹² See Human Rights Law Alliance, *Human Rights Law Alliance* (2017) <<http://www.hrla.org.au/>>; Duncan Fine, 'New human rights legal centre not so keen on human rights', *Sydney Morning Herald* (online), 6 September 2016 <<http://www.smh.com.au/comment/new-human-rights-legal-centre-not-so-keen-on-human-rights-20160905-gr997z.html>>; Gina Rushton, 'Mother Of 13 To Challenge Abortion Law In Court, With Christian Lobby Support', *BuzzFeed News* (online), 5 October 2016 <https://www.buzzfeed.com/ginarushton/mother-of-13-to-challenge-abortion-law-in-court-with-christi?utm_term=.auMnpd11E#.tnqbj5vv6>.

¹³ Author of the acclaimed bestseller: *Sapiens – A Brief History of Humankind* (Harvill Secker, 2014).

¹⁴ Yuval Noah Harari, 'What Explains the Rise of Humans?' (Speech delivered at the Official TED Conference, TED Global London, June 2015) <https://www.ted.com/talks/yuval_noah_harari_what_explains_the_rise_of_humans#t-884811>.

¹⁵ *Ibid.*

injurious harms caused by human rights violations are certainly objectively ascertainable, and, at that point, human rights and human wrongs become much more than mere beliefs. But that is perhaps a debate for another time.

Our civilisation's fundamental belief in the story of human rights is indispensably important for the future welfare of our peoples and our planet.

Human rights are positive foundational stories for humane civilisation. They articulate the benevolent narratives required by humankind to walk us closer to the daylights of dignity and the fulsome flowerings of self-realisation. Legal advocates, on behalf of the voiceless, the chastised and the choice-less, are the protectors and promoters of these vital, underlying historic stories — these indispensable democratic dictums of human dignity.

IV #RIGHTSPLAINING & HUMAN RIGHTS EDUCATION

I recently saw a photograph on Instagram that read 'Equal Rights for Others Does Not Mean Less Rights for You. It's Not Pie.'

Whilst reference to "pie" in the singular bereft of pronoun reveals the North American vernacular "pie". In Australia, we might say "a pie" or "a meat pie" or even "a gluten free organic vegan pastry free paleo pie". Notwithstanding international conflict around articulations of "pie", the point is that the fountain of human rights is an infinite spring and should flow freely for everyone.

It is a profound misconception and absurd proposition that to extend rights to others will somehow diminish one's own rights. In Australia, we have a lot of hashtag *#rightsplainning* (yes, a significant improvement on "mansplaining") to do — especially for our political class. That we are bereft of a Bill of Rights or Human Rights Act means that the educative impact of such a righteous document at the heart of our democracy and national identity, is *not* present and we must thus significantly compensate.

One of a few things I strongly agree with Phillip Ruddock on is the lack of education of politicians in the realms of international human rights and treaty law. Can you imagine sending in a plumber to fix a job without the right tools, equipment and knowledge? How can our federal politicians possibly do a proper lawmaker's job without knowledge of

how international law works, and what our obligations are? I have heard of colleagues encountering the most aberrant, asinine responses to our refugee crisis in the corridors of Canberra along the lines of: “What Convention? What obligations? Well, why don’t we just become un-part of it!?” The quite absurd ‘Recommendation 4’ of the Queensland Parliamentary Inquiry into a Queensland Human Rights Act, that the judiciary have no part in the implementation of a Human Rights Act,¹⁶ appears also to be strong evidence of this problem of a culture of political rights ignorance. The following question during the Committee’s Inquiry into a Possible Human Rights Act for Queensland, from the Committee Chair to Queensland Anti-Discrimination Commissioner, seems to be more symbolic of a culture of legal ignorance amongst our lawmakers: ‘[i]t has been put to the committee: why do we not just enhance pieces of *common law legislation* to fix that sort of issue that I just presented to you rather than produce a human rights act?’¹⁷

We can neither forget nor forsake history. History is happening and historical amnesia breeds catastrophe. A non-myopic perception of the present requires a considered and wholesome understanding of the past. I think our federal politicians need at least a one-day induction in international law. That they don’t, whilst not entirely their own fault, I think is a hallmark of professional negligence.

Let’s teach them about the robustly blustering Colonel Hodgson, an Australian hero of international diplomacy and Great War veteran. Let’s reimagine the ANZAC legacy infused with a Brandis-ian respect for “traditional freedoms” (or we could just call them “human rights”), that our young people, sacrificed their lives, limbs, and sanity on the unforgiving and irreversible fires of war for; to protect all of our rights and freedoms — the basic building blocks that make up our fair-go-lucky way of life! And then let’s legally protect those fundamental rights and freedoms — because they are still worryingly absent from our corpus of law in Australia.

