

## **Charlesworth, Hilary (2002) *Writing in Rights – Australia and the Protection of Human Rights*, UNSW Press, Sydney**

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*Writing in Rights* is a collection of three lectures delivered by Professor Hilary Charlesworth at New College, University of New South Wales, on the theme of the protection of human rights in Australia. The aim of the lecture series is to ‘provide an opportunity for a distinguished scholar to comment upon some aspect of contemporary life and society consistent with the objects and purposes of New College’. In these three lectures Charlesworth’s central thesis is that in considering constitutional change ‘the most urgent task is to devise an Australian system to protect human rights’ (p76). At a time when Australians are debating numerous human rights issues including the policy of detaining asylum seekers, the merits of the United Nations’ mechanisms for protecting human rights, and the ratification of the Statute of the International Criminal Court, these three lectures are a timely reminder of the need to extend the discussion to focus on ways to entrench the protection of human rights within our Constitution.

Chapter I deals with the constitutional history in Australia and includes reference to the United States’ model and the debates that led to our own (inadequate) protection of rights. As is highlighted by Charlesworth, our Constitution is more concerned with the relationship between the Commonwealth government and the states than it is with the relationship between government and the people. This is probably best reflected in the introductory words to the Commonwealth Constitution: ‘Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessings of Almighty God’. The Australian model may be compared with the United States’ Constitution: ‘We the People of the United States/in Order to form a more perfect Union’, or the new South African Constitution: ‘We, the people of South Africa/Recognise the injustices of our past ...’ Explicit provisions protecting rights in our Constitution are few and far between, and when they do appear are in a fairly limited form. Thus sections such as s116 (freedom of religion) and s117 (non-discrimination on the basis of state residence) have been restrictively interpreted and are not broad guarantees of rights.

Charlesworth shifts her emphasis from the constitutional protection of rights to the High Court’s recent decisions implying freedom of political communication and the right to legal equality into our Constitution. She then deals with the unsuccessful attempts to present a legislative bill of rights at the Commonwealth level and the current system of human rights protection through the Human Rights and Equal Opportunity Commission. While many argue that the current conventions of representative and responsible government provide adequate protection for our fundamental rights, Charlesworth demonstrates that our faith in the ability of the parliamentary system to protect rights is not justified, particularly when dealing with the rights of minorities. The lack of an entrenched constitutional basis for rights protection is also evident in recent suggestions to remodel the Human Rights and Equal Opportunity Commission into a ‘Human Rights and Responsibilities Commission’, suggesting that rights are to be earned by the performance of duties (p76).

Chapter II moves beyond the Australian context to deal with the international system for the protection of human rights. The United Nations mechanisms for the implementation of human rights rarely feature in the Australian media — *Toonen’s* case, and the subsequent legislative response at the Commonwealth and State level, and the UN Committee on the

Elimination of Racial Discrimination's criticism of amendments to the Native Title Act being exceptions. The outcome in *A's* case (including the Commonwealth's response) and *Elmi's* case, both dealing with asylum seekers are less well known. Charlesworth focuses on the international human rights system since the establishment of the United States in 1945, but also deals briefly with challenges to the human rights movement offered by cultural relativists and post-modern critics. In line with the theme of the lecture series at New College, greater attention is given to religious perspectives on rights. This chapter is not a catalogue of the rights contained in the international instruments or a handbook on the procedure for making complaints concerning the violation of rights to UN committees — such details can be found in other works. Rather it is a very readable introduction to the international system and its role in providing a starting point for devising a domestic system for the protection of rights.

Charlesworth concludes Chapter II by suggesting that the 'international law of human rights is a valuable source of norms to import into Australia's constitutional fabric'. In Chapter III she elaborates on the possibilities that exist for constitutional reform in our own system using the experience in Canada, the United Kingdom and South Africa as illustrations. For the most part the bills of rights in these countries are seen as positive examples, Charlesworth only dealing briefly with criticisms made of the Canadian Charter of Rights and Freedoms. This book does not attempt to set out a model bill of rights, rather it is recommended that Australia should use the international instruments as a starting point, but may develop variations for local conditions, for example specific sections protecting the rights of indigenous people. Charlesworth suggests that one possible method to move forward in Australia would be to adopt a two stage process as was the case in Canada — first, to enact a legislative bill of rights, and secondly to consider constitutional entrenchment. Although given our history of reluctance to pass amendments to the Constitution, such alterations are unlikely in the near future.

The debate on the need to implement a more satisfactory system of human rights protection in Australia is not new, but the value of this book is not in its novelty. Rather Charlesworth's essays present a very engaging and readable contribution for the lawyer and non-lawyer, interested citizen and politician alike on the reasons why greater attention should be given to the protection of human rights in the Australian legal system and the potential for change. This work would be as much at home in the local library as it would in a law library. In her last paragraph she quotes from Bertolt Brecht's poem 'Everything Changes' — 'You can make/A fresh start with your final breath.' Perhaps this is a message to all Australians to examine new ways in which to promote the implementation of human rights within our national legal system.

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## LIST OF CASES

*Toonan* - Communication No 488/1992. Australia. 04/04/94 CCPR/C/50/D/488/1992.

*The Case of "A"* - Communication No 560/1993. Australia. 30/04/97 CCPR/C/59/D/560/1993.

*Elmi* - Communication No 120/1988. Australia. 25/05/99 CAT/C/22/D/120/199.