

Protecting Rights without a Bill of Rights: Institutional Performance and Reform in Australia

edited by Tom Campbell, Jeffrey Goldsworthy and Adrienne Stone

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This is a book about the protection of civil and human rights in Australia. It is a dense and dry tome, epitomising what Tom Campbell, in the final chapter (Chapter 14: Human Rights Strategies: An Australian Alternative, at p 320), describes as ‘the remarkable rise of human rights discourse over the last fifty years’.

It is indeed a discourse, one for those fascinated by the history, methodology, processes and procedures, and the detail, patterns and structure of the human and civil rights language of parliaments, administrative tribunals and various human rights institutions, and the intellectual concepts adopted by those who seek to immerse themselves in the intestines of these institutions, such as ‘dialogic constitutionalism’ (Christopher P Manfredi, Chapter 10: The Unfulfilled Promise of Dialogic Constitutionalism: Judicial–Legislative Relationships under the Canadian Charter of Rights and Freedoms); ‘the influential concept of “dialogue” now so prominent in the literature on relationships between parliaments and courts’ (John Uhr, Chapter 2: The Performance of Australian Legislatures in Protecting Rights, at p 42); ‘the phenomenon of interpretive disagreement’ (Adrienne Stone, Chapter 5: Australia’s Constitutional Rights and the Problem of Interpretive Disagreement); and ‘citizenship rights’ (Helen Irving, Chapter 6: Rights and Citizenship in Law and Public Discourse).

Protecting Rights provides no definition of that essential quality of a civil right, and of a human right, which differentiates it from an ordinary right under Australian law; no list of all the civil and human rights that Australians do have; no list of those that they should have, but don’t; and no directory of the courts, tribunals and agencies that are charged with protecting such civil and human rights that ordinary people do have, or creating those that they don’t. So, ordinary readers would not be able to use the book to make a judgment about the nature and adequacy of civil and human rights protection in Australia.

Nor is there any clear, comprehensive description of the various alternative kinds of instruments that could be drafted to carry statements of civil and human rights for all Australians, the potential sources of authority for such instruments and their various possible roles. Towards the end of the book, George Winterton, at the start of his contribution (Chapter 13: An Australian Rights Council, at p 305), makes it clear that he is talking about 'some standard — some principles enjoying broad support (if not a consensus) — against which to evaluate legislation, and to educate the community as to appropriate standards of law and government'. This at least gets his contribution off to a good start, but the ordinary reader would surely feel immediate puzzlement: is it not the politicians who need education about 'appropriate standards of law and government'?

The ordinary person is regaled almost daily through the mass media by news reports of individual, corporate and governmental behaviour towards human beings which, in its degrading consequences for those human beings (invasions of their 'human rights'), or in its diminution of their liberty and autonomy (invasions of their 'civil rights'), ranges from the inept to the barbarous. In the two days preparatory to this review, the writer clipped stories from the national and two Sydney morning papers telling, with almost dulling repetition, of the plight of David Hicks in Guantánamo Bay and of other less well-publicised persons apprehended during the war on terror; of imported sex slaves and illegal sweat-shop workers; of children in households which are jobless or with incomes under \$400 per week; of socially isolated Aboriginal people and refugees suffering multiple health and other problems; of disabled people receiving inferior health care; of children vulnerable to critical parental abuse or neglect, especially in Aboriginal communities; of the stolen generation; of the growing number of homeless mentally ill; of people in nursing homes being sexually abused; of mentally ill people being detained inappropriately or indeterminately in prison; of accident and industrial disease victims receiving no or inadequate compensation; of people bullied, harassed and spied upon at work, at school or in other institutions; of students prey to sexually assaultive or paedophilic teachers; of victims of race hate; of teenaged victims of the ice and suicide epidemics; of ordinary people whose privacy is at risk of invasion by abuses of government databases set up to counter money-laundering and terrorism; of people beaten, detained and otherwise abused by police, immigration and other officials; of parents crudely characterised as 'bad' and threatened with the reduction of social security payments ... and the list goes on ... and on ... and on ...

Thus, if what we read in the papers is any guide, Australians are in desperate need of human and civil rights protection. But *Protecting Rights* has nothing to say to ordinary people about the adequacy of the protection of the rights of humans in these kinds of situations. Having read the book, the ordinary reader would be left with two

unanswered questions: Is there any empirical research demonstrating systematic abuse of human rights and invasions of civil liberties in sectors of Australian society? And, if so: Would it be possible to develop some new kind of *legal* mechanism to address effectively such systemic invasions and abuse?

There are 16 contributions to *Protecting Rights*. Because, as stated at the outset, none is placed within a clearly stated, overarching structure, the ordinary reader is left to drown in a dangerously uncharted sea.

The Australian Research Council (ARC) is apparently 'generously' supporting the work of the editors of *Protecting Rights* — Tom Campbell, Jeffrey Goldsworthy and Adrienne Stone — on the subject of the protection of human rights in Australia (Introduction, at p 13). They make no reference to any ARC- or otherwise-funded empirical research into the nature and extent of any systematic human rights abuse and civil rights invasion in Australia. Perhaps some empirical research would fortify the discourse, and give it more relevance to the ordinary person. ●

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