



About the Hawke Centre

Website: www.hawkecentre.unisa.edu.au

The Bob Hawke Prime Ministerial Centre is a dynamic University of South Australia initiative to establish an internationally recognised public learning/visitor and research facility serving young people, national and international scholars and local and global audiences.

Named after Bob Hawke, a third generation South Australian, one of the 20th century's most notable Prime Ministers (1983-1991) and a great conciliator nationally and abroad, the Hawke Centre was established by Memorandum of Understanding in 1997. UniSA has developed the Centre believing that that Bob Hawke's contribution should be properly recognised through a national facility, not as a memorial, but in a way that helps young Australians and furthers his legacy of valuing a cohesive and fair Australia.

The Hawke Building housing the Centre's public facilities, including the Kerry Packer Civic Gallery, Bradley Forum, and Hawke Library was formally opened on 11 October 2007.

Broadly, the Hawke Centre aims to challenge Australians to consider ideas and develop solutions for Australia and the world, leading towards more sustainable societies, within a democratic framework. It is supported by a fine group of national patrons, and especially, international patron Nelson Mandela.

*While the views presented by speakers within the Hawke Centre public program are their own and are not necessarily those of either the University of South Australia or The Hawke Centre, they are presented in the interest of open debate and discussion in the community and reflect our themes of: **strengthening our democracy – valuing our cultural diversity – and building our future.***

Contact:
Elizabeth Ho, Director,
The Bob Hawke Prime Ministerial Centre
M: 0417 085 585
E: Elizabeth.ho@unisa.edu.au

2008 International Human Rights Day Address

It's Time. A Bill of Rights for Australia

Julian Burnside QC

The Universal Declaration of Human Rights

On Friday 26 July 1946, in the Palace of Justice at Nuremberg, Robert Jackson, chief prosecutor for the US delivered his closing address at the trial of the major German war criminals. The world had watched in horror as the Nazi death camps were liberated by the allied forces, and the trial had canvassed the calculated barbarity of the Nazi regime, and the destruction of millions of innocent lives. He said:

"It is common to think of our own time as standing at the apex of civilization, from which the deficiencies of preceding ages may patronizingly be viewed in the light of what is assumed to be "progress". The reality is that in the long perspective of history the present century will not hold an admirable position, unless its second half is to redeem its first."

In the aftermath of World War 2, as the world held its breath at the awesome display of human wickedness which had unfolded during the previous decade, it looked as though the second half of the 20th Century might, indeed, redeem the first. In 1948, the Universal Declaration of Human Rights opened a new era in human rights thinking. Its prefatory words set the tone:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ..."

The Declaration articulated the essential values of a dignified human existence. Subsequently the International Covenant on Civil and Political Rights embodied as binding commitments most of the ideals of the Universal Declaration. It makes great promises. Its signatories – almost every country in the world – promise each other to secure for their citizens the essentials of a dignified human existence.

The argument about a Bill of Rights

At the 2020 Summit in Canberra earlier this year, a view emerged strongly that Australia should have a Federal Bill of Rights. That call – fairly predictable in the circumstances – triggered a series of public speeches and papers as Cardinal Pell, Bob Carr and others raised their voices against a Bill of Rights.

These pre-emptive strikes against the possibility of a Federal Bill of Rights had one thing in common: they did not identify what sort of Bill of Rights they are opposed to.

Some of their criticisms might be valid if the proposal was for a US-style Bill of Rights. So far as I am aware, no-one in Australia is pushing for a US-style Bill of Rights. The US Bill of Rights is an 18th Century document with its roots in 17th Century England, and a dash of Magna Carta providing the best bits.

Modern Bills of Right do not concern themselves with the right to bear arms or the quartering of soldiers. They are concerned instead with the sort of rights recognized by the Universal Declaration of Human Rights: equality before the law, the right to life, protection from torture and cruel inhuman or degrading treatment, freedom from forced work, freedom of movement, privacy and reputation, freedom of thought, conscience, religion and belief; freedom of expression, peaceful assembly and freedom of association, protection of families and children, humane treatment when deprived of liberty, and so on.¹

In the wake of the 2020 Summit, the public debate about a bill or charter of rights has restarted. Predictably, the conservative commentators (Gerard Henderson, Bob Carr, Andrew Bolt, Miranda Devine) are opposed to one. Their arguments speak in alarmist terms of the horrors that would be unleashed if rights were protected.

