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Dear Mr O’Donohue

The domestic subjugation of human rights

In George Orwell’s novel Nineteen Eighty-four, the dystopian government’s crony O’Brien tells the story’s protagonist that “Power is not a means; it is an end” and “the object of power is power”. So many aspects of the tale reverberate in modern society that ‘Orwellian’ references are now considered cliché. Nevertheless, those two lines just quoted (and indeed the entire story) hold almost universal value in describing repressed and controlled states such as China, North Korea, Syria, Russia or any other country that routinely denies humans their basic rights. But what about closer to home in Australia? Or Victoria? If we hold our government and way of life to greater standards than those in, say, China, then to what ends are our governments working towards? Are they working for the broader principles of fairness, freedom and equality?

Well no, actually. In Victoria, the incumbent government has wound back hard won equal opportunity laws to allow religious bodies to actively discriminate against workers on the grounds of religious belief, sexuality and marital status. In other words, churches and faith based schools, charities and hospitals now have special rights to ask job applicants whether they are a faggot or are unmarried or have children born out of wedlock (I refuse to use the caustic and frankly ridiculous term ‘illegitimate’ — all children are legitimate) and then have the legal right to escort them off the premises for an affirmatively response. It also raises concerns for those already employed and whether they can be shown the door for reasons other than performance or workplace behaviour. The new rights of religious organisations to discriminate are in perfect breach of the UN’s Universal Declaration of Human Rights article 7 (and therefore also article 1) which states “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” It also contradicts the Victorian Human Rights Charter Section 8 which follows much the same line as the UN declaration. To this end the Victorian Government has already flagged its intentions to amend the charter through the current review process to avoid being in violation (at least from the Victorian charter point of view) of this important universal human right.

Thomas Paine wrote in his political pamphlet The Rights of Man that “A law not repealed continues in force, not because it cannot be repealed, but because it is not repealed; and the non-repealing passes for consent.” The obvious corollary of the Victorian Government legislative and charter
amendments is that it either does not consent to equal rights for it repealed a law that ensured it. Either that or it favours the right to discriminate over equal protection of the law. I would guess that most Victorians had to swallow a great deal of vomit when they heard that their elected leaders were revoking their rights to be judged on their merits and not who they are. I presume they have swallowed a great deal more knowing that the government suspended parliamentary standing orders (standing orders are code for the rules by which our democratic process is supposed to adhere to) to pass the bill, demonstrating that it is not comfortable playing by the book, and thus holds contempt for Victoria’s entire law abiding citizenry. But why was the government so determined to allow workplace bigotry? It is plainly obvious to all that the government is pandering to the desires of the Australian Christian Lobby (ACL).

The ACL have a knack for identifying politicians that are neither religious, xenophobic or homophobic and then identifying them as lacking values. The usual government ‘in-kind’ payment to cease or at least keep this sort of behaviour at a low level is no more and no less a kickback, either in the form of a favourable legislative change (such as the recent changes to the now ironically named Equal Opportunity Act) or selective employment in the form of paid chaplaincy positions. Such is the perceived power of the ACL in swinging elections.

The ACL have no problems making their own bigotry known. A well publicised tweet by ACL Managing Director Jim Wallace claimed that “Just hope that as we remember Servicemen and women today we remember the Australia they fought for — wasn’t gay marriage and Islamic!” (as an aside, it is worth noting that the Nazi soldiers, along with the rest of Europe, were overwhelmingly Christians, emboldened by the Vatican which at the time still officially blamed Jews for the death of Jesus Christ. The Nazis wore belts inscribed with ‘Gott Mit Uns’ which translated means ‘god with us’. As well as genocide against jews, the Nazis committed those same atrocities against homosexuals, sentencing around 50,000 for being gay and incinerating around 15,000. We also fought against Japanese occupation of Islam dominated countries. To summarise, our soldiers fought against tyranny for freedom and the broader rights of men and women, including the rights of homosexuals and muslims). Jim Wallace’s tweet is exactly the sort of bigoted opinion upon which religious bodies can now refuse to employ competent applicants.

In summary of this point, the Victorian Government, in concert with (or at very least targeting the intentions of) a xenophobic and homophobic lobby group, has subverted the democratic process to introduce a law that reduces equality. It very likely agreed to this to ensure it was not actively targeted by that said lobby group during the recent election and to keep it on-side for some time. It seems to me to be plainly obvious that the purpose of the utilisation of power by the Government to amend the Equal Opportunity Act has been power. Richard M Nixon, a crook and chronic subjugator of human rights in places such as Cambodia, Vietnam and East Timor, once said “Finishing second in the Olympics gets you silver. Finishing second in politics gets you oblivion.” It appears this government is setting out to repay the political debts that got it onto the top dais, even if that means the public get the silver medal.

