

Chapter Four

Human Rights Legislation and Australian Sovereignty

Peter Faris, QC

My contention is that the introduction of Human Rights legislation will, in the end, diminish or even destroy our Australian sovereignty.

I am content to use the Macquarie Dictionary definition of sovereignty as “supreme and independent power or authority in government as possessed ... by a state”.

As I see it, the major threat to Australian sovereignty is from human rights legislation of two different sorts.

First, the Aboriginal rights movement, supported by legislation, gives Aboriginal people sovereign power not possessed or exercised by the rest of the community. Second, the approaching federal Bill of Rights will be an intrusion of various United Nations covenants into our domestic law.

With regard to the first case, I am a strong supporter of the Aboriginal people as Australians, not as a racial group. They are disadvantaged Australians, and we should all work hard to make the future better for them and all other disadvantaged Australians. This is not to be done by diminishing our national sovereignty in their favour.

In the second case, we are preparing to abdicate our Australian sovereignty to “law” made by the United Nations, particularly in the area of human rights. The United Kingdom has discovered that, for the first time, their Parliament is no longer sovereign. The unelected judges enforcing the European Human Rights laws can now overrule the elected Parliament. In Victoria, we have the *Charter of Rights and Responsibilities* which came into force this year, courtesy of a socialist government. An extraordinary power has been given to the unelected judges to decide that, as a matter of law, legislation passed by the elected members of Parliament is contrary to human rights. The Victorian courts cannot strike the law down, but they do report this decision to the Parliament. It would be a brave Government (and an especially brave socialist government) that failed to act by changing the law by bringing it within the terms of court approval.

Until now, Australia has followed the former British system of government, with elected Parliaments passing the laws and unelected judges interpreting these laws. The major exception is the power given to the High Court to review legislation and strike it down if it is unconstitutional.

Human rights, including Aboriginal rights, have their source outside Australia. This source is the United Nations and various international covenants to which Australia is a signatory. The one of principal concern is the *International Covenant on Civil and Political Rights* of 1976 (*ICCPR*).

It is important to remember that none of these Covenants are part of our domestic law as such. In other words, unless and until a Parliament passes them into domestic law they are not enforceable in Australian courts.

The Victorian *Charter* adopts large portions of the *ICCPR*, as will any federal Bill of Rights. Accordingly, parts of the *ICCPR* are effectively now part of the domestic law of Victoria.

Part 1: Aboriginal human rights

In the last 30 years, for various reasons, Aboriginal Australians have been treated as a dispossessed nation who have a (human) right to have the national territory returned to their ownership or control. This is the land rights movement. For pragmatic reasons, they cannot have the parts (like Melbourne and Sydney) which would be inconvenient to the mainstream population. Notwithstanding this restriction, they have been granted very large tracts of land by various governments, Commonwealth and State. They have been given extensive powers within these territories (called “lands”), including the right to exclude all other Australians in general and journalists in particular (the permit system).

For example, the (Aboriginal) Northern Land Council has the following on its website:

“Aboriginal land is private land. It is not Crown land, nor public land. ...

“Like other landowners in Australia, Aboriginal people have the legal right to grant or refuse permission to people wishing to enter or travel through their land. ...

“If you want to visit, drive through or work on Aboriginal land in the Northern Territory, you are legally required to have a permit to do so”.

It is very simple. These vast tracts are private land in the same sense that your home is on private land. Accordingly, in the same way that strangers are not permitted to intrude on your private land, it is against the law for Australians generally to travel upon (intrude into) these areas.

There is a difference, of course. The probability is that your house is something that you have worked and paid for. It is likely to be on a very small piece of land. Nobody sees a risk to Australian sovereignty in the concept of ownership of private land. For Aboriginals, they are given the land, they have not earned it. They are given it because they allegedly have some sort of (human) right because it was taken away from them in the first place.

(First aside: My ancestors came from Scotland. I wish that sort of thinking applied there. I would be happy to go back to take up my land. I also point out that my bloodline is 50 per cent Scot and 50 per cent English. In other words, as full-bloods go, I am an Anglo-Celt from the British Isles. A significant percentage of the Aboriginal people are more white than black, and have no more right to Australia than I have to Scotland – probably less. But this is a problem everywhere. President Obama is called, prospectively, the first black President, yet he is half white. It beats me.)

The Aboriginal lands have been established in areas which, not long ago, were owned by all Australians, and all Australians were free to go there.

Now very large areas have been given to a racial group which has established (by law) an exclusive private use and ownership of it. All others are excluded by law. Entry is a criminal offence.

Given all this, it seems to me that Australian sovereignty has been seriously diminished. By that I mean that parts of our country which were once owned by us all collectively have been granted to a minority group as of right.