What are we talking about?

To make the debate intelligible, it is useful to identify what we are talking about. We are not talking about a US style Bill of Rights. Some people prefer to speak of a Charter of Rights in order to make the distinction plain. Nevertheless, it is worth bearing in mind that there is no magic in the name: a Charter of Rights and a Bill of Rights are the same thing; the US Bill of Rights is an early example, but it is not one to be emulated. The US Bill of Rights is an 18th Century document with almost nothing in common with modern bills of rights. The rights protected by a modern bill of rights are – broadly speaking – the sort of rights addressed in the Universal Declaration of Human Rights which Australia adopted in 1948.

It would be difficult to find any serious disagreement about the nature of those rights – freedom from arbitrary detention, freedom from torture, freedom of thought and belief, equality before the law etc. The disagreement arises when the means of protecting those rights is in issue.

Broadly speaking, a modern bill of rights can be a weak model or a strong one; and it can be an ordinary statute or constitutionally entrenched. The arguments for and against a bill of rights change profoundly according to the model under discussion. Unfortunately, the conservative commentators never identify exactly what it is they are condemning.

¹ In the appendices to this paper, I have set out the principal elements of the UDHR, the ICCPR, the Victorian Charter of Human Rights and the US Bill of Rights

Statutory bills of rights can be disregarded or repealed if the Parliament so wishes. A constitutional bill of rights, on the other hand, cannot be repealed or altered except by referendum. A constitution (in theory) expresses the will of the people directly, and binds the Parliament. A statute, by contrast, expresses the will of the people indirectly through their elected representatives and can be made, changed or repealed by the Parliament.

A strong model Charter creates rights of action: if a person's rights are breached, they may be able to sue for damages. A strong model may also forbid Parliament to do certain things and thereby directly limit the power of the Parliament.

A weak model simply requires Parliament to take protected rights into account when passing legislation. If they wish to disregard those rights, they must say so plainly. This means that the Parliament will be politically accountable if it decides to disregard rights which it has previously resolved to respect. In addition, it guides Judges in the way they should interpret legislation, so as to preserve rights rather than defeat them.

The ACT and Victoria both have statutory, weak Charters of Rights. So long as the public and the conservative commentators find it alarming to protect rights, a weak statutory model is a good solution.

It is usual to see a range of arguments put up against adoption of a Bill of Rights. The standard ones are as follows:

- (a) Human rights cannot be created: they derive from moral truths;
- (b) Our rights are adequately protected by the majesty of the Common Law;
- (c) It is anti-democratic because it would transfer power from Parliament to unelected, unrepresentative judges;
- (d) It transfers power disproportionately to minorities;
- (e) They do not work;
- (f) A Bill of Rights will be a Lawyers' Feast.

Let me deal with each of these in turn.

Moral rights or moral truth

An interesting, but uncommon, argument is that human rights cannot be created by a parliamentary act: they derive from moral truth. Moral truth is a product of natural law. Aristotle² is said to be the father of natural law. If that is true, then Thomas Aquinas was its tutor. It provided the bedrock of the Common Law in England, it informed the writing of Hobbes and Locke, and it is reflected in the preamble to the US Declaration of Independence:

² 384 BC to 322 BC

“When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.--We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,--That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. ...”

Sophocles' play *Antigone*³ turns on a conflict between natural law and legal positivism. Polynices is slain. King Creon has ordered that his body remain on the hillside where the dogs and vultures will devour it. Any person who removes the body to bury it will be put to death by stoning. Antigone is Polynices' sister. She proposes to bury his body, and captures simply the central moral point: “He is still my brother”.

