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Last year the first issue of the *Australian Journal of Human Rights* was released. In light of the growing interest in and recognition of human rights in Australia,[1] the Journal provides a useful forum for scholarship and discussion of human rights issues in this country. The scope and approach of the Journal are set out in the preface. The Journal sets out to review human rights developments in Australia and the Asia-Pacific region. It also sets out to adopt a broad-based multidisciplinary approach to human rights, dealing not only with the legal aspects of human rights but also with philosophical, historical, sociological, economic and political issues.

This first issue is divided into three sections, the first containing feature articles on various topics, the second devoted to a symposium on racial vilification in Australia and the third containing notes on a number of recent developments in Australia and overseas.

The feature articles section opens with a contribution from Australia's recently retired Chief Justice, Sir Anthony Mason, titled 'The Importance of Judicial Review of Administrative Action as a Safeguard of Individual Rights'. After providing views on the scope, purpose and importance of judicial review of administrative action, Sir Anthony Mason comments on a few issues which are current in administrative law today. He comments with caution on a trend in some areas of government to exclude judicial review of administrative action. Other topics addressed include the extent to which Cabinet decisions and government policy should fall within the scope of judicial review, *locus standi* and justiciability within administrative action.

Jennifer Balint's contribution 'Towards the Creation of an Anti-Genocide Community: The Role of Law' discusses causes of genocide and mechanisms involving law to prevent genocide. Balint's aim is to create the anti-genocide community. Mechanisms to address genocide exist at the international level, such as the United Nations Convention on the Prevention and Punishment of the Crime of Genocide and the work of the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities. Balint notes, however, that these mechanisms come in to play only once genocide has occurred. In order to prevent genocide, developments must occur within the

[1] This interest and recognition is reflected in recent decisions of the High Court: see for example: *Mabo v Queensland [No 2]* (1992) 175 CLR 1, *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, and *Minister for Immigration v Ah Hin Teoh* (1995) 128 ALR 353. This interest has also been contributed to by government initiatives such as anti-discrimination legislation, education programs and, more recently, by the Federal government's acceptance of the First Optional Protocol to the International Covenant on Civil and Political Rights ('the ICCPR') and the optional complaint procedures under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the Convention Against Torture').

State. As a minimum, Balint calls for rights and equality law. She also explains what else is needed to move towards the anti-genocide community.

In 'No One Can Own the Land' Larissa Behrendt discusses the failure of Australia's laws to protect the rights of Aboriginal people. Behrendt details biases in the legal system which have denied rights of Aboriginal people and legitimised discrimination against them. Elsewhere in the Journal the High Court's decision in *Mabo v Queensland [No 2]*[2] is praised. However, Behrendt explains why she believes *Mabo* is a hollow victory for most Aboriginal groups. She concludes with a call for Aboriginal people to develop their own legal institutions to determine what their rights are, and how those rights should be protected.

Jerry Dohnal, in his paper 'Structural Adjustment Programs: A Violation of Rights', examines the human and economic effects of structural adjustment programs on the citizens of less developed countries ('LDC's') in Africa. Dohnal details the negative economic effects of structural adjustment programs on citizens in certain African countries, as well as how these programs are violating these people's economic, social and cultural rights. Dohnal uses the International Covenant on Economic, Social and Cultural Rights ('the ICESCR') as the basis for minimum rights which States should provide for their citizens. While Dohnal concedes that the World Bank and the International Monetary Fund have no legal obligation under the ICESCR because they are not contracting parties, he argues that, based on the evidence of economic misery and human rights breaches to be found in LDC's in Africa, the monetary bodies should review the effects of structural adjustment programs and rethink their approaches to development and debt repayment programs.

