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Giving Meaning to a 'Culture of Human Rights'

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Statutory bills of rights, such as those that have been adopted in New Zealand, the United Kingdom, more recently in the Australian Capital Territory, and now in Victoria, are intended to promote a dialogue about human rights protection between the three arms of government, rather than giving the judiciary the ultimate power to determine human rights issues.

Such dialogue models of bills of rights involve the executive government in this human rights conversation, through mechanisms such as compatibility statements, which require internal scrutiny of new bills, and through the imposition of interpretive or direct duties on public officials to consider human rights in policy and decision making.

One of the perceived benefits of this involvement of government is to foster a 'culture of human rights' within the executive.

For example, in the United Kingdom the Lord Chancellor expressed this view, noting (perhaps somewhat optimistically) that the *Human Rights Act 1998*:

[H]as moved public decision-making in this country up a gear, by harnessing it to a set of fundamental standards. And it has breathed new life into the relationship between Parliament, Government and the Judiciary, so that all three are working together to ensure that a culture of respect for human rights becomes embedded across the whole of our society.¹

In determining the most appropriate scheme of human rights protection for the Australian Capital Territory, the ACT Consultative Committee also considered that the creation of a human rights culture was of critical importance:

While a bill of rights has legal significance, its primary purpose should be to encourage the development of a human rights-respecting culture in ACT public life and in the community generally.²

However, while the creation of a culture of human rights in government may be regarded as a key outcome of the implementation of a bill of rights, the content of such a culture is generally left implicit, or is seen as self evident. Yet there may be some value in pinning

¹ Lord Irvine of Lairg, 'The Human Rights Act Two Years On: An Analysis' Durham University, 1 November 2002.

² ACT Consultative Committee, 'Towards an ACT Human Rights Act' Report 2003, p41

down this concept with more specificity, if we are to begin to evaluate the effect of a bill of rights in creating a culture of human rights.

In this paper, I will look more closely at the concept of culture, drawing on the rich consideration of this term in anthropology and social science, and will propose a tentative definition of a human rights culture as it might be applied to the executive government. I will also consider possible phases in the development of such a culture, and how it might be measured, in a qualitative if not quantitative sense.

The concept of culture originates from the discipline of anthropology, from the ethnographic tradition of field workers living in and researching societies very different from our own, observing and decoding the meaning of social behaviour and rituals.

Within the domain of anthropology there are widely varying approaches to culture, from the perspective of culture being a response to the practical problems of survival in a particular environment³ to the conceptualizing of culture as a symbolic system of shared meaning that must be read and interpreted much as one would approach a literary text.⁴ While these philosophical debates remain unresolved, and it would be difficult or meaningless to posit any consensual view of culture within this field,⁵ a simplified concept of culture that draws from the various traditions might be '*a shared system of meanings, values and beliefs which is transmitted through learning.*'

The first important feature of this definition is that culture is seen as a phenomenon shared between members of a cultural group, rather than being solely located within individual actors. Culture is thus comprised of common understandings of a group, rather than the simple aggregate of the views of its members. It is also notable that culture relates not just to the observable behaviours or other artifacts of a group, but to the understandings and attitudes that underpin them. Goodenough has described culture as '*whatever it is one has to know or believe in order to operate in a manner acceptable to its members*' and states that:

Culture is not a material phenomenon; it does not consist of things, people, behavior, or emotions. It is rather an organization of these things. It is the form of things that people have in mind, their models for perceiving, relating, and otherwise interpreting them.⁶

A further attribute of culture is that it is something that new members learn from the group, rather than being the result of genetic programming, instinct or geography. Thus humans who share the same biological makeup and who live in similar physical environments may develop very different cultures.

³ See eg Marvin Harris, *Cultural Materialism: The Struggle for a Science of Culture* (1979)

⁴ See eg Clifford Geertz: *The Interpretation of Cultures*, 1973

⁵ See eg the analysis of Roger Keesing in 'Theories of Culture', *Annual Review of Anthropology*; 1974, 3, 73-97

⁶ Goodenough, W. H. 'Cultural anthropology and linguistics' In *Report of the Seventh Annual Round Table Meeting on Linguistics and Language Study*, ed. P.Garvin. (1957) p. 167.