Her sister Ismene, while sympathetic, fears to do what she knows is right. The argument is captured in the following lines:

“ANTIGONE I will not urge you, no nor, if you yet should have the mind, would you be welcome as a worker with me. No: be what you will; but I will bury him: well for me to die in doing that.

I shall rest, a one loved with him I loved, sinless in my crime; for I owe a longer allegiance to the dead than to the living: in that world I dwell for ever.

But if you will, be guilty of dishonouring laws which the gods have established in honour.

ISMENE I do them no dishonour; but to defy the State, I have no strength for that.

ANTIGONE Such be your plea: I will go to heap the earth above the brother whom I love.”

We sympathise with Antigone's instinct, and with Ismene's weakness. But why do we owe anything to the dead? Why is Antigone's instinct so strong and so obviously right: it is clear that a corpse can no longer be party to the Social Contract.

Her crime is discovered, and Antigone is taken before King Creon. She explains her actions in a way familiar to those who know the Natural Law theory of jurisprudence. Creon charges that she has broken the law he made:

“ANTIGONE. Yes; for it was not Zeus who made that edict; not such are the laws set among men by the justice who dwells with the gods below; nor deemed I that your decrees were of such force, that a mortal could override the unwritten and unfailing statutes of heaven. For their life is not of to-day or yesterday, but from all time, and no man knows when they were first put forth.

³ Sophocles lived from 496 BC to 406 BC. *Antigone* was written in about 442 BC: before Aristotle was born.

Not through dread of any human pride could I answer to the gods for breaking these. Die I must, I knew that well (how should I not?) even without your edicts. But if I am to die before my time, I count that a gain: for when any one lives, as I do, compassed about with evils, can there be anything but gain in death?

So for me to meet this doom is trifling grief; but if I had suffered my mother's son to lie in death an unburied corpse, that would have grieved me; for this, I am not grieved.

And if my present deeds are foolish in your sight, it may be that a foolish judge arraigns my folly."

Today, Antigone would be convicted. An appeal to natural law does not work. Legal positivism has displaced natural law. Laws made by parliament are valid laws, subject to constitutional constraints. That is the consequence of the violent constitutional struggles of the 17th century, coupled with the unsympathetic clarity of a written Constitution.

A right which is not recognised by law is nothing but a pious hope. If rights are to be any use at all, they must be recognised in law.

Our rights are protected

Within the scope of its legislative competence, Parliament's power is unlimited. The classic example of this is that, if Parliament has power to make laws with respect to children, it could validly pass a law which required all blue-eyed babies to be killed at birth. The law, although terrible, would be valid. One response to this is that a democratic system allows that government to be thrown out at the next election. This is not much comfort for the blue-eyed babies born in the meantime. And even this democratic correction may not be enough: if blue-eyed people are an unpopular minority, the majority may prefer to return the government to power. The Nuremberg laws of Germany in the 1930s were horrifying, but were constitutionally valid laws which attracted the support of many Germans.

Generally, Parliament's powers are defined by reference to subject matter. Within a head of power, Parliament can do pretty much what it likes. Thus, the Commonwealth's power to make laws with respect to immigration has in fact been interpreted by the High Court as justifying a law which permits an innocent person to be held in immigration detention for life, where he is liable for the daily cost of his own detention.

The question then is this. Should we have some mechanism which prevents parliaments from making laws which are unjust, or which offend basic values, even if those laws are otherwise within the scope of Parliament's powers? If such a mechanism is thought useful, it is likely to be called a Bill of Rights, or Charter of Rights, or something similar.

In November 2003 two cases were heard together by the High Court of Australia . Together they tested key aspects of the system of mandatory detention. One was the case of Mr Al-Kateb⁴. He arrived in Australia as a boat person and sought asylum. He was placed in immigration detention because the Migration Act says that a non-citizen who does not have a visa must be detained and must remain in detention until (a) they are given a visa or (b) they are removed from Australia. He was refused a visa. He could not bear it in Woomera and asked to be removed, rather than wait out a year or two by appealing. But it was not possible to remove him from Australia, because he is stateless: there is nowhere to remove him to. The government's argument was that, although Mr al Kateb has committed no offence, he could be kept in detention for the rest of his life. On 6 August 2004, the High Court by a majority of 4 to 3 accepted that argument.

