

## A Bill of Wrongs

John Izzard

<http://www.quadrant.org.au/magazine/issue/2009/5/a-bill-of-wrongs>

Geoffrey Robertson's latest publication (*The Statute of Liberty*) might well be the most important book you could read this year. Robertson is a London-based human rights lawyer, writer, and sometimes war-crimes judge for the United Nations. Since 2008 he has been a member of the UN's Internal Justice Council. He is a strong supporter of "international law", particularly as defined by the United Nations Declaration of Human Rights (1948) and now overseen by the United Nations Human Rights Council (UNHRC).

Before proceeding, it is best to look briefly at the UNHRC. The Council is made up of forty-seven members from forty-seven countries. The UN resolution establishing the UNHRC states that "members elected to the Council shall uphold the highest standards in the promotion and protection of human rights". Of the forty-seven member countries perhaps only eight could be considered as complying. What countries such as Saudi Arabia, Madagascar, China, Egypt, Pakistan, Qatar, Bolivia, Angola and Cuba (to name just a few) are doing on this "human rights" council is anybody's guess.

The Council's latest agenda items have included such issues as abolishing "country-specific investigations"—that is, investigations into the human rights violations of the governments of Cuba, Belarus, Burma and North Korea. Readers will recall that the UN was struck almost speechless and motionless when it came to the genocide in Rwanda, Burundi, Angola, the Congo, the Balkans and the present-day mess in Sudan. In most cases UN troops were present when these atrocities occurred.

So any consideration as to how the human rights agenda is organised and how the international human rights industry operates should take the above generalisations into consideration. Also taken into account should be the fact that 70 per cent of UNHRC resolutions have been against one country—Israel. The combined vote of African states and Islamic countries now controls the whole of the UNHRC agenda. You might venture that the "international law" industry and the "human rights" industry are in the clutches of countries who have absolutely no interest in human rights—other than as a weapon against the gullible West.

The latest resolution the UNHRC has adopted is to amend the UN Charter to outlaw "freedom of expression" when it is used to criticise certain religious beliefs. This is a blatant attempt to outlaw any questioning of Islam. The vote was carried thirty-two to nil, with fifteen abstentions. Ardent countries are those that sever hands for theft; stone women for adultery; butcher civilians on dusty Darfur plains; hang fourteen-year-old gay teenagers by chains around their necks from front-end loaders; issue fatwas at the slightest perceived insult and ban women from receiving an education. All this might seem to suggest that the UNHRC is heavily involved in cant.

My dictionary defines *cant* as a "specialized vocabulary of a particular group such as thieves, journalists, or lawyers", and it also adds, it can be "insincere talk, especially concerning religion or morals". A close reading of Geoffrey Robertson's latest book *The Statute of Liberty* reveals what can best be described as an incontinence of cant.

Robertson QC canters off on a complete tangent to describe the parlous state of the rights and basic freedoms to be found in this nation, from the clear perspective of an expatriate who flits into our sunburnt land twice a year for family hols. To establish his case he must first demolish any notion that Australians live in a nation where rights, privileges and freedoms are a glorious part of our standing in the world. Robertson also must ridicule our Constitution—one of the most successful ever drafted. When it comes to rubbishing Australia, Robertson almost out-Pilgers Pilger.

This book is about Robertson's vision for a twenty-seven-clause bill of rights to enable us long-suffering Australians to regain our freedom. Well, about thirty-five pages are; the rest is a loony-Left diatribe against the people and country of his birth.

*The Statute of Liberty* appears to be part of what an ordinary Australian might call a "try-on" or what a lawyer might perhaps term a "conspiracy", whereby a group of intellectuals set out to avoid a referendum on whether this nation should have a bill of rights. One might have thought that the right to vote on constitutional changes would be the very first article in any bill of rights—but no, not in Robertsonland. In his *Statute of Liberty* we find Article 1 is "Freedom from Slavery".