The consequences of land rights will be played out over the next few decades. They will not be good for Australians.

If one applies a fertile imagination to the future, the following scenario (whilst highly unlikely) is not impossible. In any event, it graphically illustrates the problem of giving away national sovereignty to a cohesive group.

Perhaps Muslims driven by an extremist ideology could penetrate the Aboriginal people in the same way that the Churches did (through the missions). Many Aboriginals are Christians. Islam is a valid world religion, so there is no reason why Aboriginals should not become Muslims. Perhaps control of a large area of tribal lands in Northern Australia could be gained by Muslim-Aboriginals. Let us say that there develops a conflict between those Aboriginals and the federal Government. Perhaps they might want self-determination and their own Nation. After all, they have the land, they have a flag, and it is conceded by Australia that they are the wrongly dispossessed original owners (a bit like the Palestinians). Pressure for nationhood grows. An Aboriginal republic is declared. The Australian Government intervenes and sends police to take control. The Aboriginals appeal to Indonesia (population about 320 million, 85 per cent Muslims) just across the water. The Indonesian government takes up the cause of its co-religionists and supports Aboriginal nationhood and attempts to intervene. And so it goes on.

(Second aside: As an Australian I find two things most offensive. First, the constant reiteration by the socialist federal government that whenever they meet or make a speech they must first acknowledge the traditional owners. For my part, if we must do this, I would like to acknowledge the work of my people, the Anglo-Celts, in the 19th and early 20th Centuries of first building the country, then defending it in two World Wars.

Second, I find the Aboriginal flag and its use offensive as a statement of Aboriginal sovereignty and nationality. I find it extremely offensive when it is flown from Parliament House and other government buildings. The flag of all Australians, including Aboriginal Australians, is the Australian flag, and it is the one that should be flown).

This sort of problem has existed throughout history. Today it exists in the Middle East (Palestine-Israel) and on Russia's borders (South Ossetia-Georgia).

All I have tried to do is to suggest some of the risks involved in Australia diminishing its sovereignty by handing over lands to the Aboriginals in what appears to be sovereign ownership. But wait, there's more.

Aboriginals have a right to self-determination. This right has been effectively acknowledged by Australian governments and the Australian people as set out above – land, private ownership, flag and so on.

The *United Nations Universal Declaration of Human Rights (UDHR)* (1948) states:

“Article 15: 1. Everyone has the right to a nationality.
 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.

It is easy to construct an argument that Aboriginals have been deprived of their right to Aboriginal nationality (the Aboriginal nation in the Aboriginal lands) by the colonisation of Australia by the Anglo-Celts and (later) others.

The *ICCPR* states:

“Article 1: 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.....
 3. The States Parties to the present Covenant ... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations”.

Australia has promoted “the realization of the right of self-determination”. Aboriginals have been given the land in apparent acknowledgement of this fact. The next step is self-determination. It will come.

The Report upon which the Victorian *Charter* was based specifically granted Victorians some of the rights set out in the *ICCPR*. But it did not propose the right to self-determination in Victoria at this stage. Instead, it postponed the issue for four years. It stated:

“The Charter should be reviewed four years after its commencement. The review should include consultation with the public and should consider matters including:
 whether, following consultations with Victorian Indigenous communities, a right to self-determination should be included in the Charter, and, if so, the appropriate definition and scope of that right;.....”.

It is certain that the Aboriginal communities (in Victoria they are not called Aboriginals, but either Kooris or Indigenous persons) will happily accept self-determination. In this sense it is a foregone conclusion.

For its part, the present socialist federal Government could be expected to go along the same path. Since the election of Mr Rudd as Prime Minister last November, Australia has emerged as a World Leader in numerous matters of high principle: global warming, whales, human rights in China, freedom for Tibet, the end of nuclear weapons and a European Union-style community for South-East Asia.

It would be unthinkable that a man of such high principle as Mr Rudd could preach to other countries about their human rights records and fail to implement the UN covenants for the self-determination of the Aboriginal people.

Thus has Australian sovereignty been diminished by applying Human Rights principles to the Aboriginals. We will pay a price for this.

Part 2: A federal Bill of Rights

Eventually, the federal government will adopt most, if not all, of the *ICCPR* by legislating it into force as domestic law. It is not Australian in origin, as I will explain.

In fact, this type of legislation is completely unnecessary. Australians' rights are fully protected by the Australian Constitution, federal and State legislation and the Common Law as developed by our courts. All these sources are purely Australian. Nobody in the street is complaining that they do not have human rights.

Although the Australian Constitution is actually an appendage to a British Act of Parliament, it was in fact drafted for Australians by Australians. It has been amended a number of times by the voting public. It has served us for more than a century and it has served us well.