The other case, heard alongside al Kateb and decided on the same day, was Behrooz⁵. Mr Behrooz came from Iran, sought asylum and found himself in the endless loop of rejection and appeal and had spent about 14 months before escaping in November 2001. At that time, Woomera was carrying three times as many people as it was designed to carry. The conditions there were abominable. Reports from that time show that there were three working toilets for the population of nearly 1500 people; women having their period had to make a written application for sanitary napkins. And if they needed more than one packet they had to write and explain why they needed more than one packet and very often they had to go and provide the form to a male nurse who would then dispense what they needed. Conditions in Woomera at that time were unconscionably dreadful. The Immigration Detention Advisory Group, the government's own appointed body, described Woomera as "a human tragedy of unknowable proportions".

Mr Behrooz found it so intolerable that he escaped, along with some others. He was charged with escaping from immigration detention. The defence went like this: The Australian Constitution embodies the separation of powers. This means that the legislative power is vested in the parliament (Chapter I); the executive power is vested in the Executive government (Chapter II) and the judicial power is vested in the courts (Chapter III).

The notion of the separation of powers involves this, that one arm of government cannot exercise the powers given to another arm of government. It is one of the very few constitutional safeguards we have in Australia. Central to the judicial power is the power to punish. As a matter of constitutional theory, punishment cannot be administered directly by the parliament or by the executive, punishment can only be imposed by order of the Chapter III courts. Normally, locking people up is regarded as punishment and therefore it is only Chapter III courts that can lock people up. What about immigration detention?

In *Lim's* case in 1992, the High Court held that administrative detention may be justified in limited circumstances, principally where detention is reasonably necessary as an aid to the performance of a legitimate executive function. So if a person's asylum claim is to be processed, or if the person is to be made available for removal from Australia then, as long as the detention is reasonably necessary for those purposes, it will be lawful even though not imposed by a Chapter III court.

⁴ Al-Kateb v Godwin (2004) 219 CLR 562

⁵ Behrooz v Secretary of the Department of Immigration (2004) 219 CLR 486

Well, the defence in Behrooz went like this. Assuming mandatory detention is constitutionally valid, if the conditions go beyond anything that could be seen as reasonably necessary to the executive function it is said to support then that form of detention will be constitutionally invalid because it amounts to punishment inflicted by the Executive.

We issued subpoenas, directed to the Department and ACM, seeking documents that would reveal details of conditions in detention. They resisted. They said the subpoena was invalid because the conditions in detention will never affect the constitutional validity of detention. And all the way to the High Court they maintained this argument that no matter how inhumane the conditions are, detention in those conditions is nevertheless constitutionally valid.

On 6 August 2004, the High Court accepted the government's argument.

Thus on the same day the High Court held that it is constitutionally valid in Australia to hold an innocent person for life in the worst conditions human malevolence can devise. In the same year, the High Court held that the same principles apply even if the detainee is a child⁶.

These three cases from 2004 are a clear illustration of the problem that, if Parliament decides to make a law which destroys basic rights, the Common Law is unable to prevent that result.

Anti-democratic, because it transfers power to Judges

In one sense, it is true that a Bill of Rights gives power to judges. A Bill of Rights limits the power of Parliament but not by reference to subject matter. A modern Bill of Rights introduces, or records, a set of basic values which should be observed by parliament when making laws on matters over which it has legislative power. It sets the baseline of human rights standards on which Society has agreed. Because this is so, it is wrong to say that a Bill of Rights abdicates democratic power in favour of unelected judges. Judges simply apply the law passed by the parliament. That is their role. Many cases raise questions about Parliament's powers. Judges are the umpires who decide whether Parliament has gone beyond the bounds of its power. A Bill of Rights is a democratically created document, like other statutes. Enforcing it is not undemocratic at all.

