

Susan Ryan: *Eureka Defend Democracy Dinner*
South Sydney Leagues Club 2 December 2006

We are here to honour the occasion, December 3, 1854 when the Ballarat miners took part in a battle.

It was a battle for democratic rights, the first such in the history of that British colony that was to become the Australian nation. The miners lost the battle on the day, but they won the war.

The Eureka Rebellion achieved its immediate aim, the end of the exploitative and unfair license conditions that were destroying the miners' chance of making a living.

As an outcome of the fight the miners achieved the right to vote and to stand for election with representation.

The rights they won from this rebellion became the basic building blocks of our modern democracy, of the development of human rights for all Australians.

Many of those miners paid a high price. Twenty two diggers were murdered by the soldiers of the colonial administration. Of the many who were arrested thirteen were charged with treason. Not one was found guilty. The editor of the *Ballarat Times* however was given 3 months imprisonment for the crime of sedition. Later one of the leaders of the rebellion, Peter Lalor was elected to the Legislative Council and then Speaker of the Legislative Assembly.

These events are not just of historic interest. The rights attained as a result of Eureka, democratic freedoms later developed by further generations of agitators and reformers are under threat today.

As a direct result of the laws and policies of the Coalition Government, those traditional human rights enjoyed by most in Australia since Eureka, and many other rights can no longer be taken for granted.

The state of human rights in Australia deteriorates almost daily.

Just a couple of weeks ago the High Court has decided to support the Coalition Government's decision, in relation to refugees seeking an extension to their temporary protection visas, that the onus of proof that they continue to be refugees rests with the asylum seekers themselves.

The Government apparently has no responsibility. It can decide on whatever basis that the homeland dangers have decreased, and deport frightened and desperate human beings, including children back to war zones.

The Government does not have to prove anything in relation to the dangers. The asylum seekers have to produce the proof. How they are to be expected to do this defies the imagination.

As a result of this new High Court ruling it appears that many refugees will be deported for example, to Afghanistan.

Yes Afghanistan is the country where the Edmund Rice Centre investigators found that 9 persons refused extensions of their visas and deported from Australia were killed and three of their children were killed also.

Yes, Afghanistan **is** the country in respect of which DFAT advises **against** travel, citing the “extremely dangerous security situation and the very high threat of terrorist attack” (Australian, 16 Nov 2006, p.1).

I wonder if refugees trying to establish their case are allowed to quote DFAT travel advisories.

This situation may be, is, according to the High Court, legal, but it is inhumane. It is terrible. It constitutes only the most recent demonstration of the failure of Australia’s current human rights protection arrangements.

These are the same arrangements I am assured in correspondence from the Prime Minister and the federal Attorney General are perfectly satisfactory, the best in the world and in no need of improvement by a Human Rights Act.

Just a few weeks ago I had to pinch myself to see if I was really awake, really living in 2006 in democratic, open Australia, when I watched on TV, our federal AG telling us that sleep deprivation is not torture. That we are even contemplating the official use of such torture is almost impossible to believe, but we had better believe it, because may happen.

Here in Australia 2006 we do have a massive problem. Our traditional rights are constantly being eroded, by government action.

We have seen rights we have always taken for granted- such as the right to liberty, freedom of movement, the right to legal representation, the right not to be detained without trial- all gravely undermined by the anti terror laws.

The right to vote of young people has been undermined by manipulation of the enrolment provisions for first time voters.

The right to free speech has been violated by the notorious Sedition provisions of the 2005 anti terror laws. Yes, Sedition, the same crime for which the *Ballarat Times* editor was jailed in 1855.

What is happening in response to these attacks? At official level, nothing.

The ALRC has reported that the Sedition laws are wrong, unnecessary, and dangerous and should be removed. The Government has dismissed the advice.

The community in general, as well as most of our national parliament remains passive.

If there is anything this country is crying out for, in relation to Human Rights protections it is national **political leadership**. But where is it?

The Howard government is totally dismissive of human rights abuses, even or especially those created by its own laws and policies.

The Opposition, despite the good work of some MP's has not yet recognised that it would attract much greater community support if it reclaimed the great Labor tradition of taking UN human rights conventions seriously and using them to make laws to protect Australians.

This is what previous Labor governments and leaders, Evatt, Chifley, Whitlam, Hawke and Keating did, and did successfully extending the rights of Australians.

In the absence of political leadership it is up to us, the community, to act.

It is out of this political leadership vacuum, that our *new matilda* community campaign for a Human rights act for Australia has sprung up.

This campaign started just over one year ago, in the first place as a response of a few of us to the concerns of the readers of *New Matilda*.

New Matilda is an independent online weekly magazine, devoted to truth and accountability in government, better public policy and participatory democracy. It is now over two years old and has a growing subscriber base of several thousand.

As soon as *New Matilda* appeared, contributors and readers repeatedly expressed disgust and amazement at the practices in detention centres, the desperate plight of adults and children seeking our assistance, the so called Pacific Solution, and other daily acts of government that flew in the face of international treaties on human rights.

