Full steam ahead for the human rights in 3 minutes project

Research shows that most Australians support human rights, but don’t quite understand what they are. The Castan Centre has embarked on a two year project to create short, engaging videos focusing on current and controversial human rights questions. These videos are designed so that they can be easily shared online and over social media, allowing a broad audience to be engaged.

The first 10 topics have been chosen by our members and production on those is underway with the involvement of not only the Castan Centre but also students from journalism, film production, animation and law disciplines. The law and journalism students have taken to the project with enthusiasm and are working in teams to pitch ideas for each topic and then work on a final script, while RMIT animation students will create the visual elements. Film and TV veteran Rob Hall is donating his (considerable) time as Creative Director and has assembled a talented cast of actors to work pro bono on the project.

Our academics have taken to the task with gusto, but also some trepidation about their acting debuts, as they play their part as the human rights experts. Filming and editing of the first six videos has commenced with the involvement of Andre Dao, formerly Project Officer with the Centre, who has returned to be part of the production team alongside Elle Marsh.

The project is funded by the US-based Newman’s Own Foundation, the Victoria Law Foundation and the Monash University Vice-Chancellor. The first videos will be released in September this year.

Social Media: What are we up to?

It’s no secret that the world has dramatically changed the way it communicates. The rise of social media and the ever increasing prevalence of smart phones and tablets gives us the opportunity to seek out information and communicate like never before. In the past few years, the Centre has focused on expanding our online and social media presence, allowing us to comment on human rights issues, facilitate the public’s interest in human rights and help create a stronger culture of human rights.

What have we been doing online over the last 12 months?

We have featured 55 posts on our main Castan Centre blog, and by the time you read this, we will have ticked over 100,000 views. The blog is a major avenue to share in-depth commentary and analysis by both centre academics and guest writers, who have included Tim Soutphommasane, Australia’s Race Discrimination Commissioner, and Kate Galloway who wrote our most read article for the year: ‘The unravelling of civil liberties in Queensland’ regarding the new bike laws.

Our Global interns also have a blog to call their own, where they reflect on their experiences around the world.

Facebook and Twitter are both opportunities for us to connect with the public on a daily basis. Our Facebook following has increased 57 per cent in the last 12 months and is an important channel to share information about Centre activities as well as major Human Rights issues. Our twitter account is in overdrive (25,000 tweets and counting) sharing global human rights news through the week. We also have a dedicated twitter account for live tweeting our events.

Our YouTube channel is also an important resource for our events. We have hosted 15 events in the last 12 months, as well as our annual conference, and video of almost all events is available on YouTube along with short 5 minute Q+As with our speakers. With more than 6,500 views over 12 months we know that many of you who can’t attend in person still want to be able to hear from our wide range of expert speakers.

How can you get involved?

Join us! re-tweet, comment, share, watch, RSVP for an event, or just follow us and come along for the ride.

Our main blog: http://castancentre.com

The global interns blog: http://castanglobalinterns.wordpress.com

Facebook:
www.facebook.com/TheCastanCentre
Castan Centre Twitter: @CastanCentre
Castan Events Twitter: @CastanEvents

YouTube:
www.youtube.com/user/CastanCentre

And don’t forget to go to our website www.law.monash.edu.au/castancentre
and click on the link to become a member (it’s free)
Our annual conference will be held on Friday 25th July at the Deakin Edge in Federation Square with a full day of local and international experts.

Jillian C. York, Director for International Freedom of Expression at the Electronic Frontier Foundation, is visiting Australia especially for the conference. A passionate defender of Internet freedom, York will be examining the hot topic of internet spying in the wake of the Edward Snowden revelations.

Fresh on the heels of completing the report of the commission of inquiry on Human Rights in North Korea, retired High Court Judge The Honourable Michael Kirby will speak about the appalling human rights abuses he uncovered during his time leading the commission into the Hermit Kingdom.

In light of the continuing public and political debate about asylum seekers, offshore processing and the re-settlement of refugees, Elaine Pearson, Australia Director at Human Rights Watch, will debate the consequences of Australia’s border protection policies. Dr Cassandra Goldie, CEO of the Australian Council of Social Service, will draw on her extensive legal, public policy and advocacy experience to speak on poverty in Australia while Australia’s commitment to addressing poverty overseas will be investigated by Adam McBeth, who is an Associate Professor at Monash University and a Deputy Director of the Castan Centre as well as co-author of the recent book, The International Law of Human Rights.

George Williams AO is one of Australia’s leading constitutional lawyers and public commentators and as chair of the Victorian Human Rights Consultation Committee in 2005 helped bring about Australia’s first State bill of rights, the Victorian Charter of Human Rights and Responsibilities. At our conference he will discuss the High Court’s role in recent human rights cases.

Working as a senior advocate with the Foreign Prisoner Support Service, human rights activist and writer Martin Hodgson has worked on the cases of individuals imprisoned overseas, advised on death penalty cases around the world and managed public and judicial campaigns for Aboriginal and Torres Strait Islanders. At our conference he will discuss Indigenous rights in the criminal justice system.

Our final confirmed speaker is Dr Ronli Sifris, who is a Monash University lecturer and associate of the Castan Centre. Her book Reproductive Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture has recently been launched and she will take the floor to discuss women’s reproductive rights. The Honourable Michael Kirby will speak at our conference on Human Rights abuses in North Korea.

To register for the conference, and to keep updated about more speakers, go to our website (law.monash.edu/castancentre).

The Castan Centre’s biennial gala dinner has been announced for October 23rd this year. The keynote speaker will be Jon Stanhope, who finishes his term as administrator of the Australian Indian Ocean Territories this September. In that role Mr Stanhope has been responsible for both the Cocos (Keeling) Islands and Christmas Island, which is home to a large asylum seeker detention centre.

Mr Stanhope will reflect on his life and work on Christmas Island during a highly controversial period, and his signature achievement of overseeing the creation of Australia’s first Human Rights Act in his capacity as Chief Minister of the ACT from 2001 -11.

This year, Mr Stanhope was awarded Officer of the Order of Australia (AO) in recognition of his distinguished service to the community through leadership roles, the advancement of human rights and social justice, and economic development.

The gala will again be held at Carousel, overlooking Albert Park Lake and the Melbourne CBD skyline. Our dinner is a major fundraising event for the Centre and as well as a night of delicious food and wine there will be fantastic raffle and auction prizes on offer.

More information on ticket sales will be released to our members shortly. In the meantime, if you would like to donate an item for our raffle or auctions, please call our administrator Simone on 9905 3327 to discuss.
Centre Associate launches new book

A new book by Castan Centre Associate Dr Ronli Sifris provides an important new insight into a feminist understanding of international human rights. The book, *Reproductive Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture*, was launched in March by the Chief Justice of the Supreme Court of Victoria, Marilyn Warren. It examines restrictions on reproductive freedom through the lens of the right to be free from torture and other cruel, inhuman or degrading treatment.

