Chapter Eight

The Human Rights Commission: A Failed Experiment

Nicholas Cater

What would William Wilberforce make of the modern human rights movement and the compassion industry that drives it? Today's social improvers would like to imagine they are cut from the same cloth as the nineteenth century social reformers; that they possess special insights into social evils and a noble calling to fight them. Yet Wilberforce would find today's moralisers a very odd breed indeed.

Despite his own deep Christian conviction, Wilberforce would have been uncomfortable with their intemperate self-righteousness and ceaseless condemnation of their fellow men. He might also have trouble coming to grips with the wrong they are trying to right, for, while abolishing the slave trade was (so to speak) a black and white issue, the elimination of racism unfortunately is not.

The lexicon of the new crusaders is an insight into the way they see themselves and the cause they have adopted. Wilberforce, for example, would not have been described as an "anti-slavery champion", a "crusader for social justice" or a "defender of the oppressed". He was content with the modest title of "reformer". He would not have been satisfied if he had merely "made a difference", "raised awareness" or "sent a message" – phrases that betray the limited practical ambition of our times. Wilberforce lacked the conceit to imagine that he, or anybody else for that matter, could end slavery, since God alone had the power to deliver us from evil. Instead, the nineteenth century campaigners simply sought to stop the "slave trade", an odious form of commerce that could be outlawed.

By contrast, the work of Julius Salik, a former minister in the Pakistan government whose profession is now described as "champion of human rights", illustrates the fecklessness of modern social crusaders. Unlike Wilberforce, Salik's chief aim seems to be to protest against the evils of the world, rather than to eliminate them. His actions seem purely symbolic. *The Gulf News* reports that he protested against strikes by US drones by wiping ash, soot and mud all over his face and hands. He was "trying to get the attention of media pundits all over the world", a task at which he succeeded.

The Gulf News catalogues Salik's previous exploits: he hung himself on a cross to protest civilian killings; he locked himself in a cage to protest against the war in Afghanistan; he wore an outfit made of jute for more than 12 years to express solidarity with the massacred Muslim families of India.

The newspaper comments that Salik's extraordinary endeavours [seem] to have "no limits or bounds". He disconnected the electricity to his own home to express solidarity with slum residents; he donned black robes for more than a month to raise awareness of the plight of Muslims in the Philippines; he addressed a crowd for 16 hours straight in Lahore and then changed tactics by spending months without saying a word. Finally, he was moved to protest against the Pakistan government by "bringing camels into his own living room". From this evidence, *The Gulf News* concludes that

Salik's life is "a true example of courage, hope and conviction".[1]

Before embarking on the case for reform of the human rights industry, it is helpful to understand the moral character of the post-modern emancipists. Salik's actions are highly unlikely to have any practical effect – indeed, *The Gulf News* notes: "his protest and the strikes continue unabated". The campaign by Wilberforce and the abolitionists was directed towards changing laws in the British Parliament; Salik's campaign is directed toward demonstrating *compassion*.

Modern social protest is characterised by what the political scientist, Kenneth Minogue, described as "goodwill turned doctrinaire . . . philanthropy organised to be efficient". To advertise that one has *compassion towards asylum seekers* requires no act of charity or personal sacrifice; it is a political manifesto and a badge of cultural identity. The suffering of others no longer requires an act of *mercy* , a practical action to relieve suffering. It simply demands that we are *concerned*. To be concerned is not an involuntary emotional response to the suffering of others; it is a badge of cultural identity.

For the last 40 years, conservatives and democratic liberals have largely failed to appreciate the insubstantial nature of this crusade. They have lacked the courage to confront its sanctimonious arguments lest they be ranked among the oppressors rather than the oppressed. The dispiriting consequences of victimhood – enforced helplessness, fatalism and entitlement – have been painfully apparent. Yet a collective failure of nerve has made them hesitant about challenging a philosophy they knew in their hearts was wrong.