Robertson's success in human rights cases and his celebrity status as an ace television performer in *Hypotheticals* has given him a recognition factor perhaps equalling Leo McKern in *Rumpole of the Bailey*. His books, such as *The Levellers*, *Crimes Against Humanity* and *Does Dracula Have AIDS?*, have made him famous. But his skew-eyed book, *The Tyrannicide Brief*, on the trial and execution of Charles I, is another story.

It is hard to find people who question what Robertson writes. But he was questioned closely in 2004 when pressure was applied for him to resign as President of the UN-backed Special Court for War Crimes in Sierra Leone. He was ultimately barred from judging cases involving some rebels because of his appearance of bias against them. He had appeared to pre-

judge the accused in his 2002 book *Crimes Against Humanity*. It seems that Robertson didn't volunteer to resign when these issues were raised, but was forced to step aside by his fellow jurists.

*The Statute of Liberty* needs to be judged carefully from three crucial aspects. The first is his opinions about the lack of rights, freedoms and justice in Australia. The second is the curious twenty-seven articles he floats in his proposed Australian bill of rights. The third is the unconscionable way he and his fellow travellers intend to go about their plans. But first, what does Geoffrey Robertson have to say about Australia?

Anyone not familiar with Australia would be surprised to learn that we need a bill of rights (according to Geoffrey Robertson) because of "children abused at school, old people who are not cared for properly, patients in hospitals or vulnerable people suffering from mental illness". People living here would be familiar, almost to distraction, with media reports of such cases and how they are normally adequately dealt with by existing mechanisms. If they are not, the squawks just keep coming until they are. Robertson seems quite happy to slander the millions of dignified Australians who work for and provide vital services to the above. They would be stunned to know that their naturally occurring moral conduct needs to be underpinned by a bill of rights.

Robertson doesn't seem to think much of our democracy either, or for that matter our politicians, and is passionate about activist judges having the power to develop and refine the laws parliament passes. He claims that some Australian commentators want parliament to have unlimited legal power to pass any laws it wants to. He says, "If it passed a law to cut out the tongues of citizens with red hair, then so be it", claiming there is nothing in the Australian Constitution to stop it. Well, first, there are about 20 million Australians who wouldn't let it happen. Second, there is a High Court that wouldn't let it happen.

Robertson is very big on "democracy"—when it suits him. Yet he's quite keen to trash Australia's—one of the most successful democracies in the world. He goes on to say, "Yet the secretive and undemocratic Australian system allows a prime minister to appoint an ideological crony to the High Court bench without the slightest scrutiny from our supine Senate." Is he referring to Labor appointees like Lionel Murphy or Michael Kirby? He says, "I take the positivist position that a 'right' does not really exist unless it is capable of enforcement," which, being a lawyer, he would say, wouldn't he? Robertson laments the fact that opponents of a bill of rights fear it will just become a lawyer's feast.

I first became disillusioned with Robertson when I read and reviewed his book *The Tyrannicide Brief* (Quadrant, January-February 2006). In that book Robertson lauds the lawyers and judges for their crass legal stratagems that led to the arrest, trial and execution of King Charles I in 1649. In his zeal to heap praise upon the radical barrister John Cooke, who worked out various legal devices (or invented them), Robertson failed to reflect upon the havoc thereby unleashed. The parliamentary system in England was taken over by a puritanical, religion-crazed junto, and with its Roundhead mob, the New Model Army, terrorised England and Ireland for years. Members of Parliament were either locked in the Commons, or locked out, to rig the votes that eventually led to the King's demise. The junto army had no qualms about invading England's parliament to drag out members who opposed the trial of Charles I. Robertson saw this illegal overthrow of the legitimate government as a success for interventionist legal action—by a nasty clique in the legal profession acting for a cabal of power-hungry earls, barons and landowners. The lesser citizens of England had scant say.

*The Tyrannicide Brief* reveals Robertson's zest for judicial interference in the laws made by parliament and in the traditions that underpin them. It reveals how historical study and writing can be twisted and shaped to justify and excuse just about anything that helps to progress an ideological argument. It is a warning as to what can happen when unelected judges, academics and functionaries move in to remake our laws and define our moral values.