Dr Sifris said the book challenges the traditional notions of torture, as it deconstructs the meaning of torture from a feminist perspective. “There is a myopic view that torture only takes place within the traditional paradigm of interrogation, punishment or intimidation of a detainee,” Dr Sifris said. “This often prioritises the experiences of men over those of women, given that the pain and suffering from which women disproportionately suffer occurs in situations outside of the context of these standard definitions, such as in circumstances of intimate partner violence. My book focuses on restrictions on reproductive freedom within the framework of the right to be free from torture.”

Dr Sifris is an Associate of the Castan Centre for Human Rights Law. She received her LLB from Monash University where she was awarded the Supreme Court Prize for graduating first in her class and was the editor of the Monash University Law Review. She completed an LLM in International Legal Studies as a Hauser Scholar at NYU School of Law and a PhD at Monash University. Prior to commencing her PhD she worked as a consultant with the International Center for Transitional Justice in New York.

Comings and goings at the Castan Centre

The Castan Centre welcomed Sarah Austin as its new Project Officer in March this year. Sarah, who finished her undergraduate law degree at Monash in 2008, had previously showed her skills as a long-term researcher on the Centre’s human rights case note collaboration with Oxford University Press. The project, which requires the Centre to create a case note for every substantive complaint heard by one of the United Nations’ treaty bodies, allowed Sarah to hone her human rights law knowledge. Sarah replaces Grace Jennings-Edquist who scored a highly sought after baptism of fire in the lead up to our first gala dinner in October of that year. She has since become adept at the huge range of tasks thrown her way on a daily basis. Now, as we prepare to host our third biennial dinner, she is handing the duties over to Simone Heane, who will take over for Janice during her absence.

Since arriving, Sarah has been thrown in the deep end, helping to edit the Castan Human Rights Report while assisting on the Human Rights in 3 Minutes project, editing a backlog of videos and managing the Centre’s social media platforms. She has also taken the lead in editing this newsletter while handling all of those other little tasks that inevitably pop up along the way. Sarah has settled in well and will hopefully be with us for a long time to come. You can read more about her in the “Four Questions for...” feature on page 11.

Just as Sarah is finding her feet, our Administrator Janice Hugo is taking leave as she prepares for the birth of her first child. Janice has been with the Centre since 2010 when she had a baptism of fire in the lead up to our first gala dinner in October of that year. She has since become adept at the huge range of tasks thrown her way on a daily basis. Now, as we prepare to host our third biennial dinner, she is handing the duties over to Simone Heane, who will take over for Janice during her absence. Simone has been working with Monash University in the Faculty of Biomedical Science for a number of years and we are looking forward to having her at the Centre during Janice’s absence.

Centre Deputy Director wins VCAT Award

The VCAT Author Award was presented by The Honourable Justice Garde, President of VCAT, to Castan Centre Deputy Director Dr Paula Gerber in March this year. VCAT gave this award in recognition of her outstanding contribution as an author and to the community of Victoria in both human rights and construction law. Dr Gerber has written recent books on both resolution of commercial disputes and human rights education as well as numerous articles and submissions to parliament.

This is the second time VCAT has awarded the Author Award, which is only open to VCAT members. The inaugural award was awarded to Senior Member Russell Byard in March 2013, for his contribution as an author within planning and environment law.

Dr Gerber has been a member and mediator in the Civil Division of VCAT for 9 years and was thrilled to have her work recognised and appreciated outside of purely academic circles. She said “for an organisation such as VCAT to respect and appreciate the value of my research and writing suggests that my work is having an impact, and that is what I think all researchers ultimately want.”
2014 Castan Centre / King & Wood Mallesons Annual lecture

The 2014 Castan Centre / King & Wood Mallesons Annual lecture will be delivered by Professor Ron McCallum, who is currently vice-chair of the UN Committee on the Rights of Persons with Disabilities.

“Nothing About Us Without Us”, is the slogan of persons with disabilities. In his lecture, Professor McCallum will examine the national responses of thirteen countries, including Australia, to the United Nations Convention on the Rights of Persons with Disabilities.

This year’s lecture will also officially mark the 50th anniversary of the Monash law faculty, to which Professor McCallum contributed so much during nearly 20 years as a faculty member between 1975 and 1993. In addition to his role with the UN, Professor McCallum is an Emeritus Professor at Sydney University. He was recognised for his services to education, industrial relations, the visually impaired and social justice in 2006 when he was made an Officer in the Order of Australia and was also awarded senior Australian of the year 2011 in recognition of his work for equality of all Australians.

We would like to acknowledge the support of King & Wood Mallesons for this event which will be held on Friday 22nd August at the NAB building, 700 Bourke street Melbourne.

The 2014 Castan Human Rights Report

For the first time in 2014, the Castan Centre has published a report featuring fresh perspectives on many of its vital research areas.

The report – which contains contributions from most of the Centre’s academics – is designed to improve the public’s understanding of our world-renowned academic research.

The topics featured in the report include high profile issues such as asylum seekers, gender-based violence, terrorism laws and the federal government’s hot-button issue of “freedom”.

Regarding freedom, our Director, Sarah Joseph, said the recent narrow debate on the “right to be a bigot” had camouflaged the real effects of changes to legislation. “The ‘bikie laws’, police move-on powers, copyright laws, and even threats to remove government funding from artists are all reducing society’s freedom,” she said.

Centre Associate Dr Heli Askola wrote on gender-based violence, saying that the recent spate of domestic violence cases shows that the existing laws are not going far enough to protect the most vulnerable in our society. “Australia’s National Plan to Reduce Violence against Women has the potential to create change, however it must be backed up with sufficient funding and better implementation,” Dr Askola said.

Current terrorism laws in Australia also need closer consideration, according to Dr Patrick Ernerton. “ASIO’s excessive powers to make ‘predictive judgments’ about potential terrorists – such as ‘adverse assessments’ of bona fide refugees – threaten human rights,” Dr Ernerton said. “For this reason ASIO’s powers must be brought into line with human rights norms.”

On the issue of asylum seeker rights, Dr Azadeh Dasteyri identified at least seven international laws breached by current asylum seeker and refugee policies and practices. “Contrary to the Australian government’s oft-repeated assertion that it respects asylum seekers’ rights, the current situation doesn’t reflect this,” she said.

Other academics featured in the report have written on areas that receive less attention, and often less sympathy. Prison overcrowding is a festering issue in Australia (and particularly Victoria), while conditions in other “closed environments” such as detention centres and “closed” mental health facilities also threaten people’s basic human rights. Meanwhile, sporadic news coverage belies the continuing battle in this country over reproductive rights, Indigenous issues, LGBTI rights and women’s issues.

And, internationally, debates rage over the role of corporations and aid agencies, particularly in the developing world.