Hansard records the discomfort felt by admirable public figures at the introduction of human rights legislation but, when push came to shove, they opted for appeasement. Yet the moral crusaders can never be appeased. They, after all, are the makers of history. Minogue compared the moral campaigners to the legend of St George:

> The first dragons upon whom he turned his lance were those of despotic kingships and religious intolerance.
>
> These battles won, he rested a time, until such questions as slavery, or prison conditions, or the state of the poor, began to command his attention . . .
>
> But, unlike St George, he did not know when to retire . . . He *needed* his dragons. He could only live by fighting for causes – the people, the poor, the exploited, the colonially oppressed, the underprivileged and the underdeveloped. As an ageing warrior, he grew breathless in his pursuit of smaller and smaller dragons – for the big dragons were now harder to come by.[2]

Those words sing loudly above the confusion of our times. Yet they were published half a century ago at the start of Minogue's first book, *The Liberal Mind*. It is a book that pays revisiting, not least because it has stood the test of time. It is remarkable, too, for its prescience, providing a record of the intellectual climate in which the fixation with human rights was about to take hold. Writing early in the 1960s, Minogue sensed the direction in which liberalism – by which he means social liberalism or progressivism – was heading as it marched bravely uphill to seize the high moral ground. The modern international human rights movement was more than a decade away, but Minogue identifies the building block from which the edifice would be constructed. "The point of suffering situations," Minogue wrote, is to "convert politics into a crudely-conceived moral battleground." [3]

Those caught in a *suffering situation* are the people we think of now as *victims*, a phenomenon Minogue examined in his last book, *The Servile Mind*.[4] The victimhood club does not accept applications for individual membership. To join, and enjoy the many benefits membership offers, one has to be part of a "minority". The word "minority" in this instance is a figurative expression since the first victim category is women.

The second category is the ethnic minority or, as we are supposed to call them these days, the *visibly distinct*. One category, indigenousness, is recognised by the United Nations as a separate victim category. Unlike other ethnic minorities, however, indigenous people do not have to be visibly distinct, as Andrew Bolt learned to his cost in 2011.

Next in Minogue's analysis is a class of victim labelled miscellaneous, a category that is expanding. Matters concerning sexual disposition and gender are especially vulnerable to mission creep. First comes LGB, then LGBT, and now LGBTI, demonstrating the dangers of turning a private matter into a badge of cultural identity. Confusion reigns. The organisation, Beyond Blue, ran a clever campaign promoting community tolerance towards gay, lesbian, bi-sexual and trans-sexual people using the slogan, "Imagine being made to feel like crap just for being left-handed".[5] Then the Leader of the Opposition, Bill Shorten, spoils it all by demanding quotas for homosexual candidates in pre-selection contests. Will Labor also be introducing an Emily's List for the left-handed?

Disability is the growth area in the anti-discrimination industry these days; the number of grievances presented to State government bodies is growing all the time. Not all of them are frivolous, but in my business – journalism – it is the nutty ones that catch the eye. Take the case of Cecil, the disgruntled Santa Claus, who was employed by a department store in Adelaide to ply his jovial trade. The South Australian Equal Opportunity Commission took up Santa Cecil's case:

> Cecil . . . was asked if he could work without his glasses because they "were playing up with the photos". Cecil refused as he could not see without his glasses . . .
>
> He made a complaint of impairment discrimination to the Commission. The store management said that . . . the photos had to be reprinted after many complaints by the customers.[6]

Having listened to the evidence, the Commission adjourned to consider who had been naughty and who had been nice. Cecil left with $600 of compensation in his pocket.

All up, Minogue calculated in 2010, about 73 percent of the British population are members of the victimhood club. In 2013, Nicola Roxon's failed Human Rights and Anti-Discrimination Bill took victimhood to a new level of codified absurdity. To qualify for protection, you must have a listed *protected attribute,* and I was miffed to discover than none of them applied to me.

I am unlikely to take up breastfeeding, for example, not least because there is little chance of me becoming pregnant, another attribute in which I am deficient. Political views are a protected attribute, yet political disagreement is the consequence of pluralism, not prejudice, and demands the right to argue back. Immigrant status? Race? Forget it – I think the test case has already been run on "pommy plonker." The ruling, as I recall, was "suck it up you whingeing shower dodger", or words to that effect.

