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Research Director,
L.C.A.R.C.
Dear Sir/Madam,

I find it interesting that mention is made in Issues Paper No.3 of the U.S. Bill of Rights. How these rights have of late been interpreted by the U.S. Judges, & the resulting divisions within U.S. society suggest that anything approaching the U.S. Bill is the last thing Queenslanders either need or want. I refer specifically to the discovered "right" to an abortion, & the recent 'discovery' by a leading U.S. lawyer of a 'right' to a physician assisted suicide, i.e. the right of a physician to kill.

Rights cannot be unalienable unless they are based on something beyond government. Where do "unalienable rights" originate? From the State? They are not then unalienable, for what the State gives, the State can also take away.

The classic conception of rights was simply the freedom to act according to conscience without interference. In the 1960's arose a new concept of rights: inter alii, a right to receive benefits from the government. Thus government "aid" programmes have become entitlements.

Every right claimed imposes an obligation on someone, e.g. if I have a right to medical treatment then doctors have an obligation to administer that treatment. If people have a right to financial security then the government has an obligation to dole out welfare benefits. With each new right comes a network of laws & regulations to enforce the corresponding obligation. And if people feel that is not enough they can resort to another form of government power - the courts. Private contracts, private conversations, the most intimate details of our lives can become fair game for court scrutiny.

Thus the old concept of rights designed to limit state power- to define areas free from government interference- has been replaced by a new concept that expands state power. It asks government to regulate all sorts of areas that were once private. Thus more & more of our lives becomes vulnerable to government control, or worse, in that the final test is a majority view of a group of judges.

Rights talk encourages our all-too-human tendency to place the self at the centre of our moral universe. In tandem with consumerism & a normal dislike of inconvenience, it regularly promotes the short-term over the long-term, crisis intervention over preventive measures & particular interests over the common good.

Legality has become a touchstone for legitimacy—the language of rights is the language of no compromise. The winner takes all & the loser leaves town.

Absoluteness is an illusion & hardly a harmless one. The implication is that no one else is affected by my exercise of the individual right in question. The independent individual, helmetless & free on the open road becomes the most depressed of individuals in the spinal injury ward. Rights of life, liberty & property are pre-eminently the rights of separated independent individuals.

Privacy as "freedom from surveillance, or from disclosure of intimate affairs" has shifted to "freedom to engage in certain activities & to make certain choices without government or other interference". But my freedom to express disapproval of certain legislative enactments does not extend to a freedom to stand in a crowd & shout four-letter words in the SunCorp Stadium. Thus in the U.S. has been put in place a system of 'abortion on request', covering the entire nine months of pregnancy, & available for any woman who can find a doctor to agree with her assessment of the degree of her distress. Parents- & others- whose notion of self may be inextricable from relationships of care taking & dependence, are poorly served by a politico-legal discourse that exalts self sufficiency & that treats relationships as merely freely chosen "life styles"

The philosophers' austere ideal of self sufficiency cannot be successfully democratised. A large collection of self determining, self sufficient individuals cannot even be a society.

Buried deep in our rights dialect is an unexpressed premise that we roam at large in a land of strangers, where we presumptively have no obligations towards others except to avoid the active infliction of harm.

There can be no watertight separation between law & morality, or between public & private. Our stark simple rights dialect puts a damper on the process of public justification, communication & deliberation upon which the continuing viability of a democratic regime depends. It contributes to the erosion of the habits, practices, & attitudes of respect for others that are the ultimate & surest guarantors of human rights. It impedes long- range thinking about our most pressing social problems. Our rights-laden public discourse easily accommodates the economic, the immediate, & the personal dimension of a problem, while it regularly neglects the moral, the long-term & the social implications.

The new rhetoric of rights is less about human dignity & freedom than about insistent unending desires. The current strain of individualism is characterised by self expression & the pursuit of self gratification. Rather than by self reliance & the cultivation of self discipline.

The assertion of rights is usually a sign of breakdown in a relationship. A liberal regime of equality & personal freedom depends on the existence & support of certain social assumptions & practices: the belief that each & every human being possesses great & inherent value, the willingness to respect the rights of others even at the cost of some disadvantage to one's self, the ability to defer some immediate benefit for the sake of long-term goals, & a regard for reason-giving & civility in public discourse.

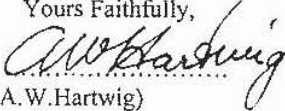
IN Eastern Europe, the slogans that stirred, & that spread like bush fire from country to country were not about rights. They were about the courage to be honest, about men & women " living in truth", & about calling "good & evil by name".

If there are "unalienable rights", surely the most basic, the most obvious & the most fundamental is the right "to be"—honoured more in the breach than in the observance throughout the world. Next must come the right "to develop, to become". While this depends largely on oneself, it can be facilitated by the interest & support of others.

There is no right to do or to say anything that in any way harms anyone else. Nor is there any right to what legitimately belongs to another.

If rights need to be written into legislation they MUST be concerned with the well being of the weak, the disabled, the elderly, the young, of those unable to care for themselves, AND of those who care for them & are committed to their welfare. The strong can always look after themselves, but they, too, one day will become weak. Thus unless the rights of the weak & of the frail are paramount, we are all at risk.

It is an illusion to believe that the " parchment barrier" of legal rights alone can shelter citizens from the arbitrary exercise of public or private power.

Yours Faithfully,

(A.W.Hartwig)

Ref" Rights Talk" Mary Ann Glendon; The Free Press 1991.