

Democracy and human rights

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Those who set out to change the Australian Constitution must be long distance runners. This is not a task for the sprinter. It requires a marathon runner's endurance and persistence - particularly if we are thinking about grafting a bill of rights onto the democratic features of the constitution.

There is a tension, even a contradiction, between democracy and protection of fundamental human rights. The tension arises because, if human rights are truly "fundamental", even democracy should not be able to override them. In this sense, fundamental human rights impose a check on democracy, and deliberately so.

This is why at the beginning of the American Republic the Constitution did not include a Bill of Rights. It is why James Madison, when commissioned to draw up the United States Bill of Rights, asked "Who will be so bold as to declare the rights of the people?". It is why Australia's founders did not include a general Bill of Rights in the Australian Constitution. They thought rights were best left to the Parliaments elected by the Australian people. Now Australia is almost alone in the world as a democracy without an entrenched general Bill of Rights. Even Britain has enacted a general Bill of Rights. Australia is now a less monochrome society than it was when the constitution was adopted. There are many minorities who demand that their basic rights be protected against majoritarian override. Yet paradoxically, although human rights and democracy are sometimes in competition, it is only in democracies that human rights have a real chance of being respected.

The debate about whether Australia should adopt a Bill of Rights, after a hundred years of the federal constitution, continues to simmer along in a fitful way. Meanwhile, some rights have been "found" by the courts, and others have been enacted by Federal and State Parliaments.

The important point to be made is that the modern notion of democracy, at least in a country such as Australia, is far more complex than simple majoritarian rule. It is a sophisticated form of government which involves the general ability of the will of the majority to prevail but in a legal and social context in which the rights of vulnerable minorities are respected and defended - particularly where such minorities are unpopular.

In Australia, this means respecting and defending the basic rights of minorities such as:

- Aboriginals and Torres Strait Islanders;
- Immigrants, especially those who are people of colour or whose appearance is different from those of European descent;

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- Gays, lesbians, bisexuals and transgendered people;
- People living with HIV/AIDS; and
- The aged and the young.

It also includes protecting women. They are not a minority but they are often vulnerable because they have not, until recently, had effective access to the institutions of power and the means of securing true equal opportunity in life.

Whilst we in Australia ponder upon how we can best protect such fundamental human rights within our democracy changes are happening at a global level which impinge on our capacity to practise democracy as we have in the past within our democratic nation. The power and influence of global and regional bodies such as the World Trade Organisation, the World Bank, the International Monetary Fund and the Organisation of Economic Cooperation and Development obviously affect the capacity of Australian democracy to control, without interference, its own laws and policies on many economic questions. This phenomenon tends to be accepted as inevitable or irresistible because of the global economy in which we must participate or perish. But today the international agencies of security and universal human rights are also affecting the laws and policies of nation states, including democracies such as Australia. This fact tends to be less well accepted by some people. Yet sometimes it is a useful corrective to stimulate a democracy with the opinions of outsiders who may occasionally see human rights defaults more failings than we do at home.

We are therefore at an interesting watershed in the evolution of democracy. Until now it has been organised on a national and subnational level. Into this settled world have moved global forces and global institutions. An important challenge of the next decades will be to preserve accountable democracy at home, to ensure the effective accountability of global institutions to the people of the world and to uphold, beyond the nation state, the respect for universal human rights which is an important cornerstone of the evolving new world order. There will always be people who reject the evolving world order. Ironically, those who are most noisy in denouncing it are frequently those who welcome most enthusiastically the economic manifestations of globalism. But the two forces - global economics and human rights, must march in step. A free economy should be counterpart to a free society, respectful of difference and protective of its minorities.

This is why the subject of democracy and human rights is so important. It should not be assumed that the two are inevitable. In most past times and in most countries today neither is present. But somehow they must be assured for the future for Australia and everywhere else. The centenary of our Federal Constitution- one of the oldest in the world - affords Australians the opportunity, and the obligation, to look into the future to consider how we can protect both democracy and human rights in the second century of the Constitution and do so better than we did in the first. Where better to start this consideration than with young students of one of the finest and most influential public schools of the nation? In the young lie the hopes of the nation. But those hopes will be dashed unless the young realise that the world and our country are changing rapidly, presenting issues much more complex than the average election jingle. And that there are many injustices to be corrected in the second century of Federation.

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