There is, however, a hint of afternoon light for middle-aged, able-bodied, Anglo-Scot, heterosexual males. One day, along with our pensions and discount bus passes, we will be eligible to claim the protected right of *age*.

I have one last hope of qualifying for the Victimhood Club – and I will throw this one out in case anyone wants to take it up *pro bono*. It seems to me that I have been excluded from the Victimhood Club purely on the grounds of my protected-attribute deficiency. Surely it is time to take seriously the plight of the protected-attribute challenged in our community?

It would be comforting to be able to say that Roxon's preposterous draft bill served a purpose in life; that this was not just 179 pages of legislative adventurism but a lesson to us all in what happens when this dismal line of reasoning is pushed to its absurd conclusion. Might it be said, for instance, that Roxon's bill showed that it is extraordinarily difficult to define racial discrimination and outlaw it by legislative means? That social attitudes and mental habits do not readily lend themselves to codification and statutory prohibitions?

Yes, but we have known that from the start. On 31 October, 1975, the day the *Racial Discrimination Act* was proclaimed, Gough Whitlam used exactly those words.

It is, of course, extraordinarily difficult to define racial discrimination and outlaw it by legislative means. Social attitudes and mental habits do not readily lend themselves to codification and statutory prohibitions.[7]

In that case, if you will pardon my impertinence, what the devil was it all about? What was the mischief the Act was trying to stop? After all, as Whitlam went on to say:

> I hope it will not be thought that by enacting this law we imply any low opinion of the tolerance and good nature of Australians. We are on the whole an exceptionally generous and understanding people.
>
> When we look at the history of our immigration program and compare our record with that of any other multi-racial society, it is remarkable how smooth and harmonious this great experiment has been . . .
>
> Without complacency of any kind, we can fairly claim that the Australian people are among the most tolerant in the world.[8]

Let us pause, for a moment, and consider the logic of what Mr Whitlam said on that fateful day in his penultimate week as prime minister. It was the day he announced that Al Grassby would head the Community Relations Commission, the forerunner of the Human Rights Commission. The essence of Mr Whitlam's admission was, first, that Australia is a pretty friendly place and, second, that even if it was not, the law can do precious little to fix it. The Act's provisions, Mr Whitlam conceded, were "necessarily symbolic and exemplary".

Only now, with the Act safely passed and assented to by the Crown, only now, 11 days before his dismissal with the nation's attention on other matters, distracted by the consequences of blocked supply, does Whitlam state clearly his intention: the *Racial Discrimination Act* 1975 was a Trojan Horse for a charter of rights:

> Unlike the United States, we have no Bill of Rights. Unlike the US, our Constitution says nothing about civil liberties. There is a need to spell out in an enduring form the founding principles of our civilization . . .
>
> If our Bill lacks the rhetorical grandeur of the American documents, it will have, I trust, the same compelling and lasting force.[9]

This legislation was not meant, after all, to protect human liberty, to right wrongs or

bring transgressors to account. It was Whitlam's surreptitious way of fulfilling the aims of item 24.1 of the Labor Party's National Platform, which demanded that "The Constitution . . . be amended to provide for the protection of fundamental civil rights and liberties".[10]

It has been noted before that the effect of the *Racial Discrimination Act* is to serve as a quasi-Bill of Rights. What has not been fully appreciated until now, however, was that Whitlam's exploitation of the external powers loophole in section 51 of the Constitution was more than just a means of extending the Commonwealth's jurisdiction over the States. It was a device used with the express intention of bypassing democratic scrutiny. Whitlam knew it would be hard to persuade the electorate to amend the Constitution to protect human rights. By ratifying an international agreement, and then assuming an obligation to honour its intention in domestic law, Whitlam could avoid taking the matter to a referendum. In my opinion it amounted to an act of subterfuge by the Whitlam Government that demonstrated a contempt for the popular will and a reckless disregard for due process.