Roger Douglas' article 'Sentencing Political Offenders' examines the issue of how political motivation should be taken into account in the sentencing of those convicted of political offences. In light of the lack of case law on the point in Australia, Douglas draws on other areas of the law for guidance such as extradition law, the emerging constitutional protection of political expression and statutory provisions precluding discrimination on political grounds. Following an examination of the principles which can be extracted from these areas, Douglas concludes that political motivation is mitigatory to the degree to which the offence represents an attempt to communicate a political message and aggravating to the extent to which it involves an attempt to coerce a government.

The features section concludes with an article by John Hookey titled 'The Prompt Trial Right: Australian Isolationism in International Law'. Hookey examines and criticises judicial approaches to the right for a prompt trial in Australia. Hookey commences by reviewing decisions of the United Nations Human Rights Committee under the First Optional Protocol to the ICCPR, as well as decisions of courts in Canada, the United States and the United King-

[2] (1992) 175 CLR 1.

dom. He then turns to Australia where the High Court, in the decision of *Jago v District Court of New South Wales*,[3] denied the existence of a distinct common law right to a speedy trial. Hookey argues that the High Court's approach is inconsistent with international law. Hookey concludes with a warning that if the harmonisation of Australian domestic law with Articles 9 and 14 of the ICCPR does not take place, it is likely that a communication will be brought against Australia under the First Optional Protocol, to test whether Australia is meeting its obligations under the Convenant.

The second section of the Journal is devoted to a symposium on racial vilification in Australia. There is a debate today as to whether racial vilification legislation is necessary and, if so, the form it should take. The symposium addresses the issues in that debate and is introduced by Melinda Jones. While introductions are often cursory, Jones' introduction is commendable. She outlines the issues and introduces each article in the symposium, placing it within the framework of the debate.

The first two contributions present a background to the debate. Ian Hazeldine, in his article 'Racism in the Australian Context: Issues of Definition and Action', describes a range of factors which have been significant in the development of racism in Australia, including nationalism, class and sexism. He also describes strategies to combat racism in Australia, including formal anti-discrimination legislation, community education and structural reforms led by government. He notes that, to design anti-racism strategies, it is important that meaningful consideration occur with those who are the likely targets of racism.

Jeremy Jones' contribution 'Holocaust Denial: Clear and Present Racial Vilification' details one type of racism in Australia. Jones details activities by Australian extremist groups that adopt Holocaust denial as part of their ideology. Jones concludes with a call for governments to provide citizens with recourse when they are subjected to racial vilification and against those who incite violence, discrimination or persecution.

Having established the serious nature of the threat of racism, the symposium turns to an examination of some existing attempts to deal with racism. Efrosini Stephanou-Haag, in her paper 'Anti-racism: From Legislation to Education', details one such attempt, the Anti-racism Policy implemented by the South Australian Education Department in 1990. Under the Policy programs to combat racism were run for teachers and students. The Anti-racism Policy had its origins in the Equal Opportunity Act 1984 (SA). Stephanou-Haag stresses the importance of legislation in giving the Anti-racism Policy a weight it would not otherwise have had and in providing the impetus for anti-racist program development.

The symposium also examines attempts to deal with racial vilification in other countries. Luke McNamara provides an overview of anti-vilification laws in Canada, which have criminalised vilification. McNamara notes problems

[3] (1989) 168 CLR 23.

with the Canadian approach and calls for greater critical examination of the objectives and the practical consequences of laws designed to counter the deleterious effects of racial vilification and hate propaganda.

David Knoll focuses on recent developments in the United States. He notes that the American experience in the last decade has seen a resurgence of anti-vilification laws. He also identifies the key jurisprudential frictions in the United States, such as the encounter between protection against discrimination and protection of freedom for discriminatory conduct. Knoll concludes that a lesson for Australian legislators to learn is that the law in the United States has often reacted after racially motivated violence has established itself. He suggests that Australian legislators act now to implement anti-vilification legislation.