¹⁶ Legal Affairs and Community Safety Committee, Submission No 30 to Parliament of Queensland, *Inquiry into a Possible Human Rights Act for Queensland* (30 June 2016) xx

<<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1030.pdf>>.

¹⁷ Legal Affairs and Community Safety Committee, Parliament of Queensland, *Public Hearing—Human Rights Inquiry* (2016) 42 (emphasis added)

<<https://www.parliament.qld.gov.au/documents/committees/LACSC/2015/14-HumanRights/14-trns-09Jun2016.pdf>>.

The responsibility for all of us here is to *#rightsplain* those proud, righteous parts of our national identity to our compatriots.

V A RIPE TIME FOR A BILL OF RIGHTS¹⁸

On the back of Rudd Government's 2020 Summit, the 2008-09 Brennan Human Rights inquiry was the most comprehensive public consultation in Australian history and recommended the implementation of a federal Human Rights Act.¹⁹ Unfortunately, despite the overwhelming public support for a Human Rights Act, it was not to be. Instead, the public was served a lacklustre substitute in the form of the National Human Rights Framework comprising the implantation of statements of compatibility (with international human rights norms) for all new legislative instruments and the establishment of the Parliamentary Joint Committee on Human Rights ('PJCHR'). While the PJCHR has consistently authored comprehensive and robust reports about implications of all new legislative instruments on universal human rights standards to which Australia is bound, scant attention has been seemingly paid by the legislature to those reports, as rafts of rights-violating legislation has been pushed through since the establishment of the Framework. In short, the Framework has failed to protect human rights in Australia.

These are the years for human rights! In December 2014, the ALHR established a new Human Rights Act Subcommittee to reignite the debate for a federal Human Rights Act. In February 2015, I attended the 40th Anniversary of the *Racial Discrimination Act* at the Australian Human Rights Commission, and during the lunch break, I bumped into another academic idol, Professor George Williams. I told Professor Williams of our plan to reignite the fight as it were. He wisely suggested that before Australia is ready for a federal Human Rights Act, it might be better to raise the consciousness of our nation and firstly get more states and territories to implement Human Rights Acts. Of course, the ACT was first to introduce a Human Rights Act in 2004, and Victoria introduced its Human Rights Charter

¹⁸ See Benedict Coyne, 'The Time is Ripe for a Bill of Rights' (2015) 128 *Precedent* 8

<<http://search.informit.com.au/documentSummary;dn=316224285638643;res=IELHSS>>.

¹⁹ Unfortunately the National Human Rights Inquiry Webpage, including all the submissions, was taken down when the Abbott government came into office and the Hon George Brandis was made Attorney-General of Australia. Prior to that the materials for the consultation and its interim and final reports were available here: Parliament of Australia, *Parliament and the Protection of Human Rights* <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook43p/humanrightsprotection>.

in 2006. At the time I spoke to George, there was an opportunity in Queensland with the formation of the new minority ALP Palaszczuk Government, and it felt sort of like a “go forth my son” moment.

I returned to Queensland and set about co-organising a broad coalition of organisations and excellent colleagues who have — with guidance from our colleagues in Victoria — including former Victorian Attorney-General Rob Hulls, Professor George Williams, and the Human Rights Law Centre— strategically campaigned smart and hard for the past two years with success!²⁰ We now have a commitment from an initially very reluctant Premier and Attorney-General (once again due to the heretofore referred lack of education which we dutifully remedied) to implement a Queensland Human Rights Act in the coming months based on the Victorian model of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).²¹

So, what is with politicians’ initial reluctance around rights? Well, it goes back to the educational point I referred to earlier, and the fact that our laws do not protect the basic values of our Australian society. It was former Prime Minister John Howard that gave a most compelling reason for introducing a Bill of Rights or Human Rights Act. When asked by media about the introduction of a federal Human Rights Act, he responded that he was not a fan because they interfere with the business of government — which is precisely the point!²² Legally protecting the human rights of Australians is to shield them from potential human rights violations and abuses by the government. Introducing a Human Rights Act in Australia will “Backyard Blitz” our somewhat dilapidated democracy. It will give us a brand-new back-deck and platform, from which we can then more legitimately point the finger at our international neighbours if we were to ascend to the UN Human

²⁰ See Australian Lawyers for Human Rights, *Leading Australian Human Rights Lawyers call on Premier Palaszczuk to initiate discussion on Queensland Human Rights Act* (11 May 2015) <<https://alhr.org.au/leading-australian-human-rights-lawyers-call-premier-palaszczuk-initiate-discussion-queensland-human-rights-act/>>.

