

Foreword

Justine Nolan*

The question of how to restore integrity and accountability to the government is top of mind for many right now on both the local and international stages. Despite attempts by some governments to cling to democratic values, the impacts of a global pandemic, climate change, ever-increasing refugee flows, enduring racial discrimination, populism, armed conflict and economic instability have triggered a parallel erosion of human rights and declining trust in governments. The conduct of some leaders in concentrating power and facilitating cultures of entitlement has additionally seen the elevation of impunity over accountability.

One casualty of poor governance has been human rights. The promise of human rights is vast yet there is often a significant gap between promise and reality. The responsibility for the fulfilment of rights falls primarily on states and the institutions they create. However, human rights are not an optional extra. They are basic internationally-agreed standards to ensure that everyone — regardless of race, gender, sex, economic status, religion or ethnicity — is treated with dignity. Without good governance, including transparency and accountability of our public institutions, ‘the promise of human rights may remain just that: a promise unfulfilled. Enforcement of fundamental freedoms when it matters may be impossible.’¹

As governments increasingly shut down channels of citizen participation and eschew transparency, they are perceived as undermining public integrity and protecting the powerful from accountability. Are checks, balances, and human rights simply seen as obstacles to the exercise of power rather than principles intrinsic to good governance?

An understanding of human rights, accountability and the rule *of* law (not rule *by* law) should be an integral part of every law school education. Indeed, it is part of the *modus operandi* of the University of New South Wales’s Faculty of Law & Justice, whose founding Dean, Emeritus Professor Hal Wootten noted that ‘a Law School should have and communicate to its students a keen concern for those on whom the law bears harshly...’² Wootten was keen to ensure that students not only understood the law, but also its power, its limitations, and its consequences.

And so too should governments in both the design and implementation of laws and policies at a national, regional and international level. Laws should be designed to safeguard human dignity and empower people, not exclude or marginalise them. The stories told in this Issue about the disturbing demise of accountability, and the accompanying challenges to rights, tend to showcase the latter rather than the true promise and implementation of human rights.

This Issue, ‘People, Power and Perspectives: A Pandora’s Crisis’, is aptly named after Pandora from Greek mythology, who unleashed calamity and sorrow on the human race when she opened her box. It explores the consequences

* Professor at the Faculty of Law and Justice, and Director of the Australian Human Rights Institute, UNSW Sydney.

and casualties when governments and the public institutions they create act in a manner that is not always consistent with rights or, indeed, representative of the people who elected them to govern.

The articles traverse the globe and, while many people may associate a lack of transparency and accountability largely with authoritarian governments, the authors tell stories that showcase the curtailing of rights, which can and does also occur in countries with democratically elected leaders. The regulatory impact of laws introduced to stem the global pandemic, the lack of access to healthcare for children in immigration detention, the gerrymandering of electoral boundaries to suit the political party in power, and a bill that enables, rather than curtails, discrimination on religious grounds are all examples of governance gone wrong by democratically elected governments. But as Catherine Renshaw explains in her examination of the continued retention of the death penalty in Asia, the character of the government is one of the most significant factors in how well human rights are protected, and authoritarian-style governments have a consistently poor record on rights.

One of the greatest challenges for governments and the public institutions that they create is often not the process of lawmaking but implementation. That is why integrity and transparency are so important — to help ensure that all governments can be held to account and that the power of government remains with the people.

- 1 John von Doussa, 'Promoting Human Rights: Good Governance, the Rule of Law and Democracy' (Conference Paper, Pacific Judicial Conference, 26–30 July 2005) <<https://humanrights.gov.au/about/news/speeches/promoting-human-rights-good-governance-rule-law-and-democracy>> quoting Michael Kirby, 'Human Rights: Essential for Good Governance' (Seminar on Good Governance: Practices for the Protection of Human Rights, Seoul, 15 September 2004) <<https://www.michaelkirby.com.au/content/volume-54-2004>>.
- 2 Hal Wootten, 'Living Greatly in the Law' (2008) 31(1), *University of New South Wales Law Journal* 258, 260 <<https://www.austlii.edu.au/au/journals/UNSWLJ/2008/10.pdf>>.