

## **60 years of the Universal Declaration on Human Rights**

### **Mutually Assured Survival: the contemporary normative impact of the UDHR**

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#### **Introduction**

*Good afternoon, and thank you to Michael Curtotti for the invitation to speak today. Michael is an eloquent, tireless and humble human rights advocate, who personifies the qualities of harmony, rationality and empathy found in human rights law and the Baha'i faith. These qualities in Michael have often inspired the Australian human rights community.*

*I wish to acknowledge the Ngunnawal people as the traditional owners and custodians of land on which we meet today.*

*This speech is dedicated to members of the Baha'i faith who have been persecuted for defending human rights or seeking to exercise their human rights. While we celebrate Human Rights Day on 10 December, we also honour their memory.*

I will present my speech in three parts. The first part will introduce you to the soul-searching that has been provoked by the 60<sup>th</sup> anniversary of the UDHR. I will tell you why the human rights world is torn between hope for the future of the discipline and despair at the fragility of what has been built over the last 60 years. Whilst acknowledging the enormous challenges ahead, I am hopeful that the quest to fully realise human rights globally will frame our future. The second part of the talk will focus on what I think are the very contemporary resonances of the UDHR for an individual Australian in 2008, and I am going to focus on my favourite article, Article 24, the right to leisure. The third and final part will explore whether the UDHR is helpful

to us in tackling national and regional issues, using the complex problem of dealing with climate change.

### **Part I: Soul-searching: the end or the beginning of human rights?**

Mary Robinson, former United Nations High Commissioner for Human Rights has said:

Peering into the future of human rights law is akin to sizing up the promise and failings of the human soul. To understand the past and present of human rights can be a way of understanding what collectively we may become in the future, a profoundly important task...<sup>1</sup>

Both the past and future of human rights law is strongly contested. Academics in the area produce two key dense and authoritative texts called 'The end of human rights'<sup>2</sup> and 'The future of human rights'<sup>3</sup> in the same year (2000) based on much the same evidence. Generally, the debate rages around the idea that, despite the ubiquity and rhetorical strength of human rights arguments and widespread acceptance of the UDHR and other human rights treaties at the international level, political acceptance of human rights is only skin-deep. Human rights are therefore only a façade, or worse, they simply do not exist. Jeremy Bentham called rights 'nonsense on stilts', Alasdair McIntyre famously said that a belief in rights was at one with 'a belief in witches and unicorns'.

'If the twentieth century is the epoch of human rights', Professor Costas Douzinas writes in his book *The End of Human Rights*, 'their triumph is, to say the least, something of a paradox. Our age has witnessed more violations of their principles than any of the previous and less "enlightened" epochs. No degree of progress, in the words of famous French philosopher Jacques Derrida, allows one to ignore that never before in absolute figures,

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<sup>1</sup> Back jacket, *The Future of Human Rights*, Burns H. Weston and Stephen P. Marks (eds), Ardsley: Transnational Publishers, 1999.

<sup>2</sup> Costas Douzinas, *The End of Human Rights*, Hart: Oxford, 2000.

<sup>3</sup> Upendra Baxi, *The Future of Human Rights*, Oxford University Press (1<sup>st</sup> ed.) 2000.

have so many men, women and children been subjugated, starved, or exterminated on earth'.<sup>4</sup>

It is easy to argue in 2008 that the UDHR does not survive the alien test. The alien test is the idea that if an alien suddenly arrived and was taking stock of the planet, what would they observe? We know the Universal Declaration of Human Rights is grossly violated every day. People, corporations, and governments 'go about their self-aggrandizing tyranny'<sup>5</sup> as if human rights did not exist. Poverty, gender inequality, war and racism thrive. Forces of globalisation, including supranational terrorist groups, unaccountable multinational corporations, the financial crisis, the food crisis, pandemics and climate change, technologies that outstrip the capacity to regulate, these issues affect humanity in every corner of the globe. Yet there are also dark corners of the map where humanitarian relief, accurate information, and the rule of law cannot penetrate, such as Darfur, Somalia, Burma, Palestine and many more.