While this broad concept of culture provides some insight, the idea of a culture of human rights has a fairly narrow focus, on a particular aspect of culture, within a particular working environment. The identification and study of such sub-cultures within our own society has been further developed by social scientists, particularly with the development of the concept of 'organisational culture.'

An influential figure in this field is Edgar Schein, who defines organizational culture as

[A] pattern of basic assumptions – invented, discovered, or developed by a given group as it learns to cope with its problems of external adaptation and internal integration .. taught to new members as the correct way to perceive, think, and feel in relation to those problems.⁷

This conception focuses attention on the interaction between the challenges of the working environment (both external and internal) and the development of a particular organizational culture as an adaptive response. However Schein emphasizes that organizational culture develops organically and is not easily manipulated by top-down interventions. Thus the enthusiasm of some managers for 'vision statements' and for inspirational posters of soaring eagles and mountain climbers, in an attempt to develop a motivated corporate culture, may have been misplaced.

Nevertheless, the concept of a culture of human rights does contain a vision of a particular organizational culture, one where human rights are respected, rather than simply describing the actual attitudes towards human rights that might develop organically within a given workplace.

One area in which a similar normative approach to organizational culture has been taken is in the field of occupational health and safety, with the growing emphasis on building a 'safety culture.' This concept arose out of serious accidents in the nuclear power industry but has been broadened to other areas.⁸ Researchers in this field have focused not just on interpreting and describing workplace culture, but on assessing the effect of interventions with the ultimate goal of improving workplace attitudes and practices towards safety.

While again there are differing understandings and definitions of safety culture, the key feature of these concepts is that they prescribe a culture in which safety is given priority over all competing objectives.⁹ Researchers have sought to measure safety culture through surveying the attitudes of workers, to gauge the prevailing 'safety climate' and then to test again after the implementation of particular safety strategies to measure their effectiveness.¹⁰

⁷ Schein, E; Organisational Culture and Leadership 1985 p9

⁸ Cooper MD, Towards a definition of Safety Culture, Safety Science 36 (2000) 111-136, at p 113.

⁹ Ibid.

¹⁰ See eg the review by Glendon AI and Stanton NA, 'Perspectives on Safety Culture', Safety Science 34 (2000) 193-214

Although the concept of safety culture has useful parallels with human rights culture, the concept of prioritization may not be so readily applicable to human rights. Human rights have inherent boundaries, to the extent that they would otherwise conflict with other human rights, and under human rights law it is accepted as appropriate to set proportionate limits on human rights to achieve legitimate competing social objectives.¹¹ Rather than seeing rights as necessarily being trumps, it appears that the key goal of a human rights culture within government must be consideration and respect for human rights, across all areas of government activity.

Thus I propose that a tentative definition for a human rights culture within the executive government might be:

A pattern of assumptions shared by government officers, and taught to new officers; that human rights must be considered and respected in carrying out all government functions and in developing new law and policy.

If the creation of such a culture is the ultimate goal, a question then arises as to how we might measure and monitor the development of a human rights culture. It may be overly ambitious to assume that this concept is susceptible to precise quantitative measurement, and indeed there is much debate over whether such measurement is possible within the field of safety culture.¹²

Nevertheless, perhaps a very simple hierarchy of the prerequisites for such a culture may be useful as an evaluation tool. Although culture is a shared phenomenon, the attitudes of individual members of a group may provide an indication of the extent to which a culture has developed.