But alas the planned contravention of human rights does not end there. The Victorian government wishes to take to the Human Rights Charter with the red pen. In its sights is Section 26, which afford the right not to be tried twice for the same crime and not to be punished if found innocent – double jeopardy as it is usually known. There are good reasons for and against double jeopardy. For double
jeopardy is the fact that the prosecutor — the government — has a vast tax payer funded resource to undertake court proceedings, whereas the defendant usually has very limited resources at their disposal. Also, double jeopardy protects defendants from zealous prosecutors that could otherwise potentially withhold evidence, with the full expectation that should the first attempt at conviction fail another opportunity would be guaranteed upon the presenting of new evidence.

One would reasonably expect that the government, with its many millions of dollars, should be applying a test of how reasonable the chance of conviction with the evidence available is (the ability to gather evidence, given government resources, should be substantial and adequately negate any argument that double jeopardy shouldn’t apply where new evidence is found). Evidence is also highly temporal, as the ability of witnesses and alibis to recall specific events, visions and discussions fade with time. Public opinion is much more likely to be influenced by media sentiment for justice (or more appropriately, revenge) thus the right to a fair trial (Section 24 of the charter) is compromised. Moreover, the defendant is fighting against being convicted of a crime, hence the process is extremely stressful and a second trial would amount to a litigious form of punishment of a person previously found innocent. Against the current Victorian double jeopardy laws is the fact that a person can be found guilty of perjury (e.g. the accused said under oath that they did not commit a crime but later confess; or an alibi later confesses that they were not in the company of the accused at the time of the crime) but cannot be retried in light of that. I would grant a small amendment to allow a retrial where a person has been found in a court of law to have perjured in a manner that obviously resulted or significantly contributed to the earlier acquittal. However, a carte blanche removal or stronger amendment of double jeopardy laws than suggested in this submission will clearly demonstrate that the Victorian government thinks the injustice of twice attempting to prosecute a rightly innocent individual has less weight than the injustice of a rightly guilty person walking free.

A further impingement on human rights (not the fault of the current government but planned to be exploited) is found in the following section from the Victorian Human Rights Charter:

**Freedom of expression (section 15):** People are free to say what they think and want to say, for example, talking, writing or with art. They have the right to find, receive and share information and ideas. *This right might be limited to respect the rights and reputation of others or for the protection of public safety and order.* [emphasis added]

The Victorian Government, through the introduction of on the spot fines for obscene or offensive language, now leaves the interpretation of an old law (the Summary Offences Act of 1966) pertaining to offensive language in charge of the police and thus also freedom of expression. One should ask the question that, so long as a person is not acting in a violent or threatening manner, and not overtly impinging on the ability of others to exercise their own rights, then why should that person be limited from exercising their freedom of expression. It seems a logical pathway that the interpretation of offence (and then logically viewed as an impingement of their rights surreptitiously granted under the Summary Offences Act) will obviously lie with the most offended person rather than the most reasonable one.

Why should the right to express yourself be limited to respecting the reputation of others and to what standard should that reputation be respected? Should Mother Teresa’s reputation of being charitable (and soon to be pronounced a saint) prevent a person from protesting her impending
sainthood because she accepted millions of money from a murderous dictator and denied thousands of terminally ill people even the most basic standard of health care despite having the means to do so? No it should not. What about public order? Should the right to freedom of expression be hindered to prevent public disorder in the form of an organised rally? No it should not. The unification of people with common interests into a common voice in a form of protest is one of the more important mechanisms to promote political change. Freedom of expression should be offered without compunction and without restriction. It is a noble human right that serves to ensure that every man and woman has the equal right to have their opinions heard.

In the beginning of Common Sense, Thomas Paine wrote “Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness POSITIVELY by uniting our affections, the latter NEGATIVELY by restraining our vices. The one encourages intercourse, the other creates distinctions. The first a patron, the last a punisher”. The current government goes further than Thomas Paine could foresee in 1775. Not content with restraining our vices, it seeks to restrain the human rights of the innocent, make it a crime to speak the English language and have already made workplace discrimination indiscriminate, so long as the person committing it forms part of a religious institution. And to what end? To enable the public? To protect the meek and the vulnerable? Or to the governments own ends, which is to gain and retain power? Orwell’s O’Brien may have summed up this government perfectly.

A charter of human rights is of no use if it cannot be applied to or by the government of the day. The current government shows no evidence that it intends to ensure legislation supports the human rights of all. May we hope that the subjugation of human rights in Victoria stoops no lower than the very low bar currently planned by the government.

Yours sincerely,

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