Alternatively, if human rights do exist, they are a 'gift from the West to the rest',<sup>6</sup> a modern weapon of colonisation, or a catalyst for unintended consequences such as fuelling the conflict humanitarians sought to end?<sup>7</sup> Are rights a type of secular religion come to joust with the world's established faiths? Have they been blighted forever by the war on terror? In my view, these types of arguments are less influential, but still deserve to be noted as cautionary tales.

It is more difficult to answer the charges of empty symbolism. Does the UDHR enshrine merely an empty ideal?<sup>8</sup> Is it valuable only as a 'light on the hill'?<sup>9</sup> The creation of the UDHR was due in the main to the determination

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<sup>4</sup> Costas Douzinas, *The End of Human Rights*, Hart: Oxford, 2000, p. 4.

<sup>5</sup> Burns H. Weston and Stephen P. Marks (eds), *The Future of Human Rights*, Ardsley: Transnational Publishers, 1999.

<sup>6</sup> Upendra Baxi, *The Future of Human Rights*, Oxford University Press (1<sup>st</sup> ed.) 2000, p. xiii.

<sup>7</sup> David Kennedy *The Dark Side of Virtue: reassessing international humanitarianism*, NJ: Princeton UP, 2004.

<sup>8</sup> Burns H. Weston and Stephen P. Marks (eds), *The Future of Human Rights*, Ardsley: Transnational Publishers, 1999.

<sup>9</sup> Charlesworth, H., 'How Universal is the Universal Declaration of Human Rights? The Future of Human Rights in the 21st Century' La Trobe University Centre for Dialogue Annual Lecture 2 October 2008.

of several remarkable individuals, so one wonders if the whole of human rights law still personality-driven and sporadically influential, rather than accepted as an independent structure or system?

On the other hand, the fact that millions of people all over the world will celebrate the 60<sup>th</sup> anniversary next Wednesday, governments and parliaments will pass resolutions. The UN is still here, against all odds - these facts are important. Human rights are strongly supported by many civil society organisations, which are linked in solidarity. The UDHR is known and still has normative impact. Humanity expresses in a myriad of artistic ways that we want to believe in a better future. The horror of the Holocaust has not faded from memory, and so the core of human rights remains the mission to 'give voice to human suffering, to make it visible, and to ameliorate it'.<sup>10</sup>

Moreover, and for me, this is the most positive achievement, there is a strong and growing body of international human rights law, with evolving ways to enforce its obligations, through diplomacy, civil action and institutions such as the International Criminal Court. Upendra Baxi writes that the quest of international law is to 'make the state more ethical, governance progressively just, and power in all its hidden habitats increasingly accountable'.<sup>11</sup> The tension in human rights law is that states are by definition the major protectors and violators of human rights at one and the same time.

What impact will globalisation, which includes the globalisation of law, have on human rights? How can we respond to the massive violations which have been proliferating due to conflicts within states? The spread of poverty and exclusion, of social and urban apartheid, of organised international crime and of new challenges posed by genetic developments and the new biological and information technologies all require that we think about the most appropriate means to guarantee the long-term protection of human rights and promote their effective application.

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<sup>10</sup> Upendra Baxi, *The Future of Human Rights*, Oxford University Press 2002, p.6.

<sup>11</sup> Upendra Baxi, *The Future of Human Rights*, Oxford University Press 2002, p.15.

The way ahead for human rights lies in rigorous questioning of assumptions against the particular context of a problem.

