

Introduction

Rights and Wrong Turns

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In the two chapters that follow, Ed Santow and Julian Leaser provide differing perspectives on the recent debate regarding the need for increased human rights protections in Australian law.

As I write, it is New Year's Day 2011, and the title of Mr Santow's chapter has me feeling sympathy for those waking from their own George and Martha moments of the night and the year just gone.

The bleak subject matter of Albee's play is perhaps not too remote from the position in which bleary eyed advocates and opponents of an Australian Human Rights Act find themselves today. There has been passionate (if sober) debate, leading to the recommendations of the Brennan Committee,¹ including a recommendation for the enactment of a Human Rights Act based on the "dialogue model". However, with the Commonwealth neither embracing nor entirely rejecting those recommendations, there seems now to be a curious impasse that satisfies neither side of the argument. Echoing the experience of George and Martha, the sound and fury have been replaced by an early morning moment of comparative calm.

Mr Leaser seeks to erect an interesting dichotomy between "organic" British or Australian rights recognised by or reflected in the common law² and the rights recognised in broader statements of human rights such as the French Declaration of the Rights of Man. He suggests that it is the latter which are the inspiration for international instruments dealing with human rights. He also suggests that, unlike common law rights, the rights recognised in international human rights instruments lack an "entrenched cultural connection to Australia" and are, for that reason, unsuitable as templates for the development of Australian norms (be it as a basis for a Human Rights Act or, as proposed in the *Human Rights*

1 F Brennan et al, *National Human Rights Consultation Report* (Commonwealth of Australia, Canberra, 2009).

2 See, as to the varied meaning of the term "common law rights", *The Constitution and the Protection of Human Rights*, a paper delivered in an extra-curial capacity by Chief Justice French as the Edith Cowan University Vice-Chancellor's Oration, 20 November 2009, Perth.

This is a preview. Not all pages are shown.