The report is designed to be accessible to the general public. Each piece is written in plain English and informs the reader about human rights law and policy issues in key areas. Although the report cannot hope to cover all of the pressing human rights issues here and around the globe, its articles help to shed light on some of the important debates that the Centre’s academics grapple with every day.

You can download a pdf of the report or read the HTML version online by visiting the Castan Centre website and following the links. Each contribution has also been published on the Centre’s blog site (castancentre.com).
A special Castan Centre event: The Freedom Forum

By Stephanie Sprott

Freedom is currently a hot topic in Australian politics. After appointing a new human rights commissioner with a specific remit to consider freedom, the government has initiated an inquiry into the protection of “traditional rights, freedoms and privileges” under Australian law. Now, our political leaders are proposing to repeal s18C of the Racial Discrimination Act in the name of freedom of speech. But the notion of freedom is fluid and evolving. The emerging public scrutiny of the term has proven its malleable meaning in different circumstances.

In an attempt to explore freedom’s boundaries and protections under Australian law, the Castan Centre held a ‘Freedom Forum’ with three prominent human rights advocates. Professor Sarah Joseph, the centre’s director, spoke alongside Joe Caputo, the Chair of the Federation of Ethnic Communities’ Councils of Australia and Professor Wendy Bacon, Professorial Fellow at the Australian Centre for Independent Journalism, UTS. Chaired by ABC radio’s Damien Carrick, the event looked at the political, social and economic implications of freedom as a fundamental part of Australian society.

Carrick launched the event with an introduction of “freedom” as the buzzword of today. He questioned what the term actually means, and how it could be better protected in Australian society. He then welcomed Joseph, who engaged in a rich and varied discussion of freedom as an inherently broad notion.

In light of the lived experiences of Australians, Joseph remarked that the Attorney General’s focus on freedom from government intervention was restrictive. The government has a positive role to protect and fulfill freedoms through practical social policies. Yet the Attorney General and the new Human Rights Commissioner favour an absolutist approach to free speech, which they claim is rooted in our common law.

Joseph explained that she was sceptical that the common law has ever adequately protected freedom, and, at most, it has only acknowledged its importance in the past 20 years. She further stated that the Attorney General’s list of freedoms provided to the Australian Law Reform Commission inquiry fails to acknowledge rights such as freedom from arbitrary detention, as well as freedom of expression, movement, religion and assembly.

This restrictive conception of freedom, Joseph argued, has led to the protection of commercial interests over freedom from harms such as hate speech. For example, an inalienable right to sponsor arts groups which “unreasonably” refuse corporate sponsorship. Professor Joseph concluded by stating that the government has applied a narrow and inconsistent conception of freedom overall. Real freedom is more complex, and will be jeopardised if we don’t broaden the debate.

Caputo, who compellingly accounted his experiences as a migrant and an activist in Melbourne, continued the evening. He explained that migration was not always a free choice, but rather a choice of survival for many people. Since his arrival over 50 years ago, he has watched Australia embrace multiculturalism and accept change. These profound achievements towards a more tolerant Australia must be built upon, not rolled back in the name of freedom of speech.

In particular, Caputo described s18C of the Racial Discrimination Act as a critical moment of equality and protection in our country.

Unfortunately, he argued, the government’s proposed amendment defines “vilify” and “intimidate” too narrowly in the context of racist harms. Similarly, he said, the reform uses a discriminatory test that measures experiences of racism by reference to the “average” person, rather than the average person of the target group. Overall, Mr. Caputo was deeply concerned that the law sided with perpetrators of racial discrimination.

Bacon concluded the night with a discussion of freedom of speech. Beginning that freedom is not an abstract concept but it is a material, lived experiences that must be fought for in different contexts. She then turned to a consideration of freedom in journalism, arguing that free and accountable reporting is essential for democracy. Government policy, she explained, has unfortunately become more restrictive towards journalist’s sources, which will negatively affect whistle-blowers. Bacon argued that source protection needs to be strengthened for without that there can be no investigative reporting and that today Journalists need to take account of surveillance.

According to Bacon, this approach is rooted in Australia’s political history. During her time as a young journalist, censorship laws were applied to serve the interests of particular groups, while later when she was reporting for The National Times, secret hearings and the offence of contempt of Parliament were invoked to cover political corruption. Where earlier free speech was rooted in the struggle of individuals against state power, now free speech laws and ideas need to take account of private power.

Overall, Bacon identified the lack of freedom to report on asylum seekers in detention, the law of defamation and the concentration of media power as sources of serious limitations on speech in Australia. She argued that ultimately freedom of expression must also include access to information and the ability to have your voice heard. All people deserve a voice, and free speech is only truly achieved when power imbalances in access to communicative power are addressed.

Carrick then challenged the speakers by asking whether it is ultimately better for potentially harmful viewpoints to be publically debated rather than censored. The speakers ultimately agreed that free speech could be limited to safeguard equality and protect vulnerable groups. They each gave a personal definition of “freedom”, but found that it is inherently difficult to describe. As the freedom debate continues in Parliament, these messages will surely continue to resonate strongly with the evening’s audience.
Surveillance and a Right to Privacy in the Digital Age

By Josephine Langbien

In the digital age, governments can monitor not only our communications, but also our entire electronic existence. And, as a result of Edward Snowden’s revelations, we know that they are eager to exploit this possibility. In April, a capacity audience welcomed Kenneth Roth, Executive Director of Human Rights Watch, to discuss the impact of mass surveillance on the right to privacy and freedom of expression.

As a former federal prosecutor, Roth is no stranger to surveillance. He was quick to point out that not all surveillance is necessarily bad. As a former federal prosecutor, Roth is no stranger to surveillance. He was quick to point out that not all surveillance is necessarily bad. There is a valuable role for targeted surveillance, but it is the mass collection of metadata (the information about our communication, rather than its contents) which he finds concerning. Metadata reveals who we call, who we email, what we search for online and even, with the help of GPS tracking on mobile phones, where we physically go. From this information, a government is able to reconstruct our lives with a few clicks of the mouse.

Roth discussed three legal fictions employed by the United States government to justify its mass surveillance activities. Given Australia’s participation in the ‘Five Eyes’ intelligence-sharing program with the US, United Kingdom, New Zealand and Canada, the arguments may also relate to our own privacy as well. First, the US government relies on a 35-year old Supreme Court ruling which held that, by disclosing the phone numbers we dial to telephone companies, we waive our privacy interests in that data. This ‘sharing’ rationale allows the government to claim that individuals have no privacy rights in any metadata communicated to third parties.

Recently, the US Supreme Court has suggested that it may revisit this interpretation of privacy to assess whether it is still appropriate. Roth noted that the ‘because terrorism’ argument is also wearing thin among the American public, and US President Barack Obama has accordingly indicated an intention to get out of the business of mass telephone data collection. While undoubtedly a positive step, the US President stopped short of expressly acknowledging a right to privacy. His statement was also limited only to telephone data, leaving the situation regarding online data (including email and banking details) unclear.

