



Lawyers' Christian Fellowship Newsletter

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JANUARY 2008

TUESDAY 29 JANUARY



Rev Dr Peter Jensen, the Anglican Archbishop of the Diocese of Sydney, will again present the opening of Law Term address in the Sydney CBD. Dr Peter Jensen, who previously was the principal of Moore Theological College, has spoken at various Katoomba conventions and CMS summer schools. He is a gifted and clear preacher who is regularly invited overseas to address conferences. His previous law term addresses are available at the LCF website.

King St Sydney at 10:30am

ST JAMES ANGLICAN CHURCH SYDNEY

OPENING OF LAW TERM SERVICES 2008

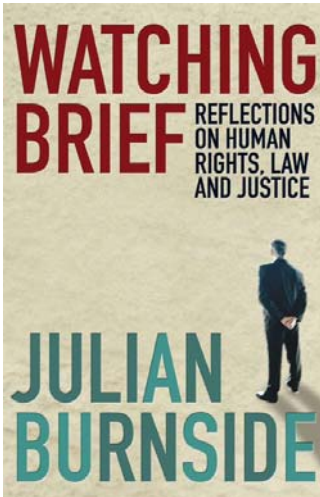
LEIGH MEMORIAL UNITING CHURCH PARRAMATTA

Macquarie Rd, Parramatta at 9:30am

This year's speaker for the opening of Law Term interdenominational service at Parramatta is the Rev Niall Reid, who is the moderator of the NSW Synod of the Uniting Church. Scottish by birth, Niall completed a law degree at the University of Sydney prior to his theological study. His other connection to the legal profession is his wife Paula who is a solicitor/consultant with Hunt & Hunt at their Eastwood office.



TUESDAY 29 JANUARY



Watching Brief: reflections on human rights, law & justice
by Julian Burnside
Q.C.
Scribe Publications,
2007

Those looking for a comprehensive and coherent analysis of the issues of human rights, law and justice will be disappointed by this book. It is largely a collection of short pieces written previously and published elsewhere by a lawyer who has become,

through his voluntary work with refugees, a prophetic voice against the injustices of Australia's recent refugee and anti-terrorism policies. The essays reflect the time when they were written and have not been significantly updated. The nature of the collection gives rise to too much repetition which is irritating.

After two introductory essays which introduce the reader to the person of Julian Burnside, the majority of the book consists of short essays gathered under the rubric of asylum seekers to Australia and then, human rights in an age of terror. The last section departs from the contemporary commentary and explores justice through a series of cases from the recent case of Van Nguyen, the Australian executed in Singapore in 2005 (capital punishment) to that of the murderous Dr Crippen at the turn of the twentieth century.

The author's journey is that of a prodigal son who, like many who went to University in the 1970s, discovered a passion for justice. A successful commercial practice as a barrister specialising in commercial litigation dulled that passion for decades until it was re-ignited as the author found himself briefed in the Patrick's stevedoring litigation in the late 1990s and then involved representing refugees.

It is some of the more common inhumanities (ones not publicised elsewhere) that the author documents that hit home – mothers only able to take their children out of the cell once a day to take their children to the toilet and having to use a plastic bag in the meantime. Detainees queuing hours to use two leaking toilets shared amongst 700 detainees. Nurses having to cut detainees toe nails but only doing one person per day (700 in the facility). A spoonful of peas and occasional piece of fruit for breakfast in Nauru. A young girl whose house was raided by armed officers who in fright wet her pants and is not allowed to change them before being transported 5 hours to a detention centre. It is these small inhumanities, which most of us can relate to, that are so prolific, unnecessary, demeaning, degrading and inexcusable. This book continues the already extensive documentation of the history of man's inhumanity to man.

Human rights are often described by the author as self-evident, inalienable, innate and yet they are then described just in case they are not self-evident to the reader. He is critical of the utilitarian arguments, such as "it is the price we pay to protect the many" that are used to justify the curtailment of rights for the weakest and outsiders in our society (refugees and suspected terrorists). Yet he does not deal in detail with the fact that in times of war these curtailments have historically occurred. He identifies the right of Habeas

Corpus entrenched in the US Constitution but does not really acknowledge that in times of war that constitution does permit its curtailment. Many nations curtail such rights in times of external threat and the question becomes what degree of legitimate threat warrants the curtailment of individual rights. Clearly he believes that neither the threat of refugees or terrorism justify the legislative actions that the previous Federal government took.

The problem of course is that if human rights rely on some nebulous consensus of the citizens at a particular time as to what is innate and important then they are always going to be susceptible to being set aside when that consensus no longer exists or it is trumped by an overriding emergency or threat. If majority opinion determines what are human rights then a minority are always at risk. The author acknowledges something more is needed. His solution is that we need a Charter of Rights to protect these liberties from the fickle nature of government and majority opinion. The history of human rights does not support this view. The US Declaration of Independence failed to protect African Americans for years as the Constitution rights and freedoms were held not to apply to them. Today it fails to protect the 1.2 million fetus' in the United States that are aborted each year because they do not fall within the definition of human.

The author never tackles the big question – why are these rights innate? What makes "rights" right – is it just the self interest of the golden rule "do unto others as they would do unto you"? If human rights are created by humans then they can be set aside by humans. But if the right to be treated with dignity as a human arises from being created in the image of God and not from the promulgation of a charters of rights then they are truly above our human laws.

The author has some interesting ideas to improve our justice system. These include requiring written submissions in Court to be handwritten. This apparently would reduce their length. He also believes charging a filing fee per page would result in much shorter court documents being prepared. The suggestions are counter intuitive (rather like removing rubbish bins to stop rubbish on the streets) and I can only hope they were made with tongue firmly in cheek. More sensible is his suggestion to increase legal aid to the middle class. As he points out few lawyers, the author and this reviewer included could afford to retain themselves to defend themselves at their hourly rate.

This is not a balanced book in its treatment of the issues but then it is not intended to be. It is a book designed to create a more balanced (fairer) society and redress what the author sees as an imbalance that threatens long term moral harm to Australia, as the dignity of what it means to be human is diminished in our country. This explains its polemic character, why at times it reads more like an indictment and why those responsible for the refugee and anti-terrorism laws are the recipient of so much of the author's ire.

Steven Nicholson January 2008.

The newsletter's editor is Steven Nicholson who can be contacted at steven@mcpheelshaw.com.au or on 47511055 or PO Box 4 Springwood, NSW, 2777 or DX 26729 Springwood.