A suggested hierarchy of development of a human rights culture within the executive could be as follows:

1. Awareness of human rights and specific legislation
2. Engagement – perception of human rights as relevant, and accepting the need to comply with procedural rules.
3. Commitment to respecting human rights

Awareness of human rights, and of the legislative regime for their enforcement, is clearly necessary before any further development of a human rights culture can occur. If there is

¹¹ The permissible limitations on human rights in the ACT context are set out in section 28 of the *Human Rights Act 2004* (ACT), that provides that human rights may only be subject to such limits in Territory laws that can be demonstrably justified in a free and democratic society.

¹² See eg the discussion of Glendon AI and Stanton NA, 'Perspectives on Safety Culture', *Safety Science* 34 (2000) 193-214 at pp196-197

limited awareness or understanding of human rights or the legislation within the executive government, any professed culture of human rights would be superficial at best.

Engagement with the process of implementing human rights is the next logical step in development of a human rights culture. This requires an acceptance amongst government officers that human rights are relevant to their particular area of activity, and of the need for compliance with any externally imposed regulation of human rights. Engagement does not imply wholehearted agreement with the cause of human rights, and may encompass a 'bare minimum' approach to compliance. Nevertheless, this stage requires officers to be actively involved in considering and applying human rights concepts.

The third stage of commitment would be the ultimate measure of achievement of a human rights culture. Commitment goes beyond mere compliance with external regulation, to the internalization of human rights values. The key indicator of commitment would be the assumption amongst officers that human rights should be considered and respected in all situations. As discussed above, however, this would be consistent with imposing reasonable and proportionate limitations on human rights when legitimate competing objectives make this unavoidable. Such a culture would be characterized by a best practice approach to human rights.

Some would argue that engagement and compliance with human rights laws is the main indicator of a human rights culture and that indeed if a government can achieve compliance across the board it would be doing very well. They might quite rightly point out that it is not possible to force government officers to feel a personal commitment to human rights, only to ensure that all rules and procedures are followed conscientiously.

It is certainly the case that full compliance with obligations imposed by bills of rights would be a significant step forward in the creation of a human rights culture within government. Nevertheless, it seems that the concept of culture, as drawn from anthropology and social science, encompasses something beyond merely reactive compliance behaviour. Rather, culture operates at the level of beliefs and assumptions, in this case about human rights.

If a true culture of human rights had developed within government, we might expect that this culture would have an effect on government policy and decision making independently of regulatory pressures. Thus for example we could consider what might happen if the Federal government decided to continue with its reforming zeal and sweep aside not just the *Civil Unions Act 2006*, and the ACT's *Terrorism (Extraordinary Temporary Powers) Act 2006*, but the *Human Rights Act 2004* (which might be regarded as the evil giving rise to both of those apparently objectionable laws). If a culture of human rights had gained a foothold in the ACT bureaucracy we would hope that its officers might continue to ascribe value to human rights and to have regard to them in drafting future legislation, even if compatibility statements were no longer specifically required.

In response to the second objection, it is clear that while culture operates at the level of unspoken assumptions and beliefs, it does not require that all individuals agree with those assumptions. Even the most homogenous of cultures will include sceptics and dissenters, who may play an essential role in creating positive cultural change and development. Rather, the critical factor is whether everyone within an organizational culture is aware of and acknowledges the prevailing norms relating to human rights in that organisation (in the same way that people might be passionately committed to nudism but would recognize the need to wear clothes to fit in with cultural expectations in the workplace).

While the three stages of cultural development have been presented as a simple linear progression, it should also be acknowledged that there may be complex interactions and cyclical movement between these levels over time, where, for example, a genuine but uninformed commitment to human rights may lead officers to develop greater awareness of specific human rights jurisprudence, which may then reinforce their level of engagement in implementation processes.

In assessing the development of a human rights culture, a survey of individual attitudes is likely to provide a useful reflection of shared cultural norms, but it should be acknowledged that such results may not tell the full story.¹³ Thus to provide a richer assessment it may also be useful to monitor other more tangible evidence of culture, such as the systems for passing on information to new members through training and induction programs, the importance given to human rights in the organization's publications, and the practical application of human rights in legislative review and decision making.