The second legal fiction promoted by the US government is that the storing of data does not infringe privacy - it is only when the data is actually examined, according to this argument, that privacy is breached. The US government claims that large amounts of metadata are collected because it ‘needs a haystack in order to find a needle’. Yet as Roth pointed out, this argument has never been tested in open court, and was instead considered by a secret intelligence court which only heard submissions from a government lawyer.

Third, mass surveillance is said to be ‘legal’ according to a restrictively narrow reading of international human rights law, which interprets a State’s obligations as limited to its own citizens and territory. The US government therefore does not recognize the privacy of individuals who are not US citizens and are not within US borders. This interpretation of international obligations is pursued despite explicit criticism from the UN Human Rights Committee. The disturbing consequence for Australians is that, under the ‘Five Eyes’ program, our federal government could easily obtain information about Australia citizens ‘legally’ collected by US agencies.

It is clear that these three grounds do not stand up to closer scrutiny. Snowden’s revelations have allowed us to openly question practices that were previously only suspected. For Roth, mass surveillance not only infringes privacy rights, but also affects freedom of expression. If we are unable to communicate in private, then our ability to express secret or sensitive matters is hindered. He does not believe these limitations are justifiable.

When Roth questioned a member of White House counsel, they were unable to name a single terror plot foiled on account of metadata collection.

Yet what can be done about the issue of mass surveillance? Roth believes that the answer lies in a deeper understanding of human rights law, and a strengthening of the international right to privacy.

Roth argued that we must instead focus on understanding privacy standards in a digital age. Relevantly, Brazil and Germany have commenced a process at the UN Human Rights Council seeking to update these standards in light of modern communications. In the discussion following his address, an audience member asked Roth how we might deal with Australian politicians who are less concerned about surveillance and privacy rights. Roth wryly suggested we ask our politicians if they have ever visited a porn site, or a psychologist, and whether they would be happy for the world to know about it.

The invasions of privacy Snowden brought to light were only possible because they were approved behind closed doors, without the knowledge or consent of the affected public. The surveillance debate must be moved to the public sphere because, as Roth asserted, the best way to protect our privacy, is publicly.
Freedom: the government’s inconsistent approach

Our federal government is committed to promoting greater “freedom”. It has appointed a “Freedom Commissioner”, Tim Wilson, and has asked the Australian Law Reform Commission to conduct a freedom audit of statutory laws. Writing in January, Attorney-General George Brandis described “freedom” as the “most fundamental of all human rights”. But what does “freedom” mean?

Brandis and Wilson espouse the classical “freedom from” the government, where human activity is “regulated” by voluntary interactions in the free market rather than by the state. Regulation by the state, in contrast, is portrayed as oppressive, inefficient, or too expensive.

“Freedoms from government” are extremely important. But there are other important aspects to freedom. There are practical “freedoms to” do the things that one wants to do. It is easier to do such things if one is rich, but harder if one is vulnerable or disadvantaged. “The market” does not fairly allocate such freedoms, as it pays no attention to pre-existing power relations and capabilities. Such an approach to freedom, if adopted exclusively, protects the strong but offers far less for others.

Governments must sometimes take positive steps to protect freedom. For instance, it enacts anti-discrimination law to prevent people from being deprived of opportunities on irrelevant grounds such as race or gender.

Race discrimination has dominated Australia’s freedom debate thanks to the proposed amendments to the “hate speech” provisions of the Racial Discrimination Act. Certainly, the current law restricts freedom of speech, especially for bigots. However, it also enhances countervailing freedoms. Speech which humiliates or intimidates on a racial basis, particularly for those battered by it for much of their lives, can seriously restrict a targeted person’s perception of what they are able to do, or where they are able to go. Their freedom is practically inhibited. Yet such speech will be largely lawful if the proposed amendments are adopted, due to narrow definitions and very broad defences.

Discrimination law is just one way that governments actively protect freedom in its broader sense. Another way is via welfare payments, which prevent marginalised people from living in grinding poverty, a situation affording very little practical freedom. It will be interesting to see how the government protects this type of freedom during its time in power.

In any case, the government’s narrow approach to freedom is inconsistently applied. The government does not, for example, favour the freedom to marry a same-sex partner, the freedom to die voluntarily with dignity, or freedom from random spying by a friendly foreign government. Brandis has openly supported Queensland’s draconian bikie laws, which are a shocking assault on classical notions of freedom of association.

Freedoms often clash and must be balanced against one another. A running theme for this government is that such clashes are often resolved in favour of commercial interests. For example, the Department of Prime Minister and Cabinet is tightening controls over its employees, prohibiting them from criticising government policy, even anonymously and in a private capacity, on social media. Extraordinarily, employees are expected to “dob in” colleagues if these guidelines are breached. Freedom of contract, a commercial right, is being upheld over freedom of speech. Certainly, public servants are free to quit their jobs if they want to tweet or blog more freely about politics. But that isn’t such an easy choice in the real world.

Senator Richard Colbeck, the parliamentary secretary to the Minister for Agriculture, suggests that laws might be amended to ban many environmental boycotts of businesses. Colbeck denies any consequent harm to free speech, while nevertheless arguing that campaigners “should not be able to run a specific business-focused or market-focused campaign”.

The government’s distaste for boycotts is already evident in Brandis’ astonishing reaction to the Sydney Biennale controversy. As Arts Minister, he has directed the Australia Council to cut funding to arts groups which “unreasonably” refuse corporate sponsorship. He seems to be creating a right for corporations to inflict their brands on others, or an inalienable right to sponsor, which prevails over artists’ freedom of conscience. Art is not apolitical or value-free: the best is opinionated, not cowed.

Requiring recipients of government funding to be apolitical is inimical to “freedom”. It leads to a skewed public sphere of debate: the privately funded have enormous freedom to express opinions while the publicly funded are muzzled.

A final example is Australia’s outdated copyright laws, which fail to properly protect free speech in the digital age. For example, many “shares” on Facebook unwittingly breach copyright. Recognising this, the Law Reform Commission recommended the adoption of a more flexible defence of “fair use” to copyright infringement. The Attorney-General has indicated that he sides with copyright holders, meaning no change.

Yet Brandis is misguided if he thinks his position supports business. Google and Wikipedia could not be based here. They are based in the US, where the fair use defence encourages innovation. Current copyright law is bad for freedom, including political, social, informational, cultural and commercial freedom.

Australia’s freedom debate is dominated by a narrow, inconsistently applied definition of freedom. In a development which will come to be seen as bizarre, it is disproportionately focused on the freedom to be a bigot. Real freedom is far more complex. And real freedom will be jeopardised unless that complexity is recognised and respected.

This article first appeared in The Age.
Asylum seekers: we can’t ignore our international law obligations

The Four Corners investigation on the circumstances surrounding the death of Iranian asylum seeker Reza Barati at the Manus Island detention centre in February was uncomfortable viewing. The ABC program highlighted the lawlessness of the centre and the vulnerability of the asylum seekers to violence.