Whitlam's words to the 1977 Labor Party National Conference leave no room for doubt about his reasons for employing the external affairs provision in the Constitution. It was a back-door way of bringing constitutional force to bear without the tiresome business of gaining majority support in the majority of States. Whitlam moved a motion recommending removal of item 24.1 from the Labor Party's platform. The barriers to constitutional reform were so great that any amendment that could be passed "would be a very insipid one indeed," said Whitlam. He went on:

> We know it is very difficult to carry referendums . . . You know how easy it would be to alarm certain sections of the Australian population as to laws we would be making on colour or race, sex, creed or politics . . . you can imagine the opportunities for mischief and confusion which would be presented during a referendum campaign.
>
> Accordingly, we think the more practical way to bring about amendments in our laws is to seek international conventions. International conventions are very much wider in their applications, as anyone can see by reading them, than any of the Acts which have been passed by any Australian Parliament.
>
> Once you get a convention through, and once you get it ratified by the requisite number of countries, then the Federal Parliament can pass the law to carry it out, but we believe this is a much more likely way to bring about amendments.[11]

Quasi-constitutional change in Australia would be achieved through the dubious exploitation of the external affairs provision in the Constitution with the connivance of New York and Geneva. I submit, therefore, that the *Racial Discrimination Act*, upon which the entire bureaucratic edifice of the Human Rights Commission and its wannabe imitators is built, is undemocratic and is illiberal to its very core. Illiberalism and intolerance are congenital faults of the Commission, a body conceived in a manner the draftsmen of our Constitution would neither have intended, imagined nor endorsed.

The *Racial Discrimination Act* was, by Whitlam's own admission, a lopsided beast, protecting certain rights but not others, like the right to freedom of speech. At the start of 2013, when the Human Rights Commissioner, Gillian Triggs, appeared before a Senate committee, the then shadow minister for legal affairs, Senator George Brandis, rammed home the censorious tendencies of the Commission in an inspired line of

questioning. The Roxon Bill, Brandis observed, listed political opinion as protected right. Did it mean that the Human Rights Commission had woken up at last to the need to defend free speech? Sadly, the answer was no:

> We would like to make the point that not all political opinion is protected. The right is not absolute; it is subject to certain constraints.[12]

Triggs warned that, if public order or the maintenance of a civilised workplace is threatened, "decision makers will have to put limits".

It would be nice to know who these decision-makers were going to be. How would the decision-makers be chosen? And to whom would they be answerable? Not you nor me, that is for sure, for like Immanuel Kant, the Human Rights Commission is nervous about leaving these sorts of decisions to vulgar opinion. Parliament will have no say in the matter, if the human rights brigade get their way. For, as Catherine Branson, Triggs's predecessor, let slip in a speech in 2012, some things are "much too important to leave just to governments." [13]

Let us conclude, then, by considering the $33 million question.[14] What is the new Attorney-General supposed to do? To be blunt, the Human Rights Commission is beyond repair, but it is unrealistic to expect the Abbott Government to burn precious political capital to bring about its demolition when the Commission's failings are not yet apparent to the public. The lily-livered Right has failed to prosecute the case. It has been inclined to curl into a ball and hide under the table at the very mention of the words, "human rights".

The then Opposition legal affairs spokesman, Senator Ivor Greenwood, made a robust case in the Senate against the illiberalism of the *Racial Discrimination Act* in 1975. The provisions it contained, he said, were "repugnant to traditional freedoms." [15] Yet, when it came to the crunch, the Coalition declined to use its majority in the Senate to block the bill. Greenwood, choosing his words carefully no doubt, said the Opposition was "in complete accord with the *proclaimed* virtue" of Australia's first human rights legislation [emphasis added].

