

# Australia honours to champions of human rights for the downtrodden

## Justice Kirby Collection

**Date:** 31 October 2000

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**Type:** Address

**Organisation:** Monash University

**Event:** Launch of the Castan Centre for Human Rights Law, Monash University

**Location:** Offices of Phillips Fox, Solicitors, Melbourne.

Michael Kirby

This week Australia honours two fine men, champions in the field of human rights. The first is the late Ron Castan QC whose name has been given to the Castan Centre for Human Rights Law at Monash University in Melbourne, launched today. The other is the late Dr Jonathan Mann. He will be remembered at a dinner organised by the AIDS Trust of Australia on Friday. There, the Federal Minister for Health and Family Services (Dr Michael Wooldridge) will announce scholarships, supported by the Australian Government, to honour Mann's name.

Both Ron Castan and Jon Mann were friends of mine. Both were young men lost at the height of their powers. Ron Castan died last year of a complication following surgery. Jonathan Mann was killed when a plane, on which he was travelling from New York to Geneva, crashed off the coast of Canada. Both men were charismatic, courageous and dedicated to fundamental human rights not only in their own countries but far way. Ron Castan was a first rate technical lawyer whose brilliant legal mind planned and executed the huge shift in Australian law regarding Aboriginal land rights known as the Mabo Case. Jon Mann was an outstanding epidemiologist. He was serving in Zaire (now Congo) when HIV/AIDS first appeared. He immediately saw the mighty challenge for humanity and for medicine. He championed the paradoxical link between protecting the human rights of those most at risk of HIV and stemming the spread of the epidemic. Both men were Jewish - proud of their faith and culture. But neither took a narrow view of religion. Each had a big heart, only matched by a big mind driven by great love for humanity.

It is no accident that these two men were Jewish. Each of them learned at their parents' knees the vital importance of Chesed - the Hebrew word for the loving-kindness that God manifests towards every living creature. That word "loving kindness", or some similar notion, is found in all of the world's great religions. It is the essence of the idea that underpins the global movement to uphold fundamental human rights.

It is not entirely coincidental that Castan and Mann were champions of human rights. The world movement for the protection of such rights is itself, in part, the product of the settlement that followed the establishment of the United Nations after the Second World War. In the aftermath of that war were discovered the grim horrors of the Holocaust. They revealed the many victims of Hitler's tyranny. These included members of many minorities - communists, gipsies, Jehovah's Witnesses, the intellectually impaired and homosexuals. They were victims of hate because they were different. However, far the greatest suffering fell

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upon the Jewish people of Europe. Their stories are heart-rending. We must never forget them. Ron Castan and Jon Mann did not forget. They turned the dreadful experiences of their people into a zeal for action to protect fundamental human rights wherever they were threatened.

The gesture of the Australian government to honour Jon Mann with the award of scholarships for research by Australians into aspects of HIV/AIDS is most welcome. There can be no better memorial for a creative scientist than an intellectual commitment of that kind. It is also wholly fitting that the new Centre for Human Rights Law at Monash University should bear Ron Castan's name. With such a name, and under the leadership of Professor David Kinley, there is no doubt that the Centre will mix, in proper proportions, the demands of dispassionate scholarship and a full understanding of the high moral cause which underpins the international movement for human rights.

David Kinley brings from his birthplace, Northern Ireland, a realisation of the importance of respect for the human rights of everyone, if law and order are to be based on more than the power of force. He has built up a strong reputation in Australia. His book on human rights in this country explores every nook and cranny of the law as it operates to protect fundamental rights. Australia is now one of the few countries of the world without a constitutional Bill of Rights. I have no doubt that the Castan Centre will contribute to the ongoing debate on whether we should change that situation, as Britain did last month, or stick with the legal approaches of the past.

It should not be assumed that human rights law, especially that originating in international bodies of the United Nations, enjoys the support every Australian citizen. A prominent newspaper, commenting recently on the criticisms of Australian legislation declared: "The attempts by various UN Committees to regulate Australian social policies threaten their own credibility more than that of the [Australian] government. The UN Committee system is a third-rate, unaccountable, opaque irrelevance that is unfit to comment on Australian policy".

To like effect was a comment by the well known iconoclast, Padraic McGuinness. Writing in September 2000, he declared in a newspaper column: "... These treaties have been used by zealous and inadequately supervised diplomats and lawyers as implements for extending their own political power. ... The glaring problem of the UN is what has been called the democratic deficit ... [It] is worsened by the active interference in UN activities of non-governmental organisations (NGOs) which themselves are entirely unrepresentative, undemocratic and concerned with their own special agendas".

Writing in a Melbourne newspaper a few weeks ago, Michael Barnard voiced a similar view: "We live in an age - where minority (and sometimes extreme) elements ... are increasingly inclined to seek the overthrow of domestic law through appeals to a hotpotch 'international community'". To Barnard, the problem was the "rights industry" which "either through manipulation or a bloated sense of mission, keeps expanding its horizons" threatening the autonomy of the nation state.

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It will be important for the Castan Centre for Human Rights Law to listen to, and answer, these critics. I know and respect Paddy McGuinness for his work as editor of Quadrant, a journal that undoubtedly contributes greatly to Australia's intellectual life. I am aware, from a letter of a parishioner, that he, Philip Adams and I were recently included in an "unholy trinity" that a congregation was commanded to pray for, to save our otherwise lost souls. So we have much in common. But the weakness of the opinions of the unidentified newspaper editorialist, McGuinness and Barnard, is that they do not tell us what they would put in place of the UN efforts to defend human rights on the planet. Surely it is not more of the unbridled nation states, unrestrained by human rights law and world opinion. Surely we have made some progress in the twentieth century and can learn from its awful errors. Ron Castan did. Jon Mann did.

From my work for the UN in Cambodia and elsewhere, I know only too well that there are weaknesses in the UN system. But the answer is to strengthen it and especially to strengthen the elements of law, consistency, efficiency and accountability. It will probably never be possible to cure the "democratic deficit" by a global election for the UN Secretary-General. So the only way the UN will work for us all is by our active participation in its human rights and other affairs. By the active involvement of the nation states, including Australia. Despite occasional interruptions, Australia's steady commitment to the UN remains stalwart. It was signalled only last week by the announcement of the federal government of Australia's intended ratification of the International Criminal Court. We are, as usual, one of the first nations to take this step. It will be followed by Australian legislation. Australia remains a good international citizen. It is helping to build a world that is governed by law, not brute power. A world respecting fundamental human rights and not condoning genocide, oppression and other abuses of the vulnerable and minorities.

The strongest input into the global movement for human rights is not that of "unrepresentative NGOs" or "loony extremists". It is that of states, like Australia, that wish to learn from, and to help, others. Input also comes from the work of strong professional organisations and individuals with a commitment to human rights and the rule of law.

This is what Ron Castan and Jon Mann would be saying to us in Australia this week as we honour their memory and commit ourselves to expanding their efforts through research and other work, fired by a proper sense of impatience. Human rights is not just an idea or words. For me, human rights is the nameless Australian soldier patiently teaching Cambodian farmers to rid the fields of landmines. It is my last year's legal clerk, Joe Tan, working for a fair election in Kosovo. It is UN Commissioner Mary Robinson working tirelessly for the downtrodden and oppressed. It is the Ugandan judge helping to establish rudimentary courts in East Timor. It is Jonathan Mann fighting for the voiceless against the spread of AIDS in Africa. It is Ron Castan turning his great gifts to the advantage of Australia's indigenous peoples.

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Castan's memory, and his achievements, will inspire those who follow in the law to strive for legal excellence whilst committed to the building of a better Australia and a better world.