Anne Twomey examines laws against incitement to racial hatred in the United Kingdom. In addition to offering some specific suggestions for Australian legislators arising from problems in the United Kingdom, Twomey states that the greatest lesson to be learnt is that we must be clear about what we expect legislation to achieve. In the United Kingdom, where racist material and violence is increasing rather than decreasing, the allegation is often made that the laws against incitement to racial hatred have failed.

In New South Wales racial vilification laws have been in operation for six years. Nancy Hennessy and Paula Smith examine the racial vilification provisions of the Anti-Discrimination Act 1977 (NSW). After analysing the provisions of the legislation and the complaints handling process, Hennesy and Smith suggest some legislative amendments.

Tamsin Solomon and Kate Eastman, in their contributions, identify legal and policy issues to be considered in drafting racial vilification legislation. Solomon, in her article 'Problems in Drafting Legislation Against Racist Activities' argues that legislation proscribing racist behaviour can best be drafted on the basis of an analysis of the nature of that behaviour, the forms that the behaviour takes and the harm it causes. After analysing these elements, Solomon identifies some drafting problems with the Federal government's now-lapsed Racial Discrimination Amendment Bill 1992 (Cth). Solomon also addresses constitutional limitations on the Federal government's power to legislate on racial vilification issues.

More recently, the Federal government has introduced the Racial Hatred Bill 1994 (Cth). If the Bill is passed, it will create three offences of racial incitement. Kate Eastman examines the provisions of the Bill. She argues that the Bill will not be effective because the criminal provisions are too uncertain and cumbersome to secure a conviction beyond reasonable doubt. Eastman also discusses some broader drafting issues, such as what acts should be covered by the proposed laws, who should be protected by the proposed laws and how the High Court would view the Bill in light of its recent freedom of communications decisions.

Melinda Jones, in her contribution 'Empowering Victims of Racial Hatred by Outlawing Spirit-Murder', assesses the proposal for racial vilification law from

the perspective of the victim. She argues that, by focusing on the rights and needs of the victims rather than on the rights and needs of perpetrators, it becomes apparent that racial vilification legislation is not only legitimate but is necessary.

Ian Freckleton, in his contribution 'Censorship and Racial Vilification Legislation', puts forward a strong argument against the use of criminal legislation to combat racial vilification. He argues that the blunt instrument of the criminal law is ill-suited to addressing what is in Australia fundamentally an attitudinal and not a criminal problem. He argues that racial vilification legislation is ill-conceived, carrying with it the potential for being seriously counter-productive, rarely likely to be enforced and emanating from a misconceived notion.

The third section of the Journal contains notes on a number of recent jurisprudential and legislative developments in Australia and overseas.[4] Following the Recent Notes section is a human rights bibliography and a book review section. The bibliography lists journal articles published in 1993 and 1994 concerning human rights, especially as they relate to developments in Australia and the Asia-Pacific region. The large number of articles listed is proof of the current interest in human rights in Australia and of the need for this Journal.

In conclusion, this first issue contains a variety of interesting and informative articles addressing an array of human rights issues and developments. One criticism is that while the Journal sets out to chart human rights developments in Australia and the Asia-Pacific region, there are no articles on developments in Asia-Pacific countries outside Australia. Hopefully, the next issue will attract contributions to fill this gap.

As for the future, the Journal's editors have indicated there are two issues planned in 1995. The first will be a general issue, the second will be devoted to a symposium on the rights of children. Having enjoyed reading volume 1, I look forward to reading the two issues of volume 2.

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[4] There are case notes on *Dietrich v The Queen* (1992) 177 CLR 292, *Marion's Case* (1992) 175 CLR 218, *P v P* (1994) 120 ALR 545 and *Pratt v Attorney General for Jamaica* (1993) All ER 769. There are also notes on the Community Protection Bill 1994 (NSW), the Human Rights (Sexual Conduct) Bill 1994, and the implications of Australia's recent acceptance of the optional complaint procedures under arts 21 and 22 of the Convention against Torture.

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