As is the pattern on these occasions, it fell to a Queenslander to say what had to be said. Senator Glenister Fermoy Sheil, known to friend and foe alike as "Thumpa", was a doctor and a part-time rabbit farmer. He was not afraid to speak his mind:

> The passage of this Bill would take some fundamental rights away from us, such as the right of free speech, free discussion and publication. Far from eliminating racial discrimination . . . the Bill will . . . create an official race relations industry with a staff of dedicated anti-racists earning their living by making the most of every complaint.[16]

Thumpa's uncannily accurate prediction was dismissed as "Neanderthal grunts" [17] by Labor's Senator Jim McClelland. Yet, had his voice prevailed, there might never have been a Community Relations Commission that grew up to become the Human Rights Commission. It was, as we well know, within the Coalition's power to block it. If the Right stood up for what it knew to be true, instead of what it thought could be acceptably said, the public consensus would already have moved against the Human Rights Commission, allowing Tony Abbott's Government to put it out of its misery here. In this field, as in so many dispiriting avenues of progressive thinking, the Right is paying the price for decades of intellectual bludging.

Yet this is no time to become despondent, for the argument is clearly turning. The Government's intention to repeal the so-called Bolt provisions in the *Racial*

Discrimination Act and to appoint a Freedom Commissioner are important steps. I vividly recall the experience of sitting on the verandah of Australia's finest hotel, The Imperial in Ravenswood in far north Queensland, 15 months ago, to write the chapter on human rights in *The Lucky Culture*. As the evidence drew me firmly to the conclusion that the only honest observation to make was that the Human Rights Commission should be abolished, I hesitated at the keyboard, thinking I was climbing out on a limb.

Yet by the time the book was published in May 2013, the debate had turned dramatically. The defeat of Roxon's bill was a highly significant moment. For the first time legislated adventurism in this field had been blocked, and few on her side of politics were prepared to come to its defence. Other events, like the decision of Myer's Bernie Brooks and his board to stand up to a nasty little social media campaign engineered by the Disability Commissioner, Graham Innes, are signs that the wind is changing.

We should take courage. Bad ideas can be changed. If I may be allowed to borrow from the lexicon of the activist, the human rights *farrago* has reached tipping point. And Thumpa was clearly on the right side of history.

Endnotes

1. Malik Alik Ayub Sumbal, "Pakistan minority rights champion protests against drones", *The Gulf News*, 2 November, 2013, online edition, accessed 8 November, 2013.

2. Kenneth R Minogue, *The Liberal Mind*, Random House, New York, 1963, 1.

3. Minogue, 1963, 8.

4. Kenneth Minogue, *The Servile Mind*, Encounter Books, New York, 2010.

5. https://www.beyondblue.org.au/for-me/stop-think-respect-home/is-it-ok-to-be-left-handed-

6. "Santa Claus told not to wear glasses," Government of South Australia Equal Opportunity Commission, 11 August, 2010. http://www.eoc.sa.gov.au/eo-resources/complaint-summaries/santa-claus-told-not-wear-glasses-photos-children, accessed 8 November 2013.

7. Gough Whitlam, "Proclamation of the Racial Discrimination Act," speech, 31 October 1975.

8. Ibid.

9. Ibid.

10. Australian Labor Party, "Platform, Constitution and Rules as approved by the 27th Commonwealth Conference Adelaide", August XXIV:1, 28.

11. Australian Labor Party, Transcript of 32nd National Conference, Party, 4 – 8 July 1977, 305.

12. Legal and Constitutional Affairs Legislation Committee, Human Rights and Anti-Discrimination Bill 2012, *Parliamentary Debates (Hansard)*, Parliament of Australia, 24 January 2013.

13. Catherine Branson, "20 Years of Mandatory Immigration Detention", speech to the Australian Refugee Association, 22 June, 2012.

14. Human Rights Commission, Annual Budget 2013-14. Source: Human Rights Commission Annual Report, 2012-13.

15. Ivor Greenwood, *Parliamentary Debates (Hansard)*, Parliament of Australia, Senate, Canberra, 14 May 1975.

16. Glen Sheil, *Parliamentary Debates (Hansard)*, Parliament of Australia, Senate, Canberra, 14 May 1975.

17. Jim McClelland, *Parliamentary Debates (Hansard)*, Parliament of Australia, Senate, Canberra, 27 May 1975.