

BOOKS

BRINGING HUMAN RIGHTS TO LIFE by Peter Bailey,
Sydney, Federation Press, 1993, xiv + 270pp, \$25, ISBN 1
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RETREAT FROM INJUSTICE: HUMAN RIGHTS IN
AUSTRALIAN LAW by Nick O'Neill and Robin Handley,
Sydney, Federation Press, 1994, xxviii + 508pp, \$55, ISBN 1
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Human rights has been a major part of the discourse on international law and international relations since the 1948 Universal Declaration on Human Rights. Australia was a significant player in the events leading up to the establishment of the United Nations at the conclusion of the Second World War, but it was not until the 1970s that Australia began in earnest the lengthy process of ratifying the principal human rights instruments sponsored by the various organs of the United Nations Organisation. The Australian Government's belated concern for the formal protection of human rights was for a long time mirrored by the paucity of general publications dealing with human rights in this country. A decade ago there was scarcely an Australian book dealing comprehensively with human rights issues, though there were books on specialised aspects of human rights such as the rights of indigenous peoples. Today an increasing number of books of the former type are available. Two recent contributions, both published by Federation Press, are those authored by Peter Bailey on the one hand and by Nick O'Neill and Robin Handley on the other. However, these books differ markedly in their scope, purpose and intended audience.

Bringing Human Rights to Life is not a text on human rights in Australia, but a collection of case studies based on the experience of particular individuals. Many of the 31 stories told in the pages of this book come from the United Kingdom and the United States, but other case studies are taken from around the world, ranging from East Timor to Eritrea, and from South Africa to the (former) Soviet Union. In this sense, the book is not so much a book about human rights in Australia as an Australian book about human rights. Nevertheless there are numerous Australian examples used as case studies. In particular there are stories about the Aborigines of Noonkanbah (ch 1: indigenous peoples); the Australian Iron and Steel Case (ch 9: sex discrimination); a patient involuntarily subjected to electro-convulsive therapy (ch 11: personal liberty); and a person questionably denied unemployment benefits (ch 12: the right to work).

Each chapter of the book focuses on a specific right, and the chapters are themselves grouped into four general categories, namely, group rights, "life" problems, achieving equality, and individual liberty and security. This division is a somewhat unusual classification of the subject matter of human rights. A more conventional treatment might have divided the subject into civil and political rights, economic, social and cultural rights, group rights, and perhaps "new" rights (such as the right to a sustainable environment). It is thus somewhat odd to see Karen Green's story about the right to work included in a part

on individual liberty and security; it is likewise unusual to see the story of the Chernobyl environmental disaster alongside stories on euthanasia and other "life" problems. However, as all classifications are to some extent arbitrary, this is a minor criticism. Regardless of the manner in which the chapters are organised, the book is to be commended for providing an extended discussion of human rights beyond the first generation rights enshrined in the International Covenant on Civil and Political Rights.

The book adopts a similar format within each chapter. First, the chapter tells "The Story" of the individual or group whose rights have been violated. Here Bailey assembles material from an impressive array of sources. For example, in the chapters on euthanasia (chs 4 and 5), four stories are woven together from information in newspaper reports, judicial decisions, church declarations, law reviews and other professional journals. The result is a vignette that is informative and objective, but yet compassionate. Moreover, the stories travel beyond the limited context and meagre facts that are considered relevant to judicial decisions. Second, there is a "Discussion" of the story, in which pertinent issues and policies are analysed, and approaches in different countries are considered. In the chapters on euthanasia, for example, the discussion distinguishes between the taking of active steps to terminate a life and the passive refusal to administer further treatment, and also distinguishes between euthanasia of those with terminal conditions and those with other diseases. Third, there is an "overview" in which the author seeks to draw together the various stories told in the chapter, to relate these to the rights protected by international human rights instruments. In relation to euthanasia, Bailey rejects the idea that there ought to be a "right to die" or a "right to die with dignity". In his view, the "right to life" set out in the International Covenant on Civil and Political Rights, and in other human rights instruments, necessarily encompasses the right to live one's life, and to end one's life, with dignity. Lastly, each chapter concludes with a brief bibliographical essay incorporating suggestions for further reading.

The final chapters of Bailey's book examine human rights from a rather different vantage point than that of the earlier chapters. Instead of concentrating on the person or group claiming the right, the penultimate chapter focuses on the means used to protect and improve human rights. Bailey identifies five principal mechanisms, which may operate at the local, national, regional or international level. Though the categories overlap to some extent, the principal means are the courts, political action, action by community organisations, education, and the law. To return to the example of euthanasia, each of these mechanisms has played a role, as illustrated by the function of courts in enforcing criminal sanctions against doctors who act unlawfully, by the political action taken to change homicide laws in the Netherlands, and by the role of professional and church organisations in establishing guidelines on the practice of euthanasia.