But perhaps the most concerning aspect of the report was the Australian government’s steadfast commitment to an arrangement that is both dysfunctional and inhumane. This commitment has not been shaken by Barati’s death or the serious injuries suffered by 62 men in the care of Australia and Papua New Guinea in the February violence.

In a conference call with the centre’s stakeholders obtained by Four Corners, a voice, believed to be Immigration Department deputy secretary Mark Cormack, says that the Australian government is... not going to change their policy. They’re not going to change their approach. They’ve got very strong resolve.

International law obligations

The immigration minister, Scott Morrison, admits in the episode that he is unable to guarantee the safety of the asylum seekers in the Manus Island detention centre. He said “It is absolutely my aspiration, it is my commitment, to ensure that these places are safe, but it is difficult I think to do that in every instance”.

However, Australia cannot wash its hands of its legal responsibility to ensure the safety of the asylum seekers it transfers to PNG. If the government cannot guarantee the well-being of people seeking Australia’s protection, it is unlawful, under international law, for Australia to transfer them to a place where they are at risk of harm.

Some of Australia’s legal responsibility to asylum seekers stems from voluntarily signing and ratifying the International Covenant on Civil and Political Rights (ICCPR). The ICCPR applies to Australia wherever it exercises power or effective control.

Australia pays for the detention of asylum seekers in PNG and maintains a permanent presence at the detention centre. As was revealed in the Four Corners report, Australia makes decisions about the day-to-day operation of the centre, such as when certain information is revealed to asylum seekers. Therefore, Australia has clear power and effective control in the centre and is bound by its ICCPR obligations there.

Australia’s responsibilities under the ICCPR include protecting life (under Article 6) and ensuring that individuals are not subject to cruel, inhumane or degrading treatment or punishment (Article 7). Under the ICCPR, Australia also has an obligation not to send someone to a place where their life may be in danger or where they may be subject to cruelty or inhumane treatment.

The transfer of asylum seekers to PNG is therefore a clear violation of Australia’s international obligations.

The enforcement problem

Unfortunately, there is no effective means of enforcing Australia’s obligations at an international level. As a result, it is left to Australian courts to monitor the legality of the government’s actions. However, Australian courts can only enforce obligations under domestic law rather than international law.

When overturning the then-Gillard government’s “Malaysia Solution” in 2011, the High Court ruled that Australia could only relocate asylum seekers to a country that meets certain human rights standards. That decision was based on Section 198A of the Migration Act.

In response to the ruling, the then-government amended the Migration Act to remove the requirement for Australia to declare that a country will meet “relevant human rights standards” before transferring asylum seekers. That is, while domestic law may have previously protected asylum seekers from being taken to PNG, the changes to the law make it more difficult to enforce Australia’s international obligations in Australian courts.

Australia’s extraterritorial processing regime under the new law is currently being tested before the High Court. Should the challenge be successful, Australia may have to cease the detention and processing of asylum seekers in PNG (and perhaps in Nauru).

The Four Corners episode offers some hope for united opposition to the Australian government’s punitive policies by showing footage of the vigils for Barati, attended by thousands across the country. Without political pressure, any legal wins may be short-lived. Governments can readily change domestic law to suit their needs.

This article was originally published on The Conversation.
Children’s complaints to the UN could embarrass Canberra, but should be heard

Is the Australian government scared of children? There can be no other explanation for why we have refused to sign on to the new system that allows children to bring complaints of human rights violations to the UN.

Australia, along with almost every other country in the world, has ratified the UN Convention on the Rights of the Child. This treaty is the benchmark for how we should treat our children. It includes provisions relating to a child’s right to education and healthcare, to be protected from abuse and exploitation and to participate in decisions relating to matters that affect them.

Until this week, these international laws have largely been unenforceable. There was no mechanism permitting children to bring a complaint to the UN about an alleged violation of their child rights. However, the Third Optional Protocol to the Convention on the Rights of the Child changed all that, and there is now a process whereby children can seek a remedy for breaches of their rights.

If a child has been unable to obtain a resolution for a rights violation in the Australian legal system, the new Optional Protocol empowers them to seek a remedy in the international arena. This new process is nothing like taking the government to court, because there is no trial, judge or jury. Rather, the child makes a written complaint to the UN Committee on the Rights of the Child, which consists of 18 child rights experts. The government is invited to respond in writing to the allegations. After considering both the complaint and the response to it, the committee gives a written decision. Nobody appears in person; it is done entirely “on the papers”.

The convention defines children as anyone below the age of 18. A child wishing to claim that their rights have been violated, may, depending on their age, need assistance in preparing a written complaint. The UN is aware of the risk of manipulation of children by those acting on their behalf, and is developing procedural safeguards to guard against such manipulation, including refusing to hear a complaint if it does not believe it is in the child’s best interest.

The nature of international human rights law is that it only applies to countries that agree to be bound by it. So far, 10 countries have agreed that children in their jurisdiction can bring a human rights complaint to the UN. These include Germany, Portugal, Spain and Thailand. A further 45 countries have indicated their intention to sign onto this Optional Protocol.

So why is Australia absent from this long list of countries willing to allow their children to seek a remedy for breaches of their rights? What is our government afraid of?

Is it worried that children held in immigration detention centres might bring complaints regarding their treatment? Certainly the Australian Human Rights Commission’s current inquiry into children in detention centres suggests it is a fertile ground for complaints by children. The heart-wrenching pictures that children on Christmas Island have drawn leave no doubt that they are suffering as a result of their prolonged detention in a harsh environment. This would appear to be in violation of our obligations under the Convention on the Rights of the Child to detain children only as a last resort and to ensure they are protected from harm.

There may also be indigenous children who would like to take a complaint to Geneva. In 2012, the UN Committee on the Rights of the Child, in its review of Australia’s compliance with the treaty, recommended the Australian government “undertake all necessary measures to ensure that all children enjoy the same access to and quality of health services with special attention to children in vulnerable situations, especially indigenous children.”

If indigenous children suffer systemic disadvantage, and are not given the same opportunity to access quality healthcare as other Australian kids, this could form the basis of a complaint to the UN.

The committee also raised concerns about whether the Australian government was fully respecting “the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships”. Failure to protect and preserve indigenous children’s identity could also form the basis of a complaint to the UN.

Children with disabilities are another group that might be keen to take a complaint of human rights abuses to the UN. In 2011, the Productivity Commission found that disability support was “under-funded, unfair, fragmented and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports, with children with disabilities frequently failing to receive crucial and timely early intervention services, support for life transitions, and adequate support for the prevention of family or carer crisis and breakdown.”

Too often children with disabilities are unable to access basic services such as education, and are treated with little respect for their rights.

In 2012, the Attorney-General’s Department did hold a public consultation on whether to sign the Third Optional Protocol, and received numerous submissions in support. However, since that time, there has been nothing but silence from the government on this issue.