Robertson's argument in *The Statute of Liberty* is that because of Australia's flawed Constitution; because of its ineffectual politicians; because of its history of "racism" and "genocide"; because of its use of the fundamentals of common law; because our writers of the Constitution "wore bowler hats and brogue shoes" and, he says, because we "are reigned over by a person carrying the genes of a long dead German aristocrat", Australians are somehow in desperate need of a bill of rights.

He cants on, "So it is anachronistic to see the Australian constitution in any iconic sense as the work of Australians: it was the work, more accurately, of unevolved Australians who were hooked intravenously to British blood. And in the class-calcified Britain of Queen Victoria there was no talk of human rights." Well, Geoffrey, actually there was. Try reading the nineteenth-century inquiries and reforming laws passed by the British parliament.

Robertson implies that being "hooked intravenously to British blood" is something to be ashamed of. The fact that 77 per cent of people counted in 1901 were Australian-born and overwhelmingly of Anglo-Celtic stock, and 18 per cent were British-born (95 per cent in total) would suggest, even to the most bigoted racist, that in our creation of a new nation we would want to securely maintain our cultural, legal and commercial ties, to say nothing of our family and tribal bonds. Would Robertson dare speak of "unevolved Muslims" or "unevolved Lebanese" or "unevolved Aborigines"?

All of the above comes from that well-worn imaginary text, *The Protocols of Resentment*, the handbook of the reforming Left. Robertson hits out with the old canard about "massacres" and "genocide". Now, you would think a student of misdeeds and a UN judge at genocide trials would be well up on the history of settlement in Tasmania. You would also think he would be accurate in the evidence he presents.

Unfortunately in his rant against Australia and Australians he gets quite a bit wrong. Just one instance. He says, "soon after Governor Phillip's departure the massacres began. First at Risdon Cove in Van Diemen's Land, where in 1804 a large party of Aborigines hunting game was murdered by grapeshot fired on the orders of Dr Jacob Mountgarret, Launceston's magistrate". In this one short sentence Robertson gets just about everything wrong.

Mountgarret wasn't Launceston's magistrate—the town didn't exist then. Mountgarret (according to the *Australian Dictionary of Biography*) was never a magistrate. Other than gossip some fifteen years after the event, there is no evidence that grapeshot was used. A large party of Aborigines were never "murdered". Both official documents reporting the incident at Risdon Cove stated that two or three Aborigines were killed and some wounded. The party of Aborigines were not murdered "hunting game". They were fired upon after attacking the wife of a settler called Birt—and Birt himself—while they were trying to burn down his hut. Dr Mountgarret didn't "order" any guns fired. Lieutenant William Moore did that. There was estimated to be several hundred Aborigines involved, attacking less than a dozen settlers. Some massacre!

Aboriginal rights groups and white activists have dined out on the myths of the Risdon Cove "massacre" for years, but there is no excuse for the world's most renowned human rights jurist to repeat such nonsense.

The general headings for Robertson's twenty-seven articles of *The Statute of Liberty* are as follows:

1. Freedom from Slavery
2. Prohibition on Torture
3. Right to Life
4. Freedom from Compulsion
5. Right to Be Set at Liberty
6. Rights on Arrest
7. The Open Justice Principle
8. Right to Trial by Jury
9. Right to Fair Trial
10. No Punishment without Law
11. Freedom of Movement
12. Freedom of Expression and Right to Know
13. Right to Privacy
14. Freedom of Thought, Conscience and Religion
15. Right to Own Property
16. Right to Work
17. Right to Wellbeing
18. Right to Education
19. Right to Democracy
20. Rights of Parliamentary Representatives
21. Right to Effective Justice
22. Prohibition of Discrimination
23. Rights of Children
24. Rights of Disabled People
25. Right to a Pristine and Healthy Environment
26. Derogation in Time of Emergency
27. Special Rights of Indigenous People

There seems to be very little in Robertson's proposed bill of rights (his "Statute of Liberty") that doesn't already exist in either law or convention, or which our society does not encompass or enjoy. We have successfully managed to arrange our laws and moral values quite skilfully without the help of a lawyer-driven set of commandments, interpreted by sunlit judges, guiding us through the gates of dawn to a new golden age of human rights and enduring happiness.