One of the most rewarding attributes of *Bringing Human Rights to Life*, which is aptly reflected in its title, is the way in which it provides an alternative methodology for regarding human rights discourse. To approach the subject of human rights in the manner most familiar to lawyers — by scholarly interpretation of convention texts and careful regard to the decisions of relevant tribunals — often removes students from the essential humanity of their enterprise, especially since the human rights of most Australians are relatively well protected when compared with those of individuals in other countries. In

this respect, Bailey's book encourages its readers to identify with individuals whose rights have been infringed, and so manages to create a sense that human rights is a living subject with real impact on human lives. The book is thus directed towards the essential goal of education articulated in Article 26(2) of the Universal Declaration of Human Rights, namely "the strengthening of respect for human rights and fundamental freedoms" through the promotion of "understanding, tolerance and friendship among all nations, racial or religious groups". As evidenced in the closing paragraphs of the book (p258), Bailey shares these aspirations:

The human rights standards set by the international community provide a basis for reasonable and respectful action in an increasingly interconnected and multicultural world.... [A]lthough human rights are not themselves a religion, they are a vehicle which can draw on the best in human experience and provide a neutral ground on which people with different religious and life views can identify, discuss and peaceably resolve problems.

In comparison with Peter Bailey's experiential stories, *Retreat From Injustice*, by Nick O'Neill and Robin Handley, is a work of a very different order. Apart from its size (it is nearly twice the length of and more closely typeset than *Bringing Human Rights to Life*), it is a book in conventional textbook style, and its focus is essentially Australian. However, as one might expect from a book whose principal author has a history of involvement in law reform and human rights activism, the book does not lose sight of the evolutionary processes of human rights protection. As the authors describe the situation (pv), in the last decade a sea-change has come over human rights thinking in Australia, and a "retreat from injustice" has begun. That retreat has been marked principally by a change in the attitude of the High Court towards common law and constitutional guarantees, as evidenced in recent cases on the right to legal representation, aboriginal land rights and freedom of political speech. But it has also been marked by the greater willingness of State and Federal legislatures to provide effective remedies for the breach of certain rights, as in the field of anti-discrimination law.

Retreat From Injustice comprises 25 chapters, which fall into approximately five groups. The first seven chapters provide an overview of human rights protection in Australia, and are amongst the book's great strengths. Beginning with a survey of the philosophical foundations of human rights in the tenets of natural law (ch 1), the book provides an overview of the various sources of human rights law in Australia, be they constitutional, legislative, common law or international in origin (ch 2). Each of these issues is taken up in succeeding chapters.

Any person familiar with United States and Australian constitutional law cannot fail to be struck by the absence from the Australian Constitution of many of the express rights and freedoms guaranteed by the United States Constitution, on which our Constitution was modelled. The express constitutional rights considered by O'Neil and Handley in chapter 3 (acquisition of property on just terms, trial by jury, freedom of intercourse and of religion, non-discrimination on the basis of residence and voting rights) are a reminder of the very limited extent to which human rights in Australia rest on solid constitutional foundations. To some extent these limitations are being circumvented by a High Court that is more willing now than at any time in the past to imply new rights into the Constitution (ch 4). Only recently, for example, a majority

of the Court held that defamation laws were subject to constitutional limitations by virtue of the right to free political speech implicit in notions of representative democracy and responsible government (*Theophanous v Herald & Weekly Times Ltd* ((1994) 124 ALR 1). Developments such as these make it certain that subsequent editions of this book will have to devote more attention than the present one to implied constitutional rights.

Beyond the introductory chapters sketched above, *Retreat From Injustice* provides a detailed account of human rights in four specific areas. Chapters 8-10 deal with the rights of individuals in relation to the criminal justice system, chapters 11-16 with freedom of speech, assembly and association, chapters 17-20 with anti-discrimination law, chapters 21-24 with the rights of indigenous Australians, and chapter 25 with the rights of immigrants and refugees. Unfortunately, this is a rather selective choice of topics, which may perhaps be explained by the authors' comment (pvi) that "not all aspects of this expanding subject can be included in a book which a publisher can afford to publish and readers to buy". Nevertheless, the book would have been more balanced and useful to readers if it had offered some commentary on other important rights, such as the rights to life and privacy, childrens' rights, the right to education and work, and the right to a sustainable environment.

Notwithstanding these limitations of coverage, *Retreat From Injustice* is a valuable addition to human rights discourse in Australia. The points of contrast between it and *Bringing Human Rights to Life* serve to emphasise not only the expanding breadth of the subject matter, but also the variety of methodologies available for teaching students and others about human rights. As Louis Henkin stated some years ago (Henkin, L, *The International Bill of Rights* (1981) at 1), and as these two books now demonstrate for Australia, "human rights is the idea of our time".

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