My vocation lies in questioning sexual inequality. As Eleanor Roosevelt stated in December 1952:

I believe we will have better government when men and women discuss public issues together and make their decisions on the basis of their differing areas of concern for the welfare of their families and their world... Too often the great decisions are originated and given form in bodies made up wholly of men or so completely dominated by them that whatever of special value women have to offer is shunted aside without expression.<sup>12</sup>

Desmond Tutu and Mary Robinson have taken stock of the global outlook for the 60<sup>th</sup> anniversary and they outline the causes for hope:

We have better tools to communicate and demand justice than any generation before us. We have global goals and shared destinies that connect us. What is needed now are leadership, resources, a greater sense of urgency, and commitment to the long-term efforts that must be dedicated to ensuring that the rights enshrined in the Universal Declaration are not only recognised universally, but respected as well.<sup>13</sup>

In my view, the next 60 years will be about embedding human rights into strong domestic institutions and into the machinery of governance and decision-making at all levels. But even if it remains a light on the hill, that is valuable enough in times of darkness. Anton Chekhov, Russian author and playwright, says that humankind has understood history as a series of battles because, to this day, it regards conflict as the central facet of life. The battle for human rights is a search for

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<sup>12</sup> U.N. Deliberations on Draft Convention on the Political Rights of Women, statement by US

<sup>13</sup> [http://www.gulf-times.com/site/topics/article.asp?cu\\_no=2&item\\_no=258755&version=1&template\\_id=46&parent\\_id=](http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=258755&version=1&template_id=46&parent_id=)  
26

ethical clarity of conviction and the communication of human rights as a language of respect that displaces conflict at the centre of our lives.

## **Part II: Contemporary resonances - the right to leisure**

Now I want to think about if and how the UDHR remains relevant to us, Canberrans, Australians, here in 2008. To do this, I want to focus on the much-neglected Article 24, which captured my imagination the first time I read the UDHR in high school. **Article 24** states that “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.” Although it is one of the articles of the UDHR that has received relatively little attention, its inclusion was an explicit recognition that problems can occur in a society when time away from work is treated as a luxury and not an entitlement.

It sits alongside **Article 27**:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Why is leisure important? In my view it is one of the best indicators of whether a person is living, or merely surviving. It shows a level of personal autonomy is available in the society the person is living in. If a person is permitted leisure time, it shows that the person is perceived as a human being with an inner life, imagination and destiny, not a slave, not an economic unit, not a chattel.

In the academic literature, for an experience to qualify as leisure, it must meet three criteria: 1) The experience is a state of mind. 2) It must be entered into voluntarily. 3) It must be intrinsically motivating of its own merit. (Neulinger, 1981) The word *leisure* comes from the Latin word 'licere, meaning “to be permitted” or “to be free,” via Old French leisir,

and first appeared in the early fourteenth century. Again, we can see the elements of voluntariness, a mental inner life, and the intrinsic merit on non-functional activity.

The notions of leisure and leisure time are thought to have emerged in Victorian Britain in the late nineteenth century, late in the Industrial Revolution. Early factories required workers to perform long shifts, often up to eighteen hours per day, with only Sundays off work. By the 1870s though, more efficient machinery and the emergence of trade unions resulted in decreases in working hours per day, and allowed industrialists to give their workers Saturdays as well as Sundays off work. So there are links again to Article 23 the right to work, for fair pay and under safe conditions, and the right to unionise.

Of course, all the articles of the UDHR, and the momentum to agree the document, were influenced by the Holocaust. The way the internees were treated in the camps, with deprivations of any privacy, leisure or cultural expression were methods designed to break the human spirit.

In my view, the hobbies, sports, and fancies of humans across the globe; the ability to lie in the grass, watch clouds and dream, are what makes us human, and makes us individual. Children have intense preferences for toys, colours, clothes and activities, which is how they express and develop their personality. This is why the Convention on the Rights of the Child protects the right to play.

I did find a Chart of Leisure, approved by the World Leisure Board of Directors, July 2000. The original version was adopted by the International Recreation Association in 1970, and subsequently revised by its successor, the World Leisure and Recreation Association in 1979.