Protecting unpopular minorities

One of the most surprising objections to a Bill of Rights is that it gives disproportionate power to minority groups. At one level, the complaint is accurate. In Australia today, the people whose human rights are at risk are not members of the comfortable majority, but members of minority groups who are typically powerless and often unpopular and almost always politically irrelevant. Whilst, in terms, a Bill of Rights protects the rights of all, its primary use is to protect the rights of the weak because the strong are already safe. The criticism is all the more surprising when you consider that many of those who advance it proclaim themselves to be devout Christians. I had thought, although I haven't checked recently, that much of Christ's teaching was concerned with the protection of the weak, the unpopular, the despised and the oppressed. It seems a curious thing then that practising Christians should object to a law which achieves that result.

⁶ Woolley, Re; Ex parte Applicants M276/2003 by their next friend GS (2004) 225 CLR 1

This complaint has a darker side. Broadly speaking, Australians have a fairly respectful attitude to human rights. If most Australians were asked what they thought of human rights they would say that human rights matter. The question then arises: How is it that those same people watched with unconcern as David Hicks languished for years in Guantanamo Bay without charge and without trial? How is it that they watched with unconcern for years as innocent men, women and children were locked up indefinitely in desert jails merely because they were fleeing the Taliban or Saddam Hussein? How is it that we have managed such enduring complacency to the plight of the aborigines whose land was taken and whose children were stolen? How is it that we are so indifferent to the draconian effects of the anti-terror laws as they are applied to Muslims in the Australian community, when we would not tolerate similar intrusions on our own rights?

The answer I think is this: Australians subconsciously divide human beings into two categories: Us and Other. We think, perhaps subconsciously, My rights matter, and so do those of my family and friends and neighbours, but the human rights of others do not matter in quite the same way because, (without quite saying it) the Others are not human in quite the same way we are. It is dangerous thinking and profoundly wrong.

We have human rights not because we are nice or because we are white or because we are Christian but because we are human. That's the sticking point which makes it possible for people to acknowledge that human rights matter and yet resist the possibility of those rights being protected by law.

They do not work

One of the favourite back-handers to dismiss a Bill of Rights is that they don't work: after all, the argument goes, the USSR had a splendid Bill of Rights, and so does Zimbabwe, but look what has happened in those countries. They have a point, of course, but it is not a point about a Bill of Rights: it is a point about the rule of law. No Constitution, no Bill of Rights, no statute, no other document, can protect rights unless the rule of law is strong. If the political opposition is weak or absent, if the media are cowed or complacent, if the courts are not fearlessly independent, the promises contained on bits of paper will achieve nothing. That is not our problem in Australia. Our Judges are competent, hard-working and independent of the other arms of government. While I have disagreed with many judgments in Australian courts, I have never doubted the honesty or integrity of our judges. The same is not true of the USSR or Zimbabwe.

Guantanamo Bay provides both a challenge and a demonstration of this point. President George W Bush chose Guantanamo Bay in Cuba as a place of detention specifically to avoid the reach of American courts and the principle of legality; he chose it in order to place detainees beyond the protection of the Constitution and the Bill of Rights.

He failed. In case after case, the US Supreme Court has held that the protection of the Constitution reaches Guantanamo.

Although it has taken a long time to expose the fraud and cruelty of Guantanamo, the fact that Bush chose Guantanamo, rather than some place on American soil, is mute testament to the power of a Bill of Rights and the rule of law. Bush chose Guantanamo in order to side-step the rule of law. The Supreme Court has gradually dismantled that plan. Most recently, in the Boumediene case⁷, the Supreme Court struck down that part of the Military Commissions Act which purported to deny Guantanamo detainees the right to seek habeas corpus. Habeas corpus is the legal equivalent of a canary in the coal mine: when governments interfere with the right to challenge the lawfulness of a person's detention, you can be sure that all is not well.

Lawyers' Feast

The "Lawyers' Feast" argument is a popular one, because everyone hates lawyers, and every one loves a feast. Anything which is going to make lawyers happy is a bad thing. The Lawyers' Feast argument is a coded way of saying that lawyers want a bill of rights because it will generate lucrative work for them. The argument is false. In Australia today, the people who need a bill of rights – the people whose rights are denied or disregarded – are almost always at the margins of society. They cannot afford to pay lawyers. Most human rights work in Australia today is done for no fee. Some is funded so that the lawyers receive some payment, usually a very small percentage of ordinary rates. No-one does human rights work to get rich, because human rights work cannot make you rich.