Legislation is passed by members of democratically elected Parliaments.

The party forming government in those Parliaments appoints the judges – in Australia, we do not have elected judges.

As far as the human rights of citizens is concerned, this system has worked well. It is not often that we hear a serious allegation that Australians are deprived of human rights. Where there are difficulties, the law can be adjusted. That is the way of a sovereign democracy.

But some people are not satisfied with sovereign democracy. They want every state in the world to be governed by some sort of international law. This international law is to come from NGOs (non-government organisations) like the UN. A greater attack on national sovereignty is hard to imagine.

Let me give a contentious example. The United States, as a sovereign national state, decided that it was in its military interests to attack Iraq in the context of an actual or perceived War Against Terror. Many countries, and many people in many countries, took the position that it was unlawful for the USA to do that without the consent of the UN. On one view, this was very close to a statement that the decisions to be made for the defence of a sovereign nation were first to be made by the UN.

Much of this thought is driven by the Left. These people were (until recently) fervent supporters of Russia, China, Stalin and Mao, and hated the US, democracy and capitalism.

After the collapse of Russian Communism and the movement of China towards capitalism they have taken their hatreds elsewhere. They now support the UN and consider that nothing can be done without UN support. Even though they have lost the war against democracy and capitalism, they are seeking to gain control through international organisations.

A prime and current example is global warming. The propagation of this fraud by the Left constitutes a major attack on capitalism. Rich countries will be obliged to bankrupt their industries and economies, to the great benefit of so-called poor countries like China and India. In the end, the aim is to bring the US to its knees.

And Australia, through Rudd, is now a world leader in this process.

And so it is with the law.

The Left do not want to have Australian laws for Australia. They want UN laws. This, of course, removes Australian sovereignty. Instead of Australians making their own laws, the laws are imported (as some sort of universal truths) from the UN.

The ultimate aim, which will be achieved, is that every UN covenant is legislated into law in Australia.

The practical effect is that the UN becomes our supreme legislative body. And these laws will be supervised by the unelected judges who can effectively strike down any legislation of the duly elected Parliaments.

From the point of view of sovereignty, the United Nations has no legitimacy – in fact, it is in direct contradiction to the concept of sovereignty. It is one thing for Australians to make their own laws, it is quite another for the UN – an unelected body, a collection of states including some of the worst in the world – to be deciding what laws are so universal that they should be imposed upon the Australian people. Yet such is the perceived moral authority of the United Nations; whatever they say is, quite literally, the law.

There are many excellent analyses of the dysfunctional nature and corrupt practices of the UN. Despite all of this, some people believe that the UN speaks like the Pope – infallibly on the questions of faith or morals.

Today in Australia, Political Correctness is so strong that it is no more possible to challenge the moral authority of the UN than it is to deny global warming. And we can be absolutely certain that our socialist federal Government, in the great tradition of socialists and communists, will seek to destroy our Australian sovereignty in favour of UN dogma.

The major international conflict today is between Islam and the Western democracies. Australia, as a Western democracy, feels that it must implement UN human rights laws, particularly in relation to the rights of Muslims within Australia, the rights of terrorists and the rights of illegal Muslim immigrants. That may be all very well, although there is considerable scope for disagreement. What is significant is that the Islamic

nations do not themselves support the UN human rights covenants. Accordingly, they subscribe to such statements as the Cairo Declaration of Human Rights in Islam (1990). This Declaration supports Shariah law, grants no freedom of religion, does not give women equal rights with men, and discriminates against non-Muslims. In itself, it demonstrates that there is no magic universality of law which should be imposed in each country.

In summary, my complaint is this. We will have introduced into Australia, as legislated domestic law, various UN Covenants. These will replace parts of our own law as we know it. The introduction of these laws acknowledges their moral superiority – they are universal laws and must be obeyed.

Our sovereignty is diminished by the fact that these superior laws are the product of an unelected body outside of Australia. Australia and Australians have demonstrated that they are perfectly capable of creating a just legal system arising from our national sovereignty. This is now denied. The acceptance of UN Covenants is an acceptance of the correctness of that denial.

In my opinion, there must always be a tension, if not a contradiction, between the concept of national sovereignty and the concept of universal human rights. It really gets down to the basic question: who should make the laws?

People like me consider that Australian laws should be made by Australians, and they reject the legitimacy of universal laws as determined by the UN or any other NGO.

Those that disagree with me (and there are many) have a fervent, almost religious, belief that the United Nations is the font of international justice, of the rights of man. Consequently, they believe that Australia must adopt the UN Covenants as domestic laws.

I do not believe that this conflict is capable of resolution. There is no right position, just a difference of opinion.

But I still believe the consequences for Australia will be a significant loss of sovereignty.