A case study: assessing the development of a human rights culture in the ACT government following the introduction of the ACT *Human Rights Act 2004*

The ACT provides an interesting case study for the assessment of human rights culture developing within a government bureaucracy. The *ACT Human Rights Act 2004* came into effect on 1 July 2004, and has thus been in force for just over two years.

In 2001, Jon Stanhope, then leader of the opposition Labor Party in the ACT included in his election platform a promise to consult the community about human rights protection. When the Stanhope government was elected in October of that year, Stanhope as Chief Minister and Attorney-General appointed an ACT Bill of Rights Consultative Committee to consult and report on whether it was 'appropriate and desirable' to enact an ACT bill of rights and the form it should take.¹⁴ The Committee found significant support in the community for greater legislative protection of human rights. It recommended a bill of rights based substantially on the United Kingdom model, but incorporating a greater scope of rights from the International Covenant on Economic Social and Cultural Rights, as well as those more traditional civil and political rights.

¹³ See eg Cooper MD, Towards a definition of Safety Culture, *Safety Science* 36 (2000) 111-136, who suggests that issues related to situational constraints and the actual behaviour of people are as important as their attitudes and beliefs in measuring safety culture.

¹⁴ ACT Consultative Committee Report, 'Towards an ACT Human Rights Act' (2003) at para 1.3).

It was expected that the Liberal opposition would be highly critical of the Committee's proposal. Perhaps less anticipated was the opposition that emerged from within the ACT Cabinet and at the most senior levels of the bureaucracy. Some departments actually commissioned their own legal advice about the potential impact of the proposed legislation. This advice (perhaps reflecting the perspective of the chosen advisers) predicted serious consequences for departmental budgets and policy making. It appears that this internal opposition was largely responsible for the more limited form of the final Human Rights Bill that was presented to the Legislative Assembly. This Bill did not include economic, social and cultural rights, and did not provide any direct duty on government officials to comply with human rights, nor any specific remedy for a breach of human rights.

The history of resistance to the *Human Rights Act* from within the ACT bureaucracy provides some insight into the place of human rights within the organizational culture prior to the commencement of the Act. Against this backdrop of internal scepticism, it might be expected that a full-fledged culture of human rights would take some time to develop.

As part of our Linkage project with the ACT Department of Justice and Community Safety, which is supported by the Australian Research Council, we have recently begun a program of interview research with the ACT government, to help us gauge the impact of the *Human Rights Act* within government.

In these interviews we have been seeking information about the level of familiarity of officers with the *Human Rights Act*, how relevant they consider the Act to be to their work, the situations and manner in which they would apply the Act and particular challenges they see arising from the Act. We have also asked directly whether officers consider that the Act has had any impact on the culture of their workplace. We have conducted pilot interviews with one department, and we are now looking to commence interviews in other departments across government. At this stage it is too early in the research to report anything other than some general observations, but we hope to later publish more detailed results.

So far the preliminary results have shown some variation in levels of awareness and engagement of government officers with the Act and with human rights generally. As might be expected, given the short period in which the Act has been in force, there has not been a total transformation of culture within government. Rather than a general shift in attitudes, there is evidence of the developments of pockets of human rights culture forming around particular areas of specialization and particularly committed people.

The ACT Consultative Committee considered that involving the executive in the dialogue would be the key to building a culture of human rights, noting that the process of engagement with human rights may be more significant than the particular decisions

made: “*The conduct of an institutional dialogue about rights is almost as important as the end result in building a rights-respecting culture.*”¹⁵

In fact it does appear that there is a correlation between the degree of participation in the human rights compatibility and scrutiny process, and the depth of commitment to human rights. Those most immediately involved in vetting legislation for human rights compliance appear to have developed a shared commitment to respecting human rights principles and consider human rights as central to the development of good policy.