#### Preamble

Consistent with the Universal Declaration of Human Rights (Article 27), all cultures and societies recognise to some extent the right to rest and leisure. Here, because personal freedom and choice are

central elements of leisure, individuals can freely choose their activities and experiences, many of them leading to substantial benefits for person and community.

#### Articles

1. All people have a basic human right to leisure activities that are in harmony with the norms and social values of their compatriots. All governments are obliged to recognise and protect this right of its citizens.
2. Provisions for leisure for the quality of life are as important as those for health and education. Governments should ensure their citizens a variety of accessible leisure and recreational opportunities of the highest quality.
3. The individual is his/her best leisure and recreational resource. Thus, governments should ensure the means for acquiring those skills and understandings necessary to optimize leisure experiences.
4. Individuals can use leisure opportunities for self-fulfilment, developing personal relationships, improving social integration, developing communities and cultural identity as well as promoting international understanding and co-operation and enhancing quality of life.
5. Governments should ensure the future availability of fulfilling leisure experiences by maintaining the quality of their country's physical, social and cultural environment.
6. Governments should ensure the training of professionals to help individuals acquire personal skills, discover and develop their talents and to broaden their range of leisure and recreational opportunities.
7. Citizens must have access to all forms of leisure information about the nature of leisure and its opportunities, using it to enhance their knowledge and inform decisions on local and national policy.



8. Educational institutions must make every effort to teach the nature and importance of leisure and how to integrate this knowledge into personal lifestyle.

**Article 24** is relevant to debates going on in Malaysia now about whether the Islamic Council was right to attempt to ban the practice of yoga. Contemporary debates in Australia about work/life balance, family time, self-improvement, paid maternity leave, 'quality time', wellbeing, loneliness, community connectedness, too much TV for kids and many other issues in some part all boil down to this same question - what is the right balance between work, family, religious obligations and all the other things individuals must do for society to function, and what time is reserved by the person to have fun, do nothing and bring calmness to their soul? That question is as relevant now as 60 years ago.

### **Part III: An Inconvenient Dilemma: responding to climate change in our region**

Now I have convinced you of the relevance of the UDHR to contemporary Australian life, I wish to consider the efficacy of the UDHR in helping Australia confront our stickiest contemporary policy problems. I argue that the normative, holistic framework of the UDHR is an incredibly useful tool to frame complex crosscutting issues, and as an example, I am going to cite the big-ticket problem item for the Rudd government, tackling the effects of climate change in the region.

What will underpin Australia's response to the effects of climate change in our region? The UNDP's *Human Development Report 2007/2008* argues that climate change will cause mass environmental displacement, the loss of livelihoods, rising hunger, the spread of infectious diseases and water shortages.<sup>14</sup> We know some of these impacts are going to hit hardest in our region. According to the November 2007 report of the Working Group on Climate Change and Development, the 'human drama' of climate change

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<sup>14</sup> United Nations Development Programme, *Human Development Report 2007/2008 - Fighting climate change: Human solidarity in a divided world* (November 2007) Available at: <http://hdr.undp.org/en/reports/global/hdr2007-2008/chapters/>

will largely be played out in Asia, in part because that is where over 60 per cent of the world's population live.<sup>15</sup> We know that the smaller Pacific Islands are already in a struggle for survival. We have seen what extreme environmental degradation has done to an island like Nauru.

Building a logical foundation for Australia's response to climate change crises in our region is crucial, but the way forward is not clear. The Lowy Institute has argued cogently that climate change is a security issue.<sup>16</sup> Mary Robinson argues that climate change is a justice issue, and that the only ethical way to deal with the resulting cross-border issues like forced migration, statelessness, conflict and poverty is through a human rights approach, strengthening the international system we already have.<sup>17</sup>

Regardless of the adopted paradigm, overarching questions arise in the Australian context. Have we a responsibility to protect those in our region from a problem that was at least partly of our making? How far does that responsibility extend, especially in regard to harbouring the region's displaced peoples? Will Australia act out of humanitarian impulse like our response to the 2004 tsunami, or because of our leadership role in the region, or because of our international legal obligations and potential liability? Or will we take the view that the Australian continent will itself be so affected by climate change that our ability to help others in our region is limited?