Conclusion

The Universal Declaration of Human Rights was entered into force on the 10th December, 1948 – 60 years ago this year. Doc Evatt presided over the General Assembly that day.

Australia now is the only Western democracy which does not have a Bill of Rights. The last decade at least has shown that we need one.

It's time we had one.

Media contact:

Elizabeth Ho
Director, The Bob Hawke Prime Ministerial Centre, UniSA
M: 0417 085 585
E: Elizabeth.ho@unisa.edu.au

⁷ Boumediene et al. v. Bush, President of the United States, et al. Argued 5 Dec, 2007—Decided 12 June, 2008

Appendix 1: Principal contents of Universal Declaration of Human Rights

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

- Article 1** All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
- Article 3** Everyone has the right to life, liberty and security of person.
- Article 5** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 6** Everyone has the right to recognition everywhere as a person before the law.
- Article 7** All are equal before the law and are entitled without any discrimination to equal protection of the law.
- Article 8** Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
- Article 9** No one shall be subjected to arbitrary arrest, detention or exile.
- Article 10** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
- Article 11** 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- Article 12** No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- Article 13** 1. Everyone has the right to freedom of movement and residence within the borders of each State.
- Article 14** 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- Article 15** 1. Everyone has the right to a nationality.
- Article 16** 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.
- Article 17** 1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.
- Article 18** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- Article 19** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
- Article 20** 1. Everyone has the right to freedom of peaceful assembly and association.
- Article 21** 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

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- Article 22** Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.
- Article 23**
1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
 2. Everyone, without any discrimination, has the right to equal pay for equal work.
- Article 24** Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.
- Article 25**
1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- Article 26**
1. Everyone has the right to education.
- Article 27**
1. Everyone has the right freely to participate in the cultural life of the community

Appendix 2: Principal contents of ICCPR

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Article 2: no race discrimination

Article 3: no sex discrimination

Article 5: no destruction of freedoms

Article 6: right to life

Article 7: no torture or cruel, inhuman or degrading treatment or punishment

Article 8: no slavery

Article 9: no arbitrary detention

Article 10: dignity of prisoners

Article 11: no prison for breach of contract

Article 12: right of movement

Article 13: no expulsion except pursuant to lawful decision

Article 14: equal before courts

Article 15: no punishment for retrospective offence

Article 16: recognition as person

Article 17: privacy

Article 18: freedom of thought

Article 19: freedom of opinion

Article 20: no propaganda for war

Article 21: right of assembly

Article 22: freedom of association

Article 23: protection of family

Article 24: protection of children

Article 25: right to participate in the conduct of public affairs

Article 26: equality before the law

Article 27: rights of minorities

Appendix 3: Rights recognised by Victorian Charter

(equivalent rights are recognised by the ACT Human Rights Act)

Part 2—Human Rights

- 7 Human rights—what they are, when may be limited
- 8 Recognition and equality before the law
- 9 Right to life
- 10 Protection from torture and cruel, inhuman or degrading treatment
- 11 Freedom from forced work
- 12 Freedom of movement
- 13 Privacy and reputation
- 14 Freedom of thought, conscience, religion and belief
- 15 Freedom of expression
- 16 Peaceful assembly and freedom of association
- 17 Protection of families and children
- 18 Taking part in public life
- 19 Cultural rights
- 20 Property rights
- 21 Right to liberty and security of person
- 22 Humane treatment when deprived of liberty
- 23 Children in the criminal process
- 24 Fair hearing
- 25 Rights in criminal proceedings
- 26 Right not to be tried or punished more than once
- 27 Retrospective criminal laws

Appendix 4: US Bill of Rights

The Conventions of a number of the States having, at the time of adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution;

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, that the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States; all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution, namely:

Amendment I Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.