

Human Rights Today and in the Future



*As of 1 January 2005 Professor **David Kinley** handed over the Directorship of the Castan Centre for Human Rights Law to Professor Sarah Joseph.*

To mark his departure, and celebrate his years as Director, we present an edited interview whereby we asked David to reflect on the Castan Centre and human rights issues generally.

What stands out for you personally as some of the most satisfying achievements of the Castan Centre for Human Rights Law during your Directorship?

I think that the overall sense of satisfaction must come from the fact that from something that started out as nothing, has evolved into a significant human rights institution with a little money and a lot of good intentions and energy. How does one assess the success of this project? I think it is the profile: the fact that the centre is now well recognized and respected; known as the leading human rights law centre in Australia.

For me personally, I honestly think that [the real success] is the light that the centre has been to the young blood moths. I love the idea of young academics and students or recent graduates, PhDs and Masters students, wanting to be a part of the Centre because of what it does. To me it is extremely gratifying that people want to be involved, and the quality of their work and their enthusiasm is just wonderful. It reinforces one's belief that what you are doing is worth while in their eyes; and their view matters. They know their area. They know enough about what excites them and what does not.

What do you see as Australia's role among the international community in human rights discourse, dialogue and action over the next 10 years: firstly ideally and secondly given the political climate in Australia today?

In Australia, there has unquestionably been a ten year withdrawal from the embracing of the international human rights regime. Over that time, Australian governments

have adopted a critical perspective of international human rights in general and the UN in particular. They have done so in respect of institutional efficacy – where there is undoubtedly scope for improvement, but governments have also been highly reluctant to see the relevance and application of international human rights to Australia. The attitude could be summed up as: “sure human rights are important for other countries – and we are happy to actively export the ideas and practices - but don't lecture us about our own human rights shortfalls!”

Much of this comes, of course, from an appeal to red-neckery at home, in which constituency human rights have been, at worst, demonized, and at best seen as a concern for others. It is a great difficulty, and I think that is something many western nations suffer to a certain degree. The challenge is to harness the international concerns over human rights abuses abroad with recognition of the need to correct violations at home.

Do you predict that this is going to be the experience of Australia for some time yet, or do you believe that there is a change ahead?

I think this comes down to a leadership question. I think leadership is not a question of looking at opinion polls, or appealing to what you consider to be your domestic heartland because that is what keeps you in power. I think that if you “lead” by simply reacting to a populace that is fearful and suspicious, then the policies you are going to get are likely to be introspective and exclusionary. Whereas, leaders can and should actually provide ideas, guidance and ways forward, so that people can follow them. The ideal is that leaders are engaged in a dialogue with the populace that they represent, and not merely ciphers – nor, for that matter, manipulators – of basic community instincts.

What do you think will be some of the key issues and debates in human rights discourse and dialogue over the coming twelve months?

Two of the biggest issues will be first - the relationship between poverty and human rights and especially how that relationship will be understood in a way that advances the human rights of the poor through international aid, domestic governments and indeed the attitude of individual members of society in the West. Whether we continue to hear that the problem is too difficult or too big to be dealt with, I think that it is something that can't be pushed away.

The other key issue I think will be cultural and religious tolerance, as this question lies at the heart of so many human rights problems, including refugees, terrorism and our responses to it, discrimination, and even poverty.

Do you think those issues will be reflected domestically?

I think those problems will largely be seen as offshore concerns. One possible exception I think is Indigenous peoples. It is extraordinary now when you look at how indigenous affairs have just dropped off the radar. Just one of those things I remember, when I was working on the Human Rights and Equal Opportunity Commission post Stolen-Generations report, was a study commissioned by HREOC on how much coverage the stolen generations, and the associated report, got in the press in 1996-7; it was then by far the single most important social political issue in the Australian press. I would be surprised if today [Aboriginal affairs] even makes it in the top five. I think that indigenous social, political and legal concerns will come around again as they are unfinished business.

Do you think that international human rights law is achieving its goals or at least getting closer to them, and will it continue to be relevant in the C21st century?

Human Rights have become a sort of ‘secular faith, and in all sorts of ways, not just in the Academy. If you look at the sheer numbers of people who do human rights work compared to ten or fifteen years ago. Many more people are engaged in human rights work. They see it, I think, as interesting, as relevant, as part of the social globalisation along side the economic and technological globalisation.

However I think there are some problems with overkill. Human rights can be used as a bludgeoning instrument for just about anything. It has become an overused and misunderstood term, like democracy, or rule of law, and it has lost its traction and a little bit of currency because of this. Having said all of that, I don’t see the human rights project as fundamentally flawed. I do see it as an important, sophisticated, philosophically grounded, global phenomenon. A cultural and political phenomenon, and I think probably soon, an economic phenomenon. How the notion will develop and adapt in these contexts will be a key challenge.

Has it achieved its goals? I think that now, not least because of hyper-communication at a global level, there is more dialogue, there is more knowledge shared and to some extent better understanding of others. However, I do think that with such increased exposure there has come increased fear and suspicion. They may know more but in fact it may scare them. It strikes me that this is a problem that we have to deal with. Dialogue however seems to me, in a grand sense, better than ignorance; better than no dialogue. There is a wonderful Japanese international

lawyer who talks about the need for a truly inter-civilisational dialogue. I absolutely agree. Such dialogue is both a goal of, and pre-requisite for - better human rights protection.

Has, therefore, human rights achieved its goals? No, and I don’t think it ever will. I think that there are egregious human rights abuses now, and, alas, I think there always were. But it seems to me that the only clear way forward is to pursue the goals of engagement, knowledge and greater understanding and from that there will eventually come greater empathy and respect for one another.

Professor David Kinley will be taking up a Professorial Chair in Human Rights Law at the University of Sydney Law Faculty.

China Delegation

On 3 August 2004 the Castan Centre hosted the Human Rights and Equal Opportunity Commission China – Australia Human Rights Technical Cooperation Program (HRTC) for the day.

The China – Australia Human Rights Technical Cooperation Program is an integral part of the dialogue on human rights between the Governments of Australia and China and is aimed at providing practical assistance to China to administer, protect and promote human rights. Activities are designed and implemented through a cooperative venture between the Human Rights and Equal Opportunity Commission and a particular Chinese organisation.

The recent activity with which the Castan Centre was involved was coordinated in conjunction with the National Judges College of China, and involved a visit to Australia by the President and senior officials of the National Judges College from 2 – 14 August 2004. The objective of the activity was to enhance the ability of the National Judges College to design and deliver curricula for the education of trainee and mid-career judges in human rights and judicial protection of human rights.

The Castan Centre participated in the hosting of the delegation on 3 August 2004. The officials were given an overview of the University and Centre’s undergraduate and postgraduate programs in human rights related areas, which involved discussion of the fundamental nature of human rights and the international framework for protection.