Our recently appointed national children’s commissioner, Megan Mitchell, has urged the government to sign up to the new UN complaints system, saying that silencing the voices of children is not the answer; we need to allow children to speak up.

With the significant potential for complaints of human rights violations by children, it is not surprising that the Australian government is scared that children in Australia might bring complaints of human rights violations to the UN. We are clearly failing to fully protect children’s rights; rights that we have already told the international community we will respect.

But it would be better if the Australian government, instead of resisting input from the UN Committee on the Rights of the Child, recognised it as an opportunity to receive expert advice about how we can better protect children. After all, there is little point in signing UN human rights treaties if we are not willing to implement these rights, and be held to account if we don’t.

This article first appeared in The Age.
Meet some of our in-house interns

The Castan Centre relies significantly on the invaluable work done by in-house interns who share their time and skills with us full time over the summer and winter breaks as well as part time during semester. Meet a few of them...

Ruvini Leitan

What was your best experience while working with the Castan Centre?
One assignment I found particularly interesting was investigating the treatment of homosexuality and LGBTI rights in the Australian Defence Force, with the aim of identifying redress for negative treatment. It was challenging research with an important practical objective, which is the kind of exciting work that the Castan Centre specialises in.

Any advice for future interns?
Keeping an open mind is the best approach to this internship - you probably won’t have background knowledge about every task you work on, but it’s a great chance to hone your research and analytical skills and learn something new. The internship is also a really great chance to support and learn from some of the best academics working in human rights, so ask lots of questions too.

Stephanie Sprott

Why are you interested in Human Rights?
I am interested in human rights because it provides a method for marginalised groups in society to achieve equality. The diversity of experiences inherent to our society has led to significant power imbalances. Human rights law is exciting as it helps put everyone on a level playing field.

What are your plans for the future?
I would like to be involved in community legal education and advocacy projects. At some point in the future I would probably like to obtain a Masters Degree in international human rights law, and perhaps do some work overseas. I believe that the provision of an advocacy platform to marginalised groups at a grass roots level is very important, so if I could work in an area that does this I would be very excited.

Josephine Langbien

What human rights issues are you most interested in?
I feel particularly strongly about the treatment of asylum seekers and refugees, as this is one of the areas in which I believe Australia most blatantly disregards its international and human rights obligations. I am also interested in the experiences of women in conflict situations and more broadly, and I am passionate about gender equality.

What was your best experience while working with the Castan Centre?
I especially enjoyed being involved in the preparation of the Castan Centre’s submission to the National Inquiry into Children in Immigration Detention, currently being conducted by the Australian Human Rights Commission. We undertook extensive research to inform the submission and it was very rewarding to see our work put to use in such a significant context.

Georgina Bitcon

Why are you interested in Human Rights?
I am interested in Human Rights Law as it establishes a baseline for individual liberties that creates an international community of support.

What was your best experience while working with the Castan Centre?
Ruvini and I worked on a project researching LGBTI rights standards abroad. I really enjoyed this project because we were able to discover fascinating information about countries I had not known a great deal about before.

What are your plans for the future?
I am currently completing my degree at the Monash Prato Centre in Italy. Upon finishing my studies, I hope to gain further experience in the field of Human Rights and public interest law. Who knows what the future holds!

Students who are interested in being an in-house intern or participating in one of our other student programs should go to www.law.monash.edu.au/castancentre/for-students
Human Rights and Business: A vital partnership

As influential global citizens, businesses have a vital role to play in upholding fundamental human rights and freedoms. At the 2013 Castan Centre / King & Wood Mallesons Annual Lecture, President of the Australian Human Rights Commission, Professor Gillian Triggs, discussed the importance of corporate social responsibility, and explained how respect for human rights is ultimately good for business.

Developing a positive relationship between businesses and human rights is an important strategic priority for Triggs and the Australian Human Rights Commission (AHRC). Community expectations of businesses are growing, and consumers now demand socially and ethically responsible conduct. Consequently, many businesses have assumed leadership roles by implementing human rights in practical ways. Triggs believes more businesses must be similarly encouraged to voluntarily change their culture by accepting the ‘business case’ for good human rights practice.

Triggs provided numerous examples of the direct connection between respect for human rights and economic success. In Australia, closing the gap between male and female employment and productivity would boost our Gross Domestic Product by thirteen per cent. Many large Australian corporations already have exemplary policies in place to promote indigenous employment, sustainable housing and community service. These organisations understand that embracing human rights reduces the risk of litigation, improves brand image, and creates new opportunities by offering a competitive advantage in emerging markets. Yet Triggs pointed out that it is often smaller businesses where human rights are most at risk. Smaller businesses tend to see human rights compliance as an administrative road block, but in reality abiding by human rights law is in the best financial interests of businesses, no matter how large or small.

At the international level, the global community has struggled in the past to articulate any definitive list of human rights obligations for businesses. The UN’s ‘Guiding Principles’ for transnational corporations, developed by Professor John Rugge in 2008, finally established an authoritative global standard for human rights practice. While the Principles do not create new legal obligations, they do create ‘soft law’ – a building block Triggs believes to be essential to meaningful cultural change. As Eleanor Roosevelt said, however, human rights begin at home. While Australia has always been a good international citizen, we still have no domestically enforceable human rights framework. This provides unique challenges to the AHRC as it tries to foster Australian businesses’ respect for human rights.

Forced Disappearances in Laos: the case of Sombath Somphone

On Saturday 15 December 2012, Laotian community development worker and peace advocate Sombath Somphone disappeared after being stopped at a police post just outside of Laos’ capital city. He has not been seen since.

During a recent trip to Australia, Mr Somphone’s wife Shui Meng Ng spoke humbly and eloquently about his disappearance. In a poignant explanation of Mr Somphone’s work and philosophies, Ms Ng urged the Australian government to take a stronger diplomatic stance on the issue of forced disappearances. Together with writer Andrew Nette, the organiser of Ms Ng’s trip, and Andrew Beswick, Amnesty International’s Director for Community engagement, Ms Ng prompted a thoughtful discussion about forced disappearances in unstable political environments.

Dr Adam McBeth, who chaired the evening, began with an overview of the complex political, social and economic issues facing the Asia-Pacific region. He then passed over to Mr Nette, who described Mr Somphone as a hardworking, humble man responsible for the creation of low cost farming and food distribution techniques in Laos. Mr Somphone’s disappearance, he explained, has contributed to a culture of suspicion and fear amongst Laotian civil society.

Ms Ng continued the evening with a moving biographical account of Mr Somphone’s life. A ‘child of the soil’ Mr Somphone grew up in a large rural family before studying agriculture in Hawaii. Deeply respectful of indigenous traditions, he was a moral man influenced by Engaged Buddhism and sustainable theories of development. Ms Ng said that Mr Somphone worked openly with government agencies and was retired at the time of his disappearance. While the occurrence coincided with his orchestration of the Asia-Pacific People’s Forum, Mr Somphone was a peaceful, transparent and cooperative advocate for change. His disappearance, Ms Ng remarked, is worryingly indicative of governmental repression and surveillance in Laos.