Archbishop Desmond Tutu says that we are drifting into a world of 'adaptation apartheid' with the world's poor left to sink or swim through a problem that is not of their making, while citizens of the rich world are protected from harm.<sup>18</sup> It seems to me that Australia cannot stand aloof

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<sup>15</sup> Working Group on Climate Change and Development, *Up in Smoke - Asia and the Pacific* (November 2007) at p.3. Available at: <http://www.iied.org/pubs/pdf/full/10020IIED.pdf>

<sup>16</sup> Alan Dupont and Graeme Pearman, *Heating up the planet: climate change and security* Lowy Institute Paper 12, June 2006. Available at: <http://www.lowyinstitute.org/Publication.asp?pid=391>

<sup>17</sup> Mary Robinson, *Climate Change and Justice*, Barbara Ward Lecture, Chatham House, London, 11 December 2006. Available at: <http://www.iied.org/events/Barbara%20Ward%20Lecture%2006.pdf>

<sup>18</sup> Quoted by Justice John von Doussa, President of the Human Rights and Equal Opportunity Commission; and Chancellor of the University of Adelaide. 'Climate Change: Catastrophic Impacts and Human Rights' Speech delivered at University of Adelaide on 11 December

from the maelstrom about to hit our region, even if we wanted to. We need to start the debate about how Australia will frame our response to the human costs of climate change in the Asia-Pacific.

Such a reframing might focus on a holistic response to the effects of climate change that puts people and their communities, human drama, at the centre of the equation. A human rights approach puts the focus on the individual. As Mary Robinson says, 'We do not ask how we should treat human beings in order to have a well ordered society. Rather we ask how to organize society to ensure the development and well-being of people'.<sup>19</sup>

The worst or most heinous crime under international law is that of genocide, because it robs us all of the richness of humanity if one group is destroyed. This is the same argument that protects cultural property during armed conflict, and protects languages, including indigenous languages. Following this logic, we would be doing everything we possibly can to preserve and protect the culture and people of the Pacific Islands at risk from inundation. We would be focusing on solutions that meet their self-identified needs, and aim to keep cultural practice, language and communities intact, even if it means creative removals to a different island is required. I fear instead that Australia will at some point reluctantly accept people displaced by climate change in an ad hoc manner, only when they are forced to flee, and we will expect them to be grateful and assimilate into Australia. Let us reject this orthodoxy.

## **Conclusion**

Hilary Charlesworth says that rather than settling down into a comfortable retirement, even at 60 the UDHR is a rebel, a subversive and unsettling document.<sup>20</sup> Partly this is because of the duality it makes us confront, the promise of what humanity aimed to be after sinking into barbarism, and

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2007. Available at:  
[http://www.humanrights.gov.au/about/media/speeches/speeches\\_president/2007/20071211\\_Climate\\_Change.html](http://www.humanrights.gov.au/about/media/speeches/speeches_president/2007/20071211_Climate_Change.html)

<sup>19</sup> Oxfam speech 2003, <http://www.oxfamamerica.org/contents/art3960.html>

<sup>20</sup> Charlesworth, H., 'How Universal is the Universal Declaration of Human Rights? The Future of Human Rights in the 21st Century' La Trobe University Centre for Dialogue Annual Lecture 2 October 2008.

threadbare nature of the promise 60 years later. But to me, reading the UDHR never fails to provoke some new insight, a memory or a revelation, depending on what stage of life I have reached. The text represents to me a roadmap, a statement of vocation, and a poem. The words connect us to countless acts of bravery and sacrifice for principle, voices and blood. It is beautiful. It is these acts of courage, this beauty and these people we celebrate next Wednesday on 10 December. We owe it to their legacy to be hopeful.