The disgraceful treatment of Vivienne Solon, an ill Australian citizen deported to the Philippines, and of Cornelia Rau, a mentally ill resident thrust into jail and then into detention aroused further anger.

I note in announcing a financial settlement with Ms Solon this week, Immigration Minister Vanstone has expressed regret that the whole episode occurred.

If we had in place Human Rights Act, requiring a human rights culture and practice in the bureaucracy, that terrible saga would not have happened.

Our readers responded to that argument. They also saw the need for legal rights protection for indigenous communities suffering massive problems and were aware of the increasing difficulties facing minority groups, especially Muslims, currently without rights protections.

Our readers were outraged by the attacks on traditional freedoms brought about by the anti terror laws.

You here tonight have no doubt shared the questioning of our readers. I am sure all of you know about the major international conventions on human rights, and know Australian governments over the years have ratified these instruments. Yet in matters of asylum seekers, the provisions of anti terror laws, and the treatment of minority groups, government frequently contravenes these obligations. How can it be that such contraventions are, in Australia, legal?

Australia has indeed signed and ratified international rights treaties, including the International Covenant on Civil and Political rights 1980,

and the International Covenant on Economic Social and Cultural rights in 1976.

But here is the problem: without embodiment in national legislation, these obligations, despite their moral force, have no force in law. So we considered the question, if all this is legal, what can we, as citizens, do about it?

The answer was, **is**, to change the law.

In 2006, this is hardly a radical objective. Australia is the only western nation without constitutional or statutory protection of the rights of citizens. UK, New Zealand Canada have such protections and the ACT government and Victoria have legislated Human Rights instruments. These state and territory initiatives are welcome.

For those international conventions protecting our traditional rights to have full legal force here however, we need a national act that embodies them.

Readers of *Newmatilda* formed a small committee and with experts led by Ass prof Spencer Zifcak prepared a draft bill that embodies all major civil and political rights, and economic and cultural rights set out in the UN conventions, a Human Rights Act for Australia.

In October last year we launched this draft bill at a public meeting in the Sydney town hall with an array of distinguished supporters including Malcolm Fraser, Greg Combet, Elizabeth Evatt and Professor Larissa Behrendt. We followed this with similar public meetings in every capital city, many regional centres and local communities.

We published the draft bill, seeking public input and comment, on www.newmatilda.com.

We have had discussions with dozens of community, ethnic, civil liberties and church groups, and many members of the federal parliament.

Our open and consultative approach is working. Citizens have welcomed the chance to consider and comment. Other human rights groups are partnering us in our aim to get this bill into parliament.

Our draft bill does not do anything new or untried.

It defines human rights as those set out in the major international conventions. It covers traditional civil and political rights: freedom of speech, of religion, the right to vote, the right to a fair trial, the right to equality before the law, the right not to be detained without charge, the right to liberty, protection from torture and cruel and inhuman or degrading treatment.

We have also included in our draft economic, social and cultural rights: the right to social security, education, health and work. This group of rights is resource dependant and the Courts will need to treat them differently. We are therefore particularly interested in the community's views on including these rights.

How will it work in practice?

The rights are to be protected through a variety of mechanisms

Interpretation: section 50 requires courts to interpret legislation in a way that is compatible with the rights in Part 3.

Declarations of Incompatibility: The court may declare incompatibility, in which case the parliament and the government must respond.

The Attorney General must within 6 months table the declaration in parliament with a written response explaining what action, if any is intended and reasons.

This dialogue between the courts and parliament leaves the law making power with parliament but adds a highly effective level of scrutiny and strong accountability.

Parliament:

All legislation coming before the parliament must be measured against the rights set out in the act. Where there is incompatibility the AG must report and explain and parliament will determine any action.

A joint standing committee of parliament will monitor and make recommendations on all human rights matters and the implementation of the Act.

Remedies: where the courts find illegality on behalf of public authorities they may award remedies.

Members of the Public: may bring proceedings in the Courts against any public authority which has acted in a way which is incompatible with human rights.

After a years consultation we amended the draft bill and relaunched it.

We have now taken it to parliament and are in the process of lobbying for its introduction into the Senate as a Private Member's bill with cross party support.

We hope to have the bill in the parliament this year or early next year at the latest, certainly before the next election.

This campaign, like the Eureka rebellion, can succeed. It will succeed if we get active support from right across the community.

The Ballarat miners at Eureka had to act on their own behalf. The administration opposed them, indeed sent soldiers to murder them. Our campaign is in the Eureka tradition, in that it is up to us, the citizens to agitate to restore and secure our human rights.

We are prepared to lose a few battles along the way, but we are not prepared to lose the war. With the active support of the community, we will win. That means the community will win.

Winning means securing an Australian Human Right Act which will guarantee and support all those democratic rights we got from Eureka and beyond.

It is time perhaps for all of us to do what the Eureka rebels did and swear beneath the flag of the Southern Cross to fight to defend our rights and liberties.

I hope you are all up for this fight.

Susan Ryan AO Chair *New Matilda* Human Rights Act Campaign
Committee 2 December 2006