Mr Beswick then gave a stirring explanation of the nature of enforced disappearances globally. Many politically precarious states in the Asia Pacific have disappeared individuals. Sombath Somphone was disappeared despite Cambodia being a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance. Mr Beswick urged political leaders to apply international pressure to offending governments. He also encouraged the audience to write to their local MPs in an attempt to circulate the issue more widely.

To conclude the evening, the room was turned over to the audience for a thought-provoking discussion of what Australia’s role may be in condemning these criminal acts. While no single solution was identified, the powerfully personal nature of the event sparked compassion amongst a receptive audience.
The Rights of Athletes

By Josephine Langbien

Last year, the “supplements” controversy at the Essendon Football Club highlighted the intersection between human rights and the workplace in the world of professional sport. Brendan Schwab, director of International Player Relations and vice president of the International football players’ federation, FIIFPro, reflected on the issues surrounding athletes’ rights.

As a sports and labour lawyer with a history of involvement in player advocacy, Mr Schwab has a deep understanding of the challenges faced by professional athletes. A sportsperson’s career is precarious, dependent on health and physical form, and is often over a few years after it begins. Athletes are not covered by industrial awards and are excluded from workers’ compensation legislation in Australia. They face a difficult transition at the end of their careers, often confronting physical and mental health issues. Many are not educated or financially ready for life after sport.

Historically, rules such as the ‘retain and transfer system’ have restricted athletes’ freedom of movement by limiting their employment choices. Football culture has viewed players as the property of clubs, to be bought and sold accordingly. Baseball in the United States for many years allowed clubs to bind players for life. Schwab pointed out that these systems, which constitute restraints on free trade, are contrary not only to the personal freedoms we regard so highly but also to the proper functioning of our economic system.

The challenges faced by professional athletes relate to the attempts of administrators, since the beginning of professional sport in the 19th century, to control athletes. Clubs and managers have often favoured the interests of sport over the interests of players, and the 'mystique of sport' has clouded the view of fans, administrators, politicians and the occasional judge, according to Schwab. Yet over recent decades, a string of legal victories has shown that the interests of players are not necessarily contrary to the interests of sport. The introduction of collective bargaining, grievance arbitration and revenue sharing failed to bring about the predicted demise of sport itself, but instead allowed professional sports to flourish.

Schwab emphasised that the progress achieved for athletes’ rights is a result of many battles fought and won by players’ associations and the rare individual player willing to risk his or her career to take a stand. During an engaging question time, Schawb said that athletes should not be pressured to use their public profiles to comment on political, human rights or sports-specific issues. We should ask ourselves whether we would sacrifice our career for a matter of principle and the wellbeing of our colleagues.

Some outstanding individuals, including Australia’s Peter Norman, have done just that. We can only hope that in the future, the development of human rights will not come at such a high price.

Marriage equality in Australia. Where to from here?

By Stephanie Sprott

In late 2013, the ACT became the first territory in Australia to pass a bill in support of same-sex marriage. This was a pivotal moment in the marriage equality movement that sparked significant debate among the community, leading to the federal government’s High Court challenge claiming that the law was unconstitutional.

Before the court case took place, the Castan Centre held an impassioned discussion with three same-sex equality advocates from separate political standpoints. While the High Court later declared the act constitutionally invalid, the Centre’s forum nevertheless provided a space for advocates to discuss the importance of marriage equality as both a political and personal issue. Each speaker advocated his own theory of change, sparking a lively consideration of the future of marriage as an important contemporary institution in Australia.

The Hon. Clem Newton-Brown MP, Liberal Party state member for Prahran, affirmed his commitment to marriage equality and a conscience vote in the Federal Parliament. Newton-Brown urged bi-partisanship on the issue, arguing that hearts and minds can be changed through thoughtful, intelligent discussion that sparks mutual understanding between individuals. He concluded with a number of examples of pro-LGBTI issues that the Liberal Party has supported over the years, encouraging the audience to perceive the party as open to progressive change.

The discussion continued with The Hon. Adam Bandt MP, Federal Member for Melbourne, who identified a new direction for the marriage equality debate. Framing marriage as an ever-evolving, contemporary institution, Bandt criticised the government for denying a significant section of our population the right to legally marry a person of the same sex.

The final speaker was Rodney Croome, National Director of Australian Marriage Equality. Croome advocated for the use of personal stories to humanise the idea of marriage equality among opponents. He then provided a touching example of a transgender woman whose living memories had the power to open a politician’s mind. While stories are pivotal to the movement, Croome argued that legal commitments were ultimately necessary to entrench change. He concluded by advocating for marriage equality laws at state level as a way of overcoming the stalemate in the Commonwealth Parliament.

The Q&A session that followed prompted an interesting discussion about the political and social dimensions of marriage equality. It was ultimately the personal stories of the night that resonated strongly with the audience, reminding us that love lies at the heart of this debate.
India is a country of contradictions; severe poverty intermingled with incredible wealth; Hollywood fashion and Bollywood films; vibrant traditional clothing and grey smoggy skies. While my time in India was certainly challenging personally and professionally, the three months I spent living in Delhi will be something I cherish.

The Lawyers Collective was a truly interesting place to have worked. Established by Anand Grover and his wife Indira Jaising, the Collective is dedicated to delivering legal services to those most vulnerable and marginalized. It was certainly motivating to walk into an office each day were lawyers were litigating access to medicines and drug policy, the rights of LGBTI persons, women’s rights – including domestic and sexual violence and sexual harassment in the workplace – and of course conducting research for the United Nations Special Rapporteur (UNSR) on the right to health. Mr. Grover has held the post of UNSR for the past six years. The nature of the work and the dedication of staff made this workplace unlike any I’d experienced before.

Mr. Grover is often described as a controversial man but controversy in this field is necessary. Anand is very human rights centric. His outgoing and strong willed personality may ruffle feathers in Geneva, but there is no disputing he places human dignity at the forefront of the his agenda in advocating for the right to health. Anand’s research assistants are incredibly knowledgeable. They are dedicated to applying a ‘rights based’ approach to all of their work, and they passed this approach on to me.

December 11th marked a devastatingly emotional day for LGBTI individuals and the staff at Lawyers Collective. Previously, the Delhi High Court had handed down a decision in the Naz Foundation case which found that consensual homosexual sex was not a crime, thereby legalizing homosexuality in India. Unfortunately, in an archaic decision, the Supreme Court overturned the decision of the Delhi High Court due to constitutional infirmity. While this marked a tremendous step back for India and progressive equality, Mr. Grover and the staff at Lawyers Collective as well as thousands of LGBTI activists across India continue to ensure their sexuality is recognised with respect and dignity.