Article 1, Freedom from Slavery, is just window dressing and an insult to a nation and its people where slavery never has been, or will be, part of its creed. Unless of course Robertson isn't referring to the slavery of shackles and chains, but intellectual slavery, the slavery of the mind, the slavery that shackles what we think, what we can say, and the opinions we can hold, the slavery of political correctness, of ideological domination—the slavery that the UNHRC would inflict upon us.

As a simple example of how “human rights” can be seized by a minority and used to “enslave” a majority, last year the British parliament passed an act that would make the telling of gay jokes (amongst other things) a criminal offence. Fortunately the conflict between this “human right” and the right of “freedom of speech” was spotted in time and the law of the latter was enshrined by the House of Lords. The actor Rowan Atkinson said in his Lords speech that he didn’t fear being prosecuted for telling a gay joke, but he dreaded “something almost as bad—a culture of censoriousness, a questioning, negative and leaden attitude that is encouraged by legislation of this nature but is considerably and meaningfully alleviated by the free speech clause”. The human rights industry doesn’t take this sort of setback sitting down—the law is being re-submitted under an existing act.

Article 2 is more interesting notion—the Prohibition on Torture. Where does this Article stand when, say, a terrorist aboard an Airbus with 600 passengers aboard, flying over Sydney, has a ticking bomb chained to his wrist and the only conceivable way to save the aircraft is to torture him for the STOP DETONATE code? Are the passengers all expected to say, “Nay, remember Article 2 of the Statute of Liberty, folks”. Fortunately the lack of a bill of rights offers a tad of wriggle-room when society or citizens are faced with such “wicked problems”.

Article 3 is a cop-out. Its preamble reads, “Every person has, after he or she is born, the right to life. Any loss of life attributed to agencies of the state must be fully and independently investigated. No death penalty shall be carried out in this nation.” The right to life exists only after birth. The right of the state or its agencies not to kill you isn’t guaranteed, only the necessity for the state to undertake a full and independent inquiry afterwards.

Article 4, Freedom from Compulsion, is a curious piece. Its opening sentence, “No one shall be compelled to work except by court order”, might suggest that Centrelink regulations requiring a unemployed person to seek work could become a problem (for Centrelink) and suggests a gilt-edged guarantee for some to claim “sit-down money” for life.

Article 11, Freedom of Movement, is where the author really gets serious. It guarantees “freedom of movement” and the right to choose where to live. But it is unclear how this right will affect the banning of public access to nearly 13 per cent of the Australian land mass to non-Aboriginal citizens. The current permit system denies white Australians “freedom of movement” anywhere on Aboriginal lands.

Item ii in Article 11 guarantees right of entry to asylum seekers for “alleging” they are refugees under the UN Refugee Convention. Robertson then adds the condition that an asylum seeker must express a “positive wish” to accept the “rights and responsibilities” set forth in his charter. But what’s a “positive wish”, and what standing does it have in law? A casual reading of Item ii suggests an attempt at the complete dismantling of current border protection provisions and the removal of all safeguards. But then this has been the attitude of “human rights” activists all along. At least it will get rid of people smugglers and boat people. “Refugees” will simply buy an airline ticket, land, and demand their “rights” by making a “positive wish”.

Article 12 purports to guarantee Freedom of Expression and the Right to Know. Item i in this Article states, “Everyone has the right to freedom of expression, which includes the right to hold and express opinions, and to receive and impart information and ideas without interference.” Robertson might ask what the UNHRC was doing in passing the amendment to the UN Declaration of Human Rights trying to ban the questioning or criticism of Islam. Or what the British government, under pressure from human rights organisations, is doing in trying to ban jokes about gays.

If readers of *The Statute of Liberty* have the inclination I’d suggest they spend a bit of time on Article 25, Right to a Pristine and Healthy Environment, and work out what would be left on the planet should this nonsense ever be put into practice.

Every Australian should read this book. Their future liberty may just depend upon their doing so.