Those officers who have direct responsibility for the preparation of legislation are also more likely to see the Act as relevant to their work, and to engage with human rights even if they might sometimes favour a minimalist approach to compliance, rather than placing particular value on respecting human rights as an end in itself. The interactions of these officers with the Scrutiny Committee of the Legislative Assembly, and the requirement to prepare explanatory memoranda that include human rights justifications have served a useful role and reinforce need for consideration of human rights in the process of developing legislation.

It appears that there is a greater awareness of some human rights than others. For example, the right to equality and those rights arising in the criminal process may be more likely to be identified as relevant to the work of government than rights such as the protection of the family or freedom of expression. The leader of the Opposition, Bill Stefaniak recently told the Legislative Assembly that some government officers had complained about the need for human rights compliance where it seemed that such rights were not relevant to their area of work:

I have heard from talking to public servants that even in areas where you would think that there would be virtually no relevance in terms of human rights, that it is a mere formality that they have to be consulted and a process gone through, delays are being experienced with things as basic as changes to legislation in areas where you would not expect human rights to be particularly relevant whatsoever.¹⁶

Such comments are also consistent with our preliminary findings that the time frame in which legislation is developed can make it difficult for officers to fully engage with human rights considerations. Where legislative timetables are very tight, human rights processes are more likely to be viewed as an extra hurdle to be navigated, rather than a factor that can be built in from the beginning of policy development.

Although it is difficult to generalize from the small numbers of officers interviewed at this stage, it does appear that the *Human Rights Act* is having less impact in developing a human rights culture in those areas of government that do not have direct involvement in the legislative process, but are responsible for decision making and the application of laws.

¹⁵ ACT Consultative Committee Report, ‘Towards an ACT Human Rights Act’ (2003) at p 70

¹⁶Hansard, ACT Legislative Assembly, 9 May 2006, p1386-1387

The *Human Rights Act* does contain an interpretive provision in section 30, that requires anyone tasked with the interpretation of legislation to prefer a construction that is consistent with human rights, so far as is possible. This provision provides a clear role for the Courts in interpreting legislation, but it was also intended that it would apply to administrative decision makers and all officers in government operating within a legislative framework.¹⁷ However, it is not clear that all government officers who administer legislation are aware of this provision. Although such officers may be supportive of the *Human Rights Act* generally, it seems that many do not consider it their role to reconsider settled understandings of their laws and regulations.

The Victorian *Charter of Human Rights and Responsibilities Act 2006* by contrast, provides a more direct duty on public officials to comply with human rights unless legislation specifically authorizes them to do otherwise.¹⁸ It seems that such a duty is more likely to be understood by government officers as having direct application to their work than the interpretive provision in the ACT law. We understand that the possibility of including a direct duty on public officials is being actively considered in the first review of the ACT *Human Rights Act*.¹⁹

This paper has suggested a definition for a ‘culture of human rights’ and a simple hierarchy for the evaluation of such a culture within the executive government. In applying these concepts to the ACT, our preliminary findings thus suggest that the *Human Rights Act* has not yet been embraced with equal enthusiasm at every level of the ACT government, and cannot yet be credited with bringing about a ‘culture of human rights’ within the executive as a whole. Nevertheless there are encouraging signs of development of a fledgling human rights culture within those areas of government that are most closely affected by the dialogue mechanisms of the *Human Rights Act*. It seems that the ongoing challenge for the government will be to broaden the application and relevance of the Act to improve engagement with human rights across all areas and levels of government.

¹⁷ The Bill of Rights Unit within the ACT Department of Justice and Community Safety has issued guidelines stating that: “*In practice, this new rule of construction creates a new duty on all public officials to act consistently with human rights, so far as it is possible to do so.*” ‘Points on Statutory Interpretation and the Duty to Act Consistently with Human Rights’, available on the Department’s website at <http://www.jcs.act.gov.au/humanrightsact/publicationsbor.htm>

¹⁸ *Charter of Human Rights and Responsibilities Act 2006* (Vic), s38.

¹⁹ The Review report is now available (link at <http://acthra.anu.edu.au>) and recommends amending the Act to include a direct duty on public officials.