²¹ Bruce Chen, ‘Opinion: Premier to be applauded for pursuing Human Rights Act’, *The Courier Mail* (online), 2 November 2016 <<http://www.couriermail.com.au/news/opinion/opinion-premier-to-be-applauded-for-pursuing-human-rights-act/news-story/5c352f9e3ac3f28bb8a011c12a3c415f>>; Human Rights Law Centre, *Queensland Commits to a Human Rights Act* (16 November 2016) <<https://www.hrlc.org.au/news/queensland-commits-to-a-human-rights-act>>.

²² See generally John Howard, ‘2009 Menzies Lecture by John Howard (full text)’ *The Australian* (online), 27 August 2009 <<http://www.theaustralian.com.au/archive/politics/menzies-lecture-by-john-howard-full-text/news-story/d579cb42e24f5e9d9b1414a844571a2a>>.

Rights Council — and there will be less doublespeak and doublethink required by our political leaders, which must be a significant gross domestic benefit to our society!

ALHR is now supporting the campaign being kick-started by the Tasmanian Council for Civil Liberties.²³ Western Australia is in our sights,²⁴ as is the Northern Territory. It is time we had that federal debate again. I will certainly be focusing on reinvigorating the call for a federal Human Rights Act in the coming year, and I hope that my fellow lawyers will all join me in doing so!²⁵

And there is cause to be hopeful! While Labor governments appear to be more receptive to rights and the idea of legally protecting them, there is no reason why, without education, it could not become a bi-partisan issue. Again, history. The first Bill of Rights in Australia attempted at the state level was by the conservative Nicklin Country Party Government in Queensland, perhaps Australia's most conservative State, in 1959.²⁶

In spite of these tumultuous and challenging times, let us take heart in the sentiment of Dr Martin Luther King Junior when he said: 'only when it is dark enough can you see the stars',²⁷ coupled with the ancient proverb '[t]he darkest part of the night is just before the dawn.'²⁸

In conclusion, I was going to attempt to channel the Attorney-General Brandis, quoting Eleanor Roosevelt at length about the fundamental importance of human rights. However, I will keep it short and quote Brandis himself regarding Roosevelt's famous reference to human rights doing their most important work for ordinary, everyday

²³ See Blair Richards, 'Campaign begins to put a human rights Act back on agenda', *The Mercury* (online), 21 January 2017 <<http://www.themercury.com.au/news/politics/campaign-begins-to-put-a-human-rights-act-back-on-agenda/news-story/d70cf11696eed0de5c42cf2be381335f>>.

²⁴ See Jim McGinty, 'Human Rights Report Completed' (Media Release, 20 December 2007) <<https://www.mediastatements.wa.gov.au/Pages/Carpenter/2007/12/Human-Rights-report-completed.aspx>>; Human Rights Law Centre, Submission to Consultation Committee for a Proposed Western Australian Human Rights Act, *Charter of Rights: Report of WA Human Rights Act Inquiry* (August 2007) <<http://hrlrc.org.au/western-australia-human-rights-act-inquiry-report/>>.

²⁵ See Coyne, above n 18.

²⁶ See George Williams, *A Charter of Rights for Australia: Not Only an Important Shift in Law*, Evatt Foundation <<http://evatt.org.au/papers/charter-rights-australia.html>>; Benedict Coyne, 'Charting New Waters for a Queensland Bill of Rights – Part A', *Australian Lawyers Alliance* (29 January 2016) <<https://www.lawyersalliance.com.au/opinion/charting-new-waters-for-a-queensland-bill-of-rights-part-a>>.

²⁷ Martin Luther King Jr, 'I've Been to the Mountaintop' (Speech delivered at the Mason Temple, Memphis, Tennessee, 3 April 1968) <<http://www.americanrhetoric.com/speeches/mlkivebeentothemountaintop.htm>>.

²⁸ Ancient proverb, source unknown.

people in “small” places:

Such attention to context ensures that human rights are not merely fine sentiments, not merely cries into the void, but instead, are translated into real respect for dignity of actual individuals. Of course, Australia's several jurisdictions have already established a variety of mechanisms to protect those rights for people in detention, but we cannot afford to be complacent.²⁹

Well, let's keep him to his word! We have work to do!

²⁹ Brandis, above n 3.

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