The treatment of LGBTI people became a clear focus point for the Lawyers Collective and the UNSR. I was involved in researching the atrocities against LGBTI people in Nigeria and Uganda and the significant right to health implications of the national laws. Upon receiving images and first-hand accounts of violence, I was utterly distraught at the devastating affects the laws had on individuals, and the increasing ‘jungle justice’ involving acts of torture and degrading treatment, ultimately diminishing the security, dignity and respect of LGBTI people in both states. Unfortunately, the rights of LGBTI people still need to be prioritised globally as 82 countries continue to outlaw homosexuality.

While much of the work was to be kept confidential, the primary focus on my internship was the thematic report to be presented to the UN General Assembly and Human Rights Council. The focus of this report was the proliferation of unhealthy foods, diet related non-communicable Diseases and the right to health. Anand is incredibly passionate about tackling the accessibility and availability of unhealthy junk foods in the global market. This accessibility is contributing to the obesity epidemic; a known pre-curser to diet-related non-communicable diseases (including respiratory problems, cancers and diabetes). The marketing of such foods to children and low-income groups is particularly rife; often resulting in a food desert and food swamp in low-income areas. The research exposed the serious gaps in international human rights law with regard to an accountability mechanism for transnational corporations, whose influence abroad contributes to economic advancement, but also to numerous human rights violations.

As a young female in Delhi, harassment was a daily occurrence. I realised the insecurity that women face in a country where gender equality is laced through the Constitution but not practiced. The gender bias I experienced and the discrimination and harassment I endured prompted me to consider what Indian women’s experience– ultimately shaping my current Honours research on the political economy of gender-based violence in India. I am grateful that this internship has sparked a particular academic interest and shaped my future work.

The world I use to describe my experience in India is intense. The city of Delhi is aggressive and chaotic but also fascinating. The work at Lawyers Collective often concerned quite confronting and interesting subject matters, but provided a great sense of purpose. As challenging and confronting as Delhi was to live in, I do find myself missing the chaos, my colleagues, friends and the culture of community. There is something about India, which is often difficult to articulate but it’s that very ‘something’ that should encourage people to visit.

I want to thank the staff at the Castan Centre and Lawyers Collective for affording me the opportunity to live in India, work alongside incredibly dedicated and inspiring staff and see first-hand human rights law in action both domestically and internationally. The experience was certainly rejuvenating and has provided me with more energy to continue to seeking to secure human rights for all.

*Please note this my own opinion and experience and does not reflect the UNSR on the Right to Health, Lawyers Collective or Castan Centre.
Now finally back in temperate Australia, it is incredible to reflect on my amazing time in New York and the interesting projects I got to work on during my internship with the Center for Constitutional Rights (CCR).

I had an excellent time living in colourful Brooklyn; eating bagels and watching local bands play. I enjoyed watching the seasons change. When I first arrived, the squirrels were playing in the parks and yellow leaves were still falling. Before I knew it, thick snow covered the city and the sky turned dark at 4.30pm! I enjoyed meeting new people, foreigners and locals alike. New York City is home to such an eclectic range of people; I spent time with Russian actors and veterans of the Iraq War. It was particularly inspiring to meet so many human rights activists. I especially admired the willingness of these activists to actively engage in and with each other’s projects.

However, what I enjoyed the most was working at the CCR. The CCR, for those who don’t know, is a human rights organisation that employs strategic litigation to advance and protect the rights contained in the United States Constitution and the Universal Declaration of Human Rights. Founded in the 1960s, it has followed social movements, from the civil rights movement to the feminist movement, complimenting activism with litigation aimed at securing advancement through the law. In recent times, it has turned its attention to restrictions on liberty in the post-9-11 regime, including challenging detention and interrogation in Guantanamo Bay.

I worked on three main projects during my internship with CCR. The first case was a complaint to the Committee Against Torture (CAT), on behalf of some detainees in Guantanamo Bay, against Canada for failing to arrest, investigate or prosecute George W. Bush for acts of torture when he visited Canada in October 2011. This complaint was initially made in 2012, but my role was to help draft a response to Canada’s submission, which we submitted in mid-December 2013. I found this case to be very interesting due to the politics involved. While Canada is very unlikely to ever arrest Bush, it became very clear to me that this case would not be so contentious if it were dealing with a former head of state of a less powerful country. It was thus very rewarding to try and fight the impunity that comes with global power politics.

The second case that I worked on was a submission to the Committee for the Rights of the Child (CRC) on behalf of the Survivors Network of those Abused by Priests (SNAP) regarding the Vatican’s alleged breaches of the Convention on the Rights of the Child. The case focused on the abuse of children in Catholic-run institutions throughout the world and the role of the Vatican in creating a culture that both fostered and inadequately responded to such abuse. During my stay, my team went to Geneva to attend the CRC’s review of the Holy See. The outcome was very positive; the CRC sharply criticised the Vatican for putting the Church’s reputation before the safety of children and for not acknowledging the extent of the crimes.

The third case I worked on was a Freedom of Information Act (FOIA) case regarding the role of the U.S government in the Gaza Flotilla Raid in 2010, in which Israeli Defence Forces attacked a humanitarian vessel attempting to break the Gaza blockade in international waters. This resulted in nine activists being killed and many more injured. For this project I had to sift through thousands of pages from key U.S. Departments, such as the Department of Defense, the Department of Homeland Security and the Department of State, to determine what the U.S. knew and did in relation to the raid. This focus was in light of the fact that two vessels in the Flotilla were U.S. flagged and one of the activists who was killed was an American citizen. A lot of this work also involved drafting letters to these Departments requesting additional information and drawing their attention to the inadequacy of particular searches. We then tried to turn this information into something meaningful. Part of this involved synthesising it into narrative form so as to provide an account that would be accessible to the public. It also entailed assessing the relevance of this information for the pending International Criminal Court case against Israel for the Flotilla Raid.

I wish to thank both the Castan Centre and the CCR for this incredible opportunity. It helped me to develop my skills in legal research and analysis, as well as to contribute to some very important human rights cases. It was a life-changing experience that I will never forget.
"THE MORE WE ARE ABLE TO ENCOURAGE UNDERSTANDING, THE MORE COMPASSION WILL FOLLOW."

- John WH Denton
  Partner and CEO
  Corrs Chambers Westgarth
  Chair, Australia for UNHCR

Contribute to the Castan Centre’s 2014 annual appeal

By donating to the Castan Centre, you can help ensure the continued growth of the Asia-Pacific’s leading human rights law organisation. The Centre is a non-partisan organisation with a strong commitment to community engagement, student development, education and training and academic research.

The organisation hosts many of the world’s pre-eminent human rights figures each year and creates pressure for the legal protection of human rights through its engagement with the Australian parliament and international human rights bodies.

Its commitment to nurturing the next generation of human rights scholars has resulted in a strong and growing human rights internship program which sends outstanding law students to some of the world’s leading human rights institutions.

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