

Commentary

February 2014

By what right, Tim? Freedom & human rights

by Tony French

It was brain-damagingly hot working outside, so, seeking shade, I retired to my shed, beer in hand and more within reach. I would rehydrate and listen to the radio. Tim Wilson, the recently appointed youthful and articulate new Human Rights Commissioner, was being interviewed on Radio National's *Sunday Profile* (2 February 2014).

You may recall his controversial appointment last December, given that the organisation of which he was for years a director, the conservative Institute of Public Affairs (but not him personally, he said), had called for the abolition of the Human Rights Commission. It believes Human Rights are just political constructs created by capriciously interfering governments. 'Rights' could and should if necessary be amended or abolished by a conservative government in power. Was Tim a Trojan horse, or worse, the intended wrecker of the Human Rights Commission?



Eleanor Roosevelt with the UN Declaration on Human Rights 1949, UN Photo, flickr cc

Neither, it would seem from his interview; instead, he is a man with an asymmetrical view (read, 'a restricted view') of what human rights are, despite much mouthing of the mantra 'Freedom'. I thought, aren't Human Rights identifiable and permanent, by virtue of their being universal? So where does Tim's notion of 'Freedom' fit in?

For Tim (and his enthusiastic advocate and appointor, the Attorney General, George Brandis) 'Freedom' is the fundamental human right: 'Freedom'. I like the sound of it - reminds me of the '60s. But what is it, actually? Tim says it is

individual Freedom, freedom for me to make my own choices.

Is he unintentionally advocating anarchy? No, it is the neoliberal notion of Freedom - freedom from government restriction through regulation and a reliance on the market. I recall maliciously that little or no regulation did entail anarchy, if the Global Financial Crisis was an indicator of non-existent or

ineffective government controls of the out-of-control finance industry. But then that's market self-regulation for you.

Listening to Tim, I was a bit disappointed. I thought he might have a different take on Freedom and Human Rights, richer than unwinding government meddling to let the market reign and regulate. Worryingly, he was adamant that human rights are mere legalisms which can be created and removed by government. Hold on, I thought; yes we do ratify human rights conventions (local legalism you could call it), but the conventions being ratified locally do represent our underlying acceptance of something globally we all hold as worthwhile having.

Take for instance the aptly-titled 1948 *Universal Declaration on Human Rights*. It proclaims four fundamental and universal human rights: freedom of speech and belief, and freedom from fear and want. Maybe these encapsulate Tim's overarching notion of Freedom, but nowhere is this stated, nor for that is it matter any moral basis for the Declaration. And yes, nasty governments who have ratified the Convention can and do hollow out those four basic rights.

Another beer, and I have now a bi-lateral view of Freedom. Is Tim's Freedom, 'Freedom from or Freedom for something? The Universal Declaration is a freedom from (negative rights) such as freedom from torture, while Tim's idea of freedom espouses positive rights, the maximising individual freedoms such as freedom of speech and market freedoms. Of course, these are good for those fortunate enough to exercise them, while the rest have to settle for the basic minimal threshold of negative rights. Yet social, economic, and cultural rights can be positive rights too, such as our Race Discrimination Act, since it advances protections from racial discrimination.

At least Tim sees great merit in freedom of speech, the greatest of individual freedoms, I hear him say. Is this the paramount truth of the positive rights Human Rights movement? According to Attorney General Brandis it is, enshrined as it is in Art19 of the International Covenant on Civil Rights.

And who is out to restrict this right of free speech? Yes, government, and that is exactly what the Australian government has done in the Race Discrimination Act. Sec18C restricts my right to offend, insult, humiliate, or intimidate another person on the basis of their race.

Is Art 19 licensing open slather to slander, sorry, unfettered free speech contravened by S18C of the Race Discrimination Act? Not quite. Art19, when you read it, is qualified, for it says I have a duty (rights and duties, you know) to respect the rights and reputations of others. Since I am not always respectful of others, my duties have been legalised, sanctioned if you like, to remind me.

Tim thinks that's unacceptable interference; my freedom is to be able to mouth off when and with what I like, even if my intemperate language or written words vilify, discriminate, and humiliate others on the

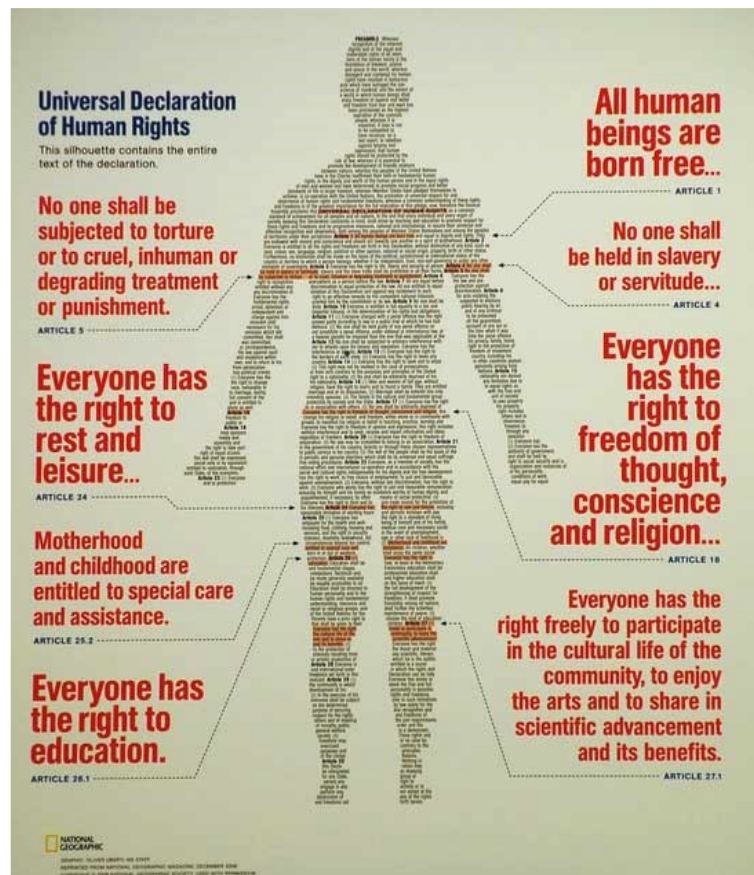


Photo Gabriel Rodriguez, flickr cc

basis of their race. Section 18D of the Race Discrimination Act is a qualification allowing reasonable fair comment that is in the public interest. Somehow, it has been overlooked.

Tim's Freedom equates to unqualified free speech, a half-reading of Art19 and Section 18. Shock jocks and commentators are free to offend and insult. Bring all they say out in the open, says Tim, bring it to the marketplace of public ideas, and public opprobrium where necessary. That - and not some statutory penalty - is the only punishment possible. And the damage done? Well, that's collateral.

Somehow 'marketplace' public reaction will deter mischievous writings and loose lips. Through sloppy journalism, an unrepentant Andrew Bolt appears knowingly to have set out to offend and insult people of Aboriginal heritage, and succeeded. I am not convinced he suffered much public approbation.

In the Bolt case, I thought the aggrieved complainants were magnanimous in complaining to the Human Rights Commission when they should have sued the smiles off Bolt and his publisher. A big award of

damages - as shock jock Ray Hadley learned recently - is a better lesson than mere public scorn. Let the common law remedy of defamation rise, then, to meet market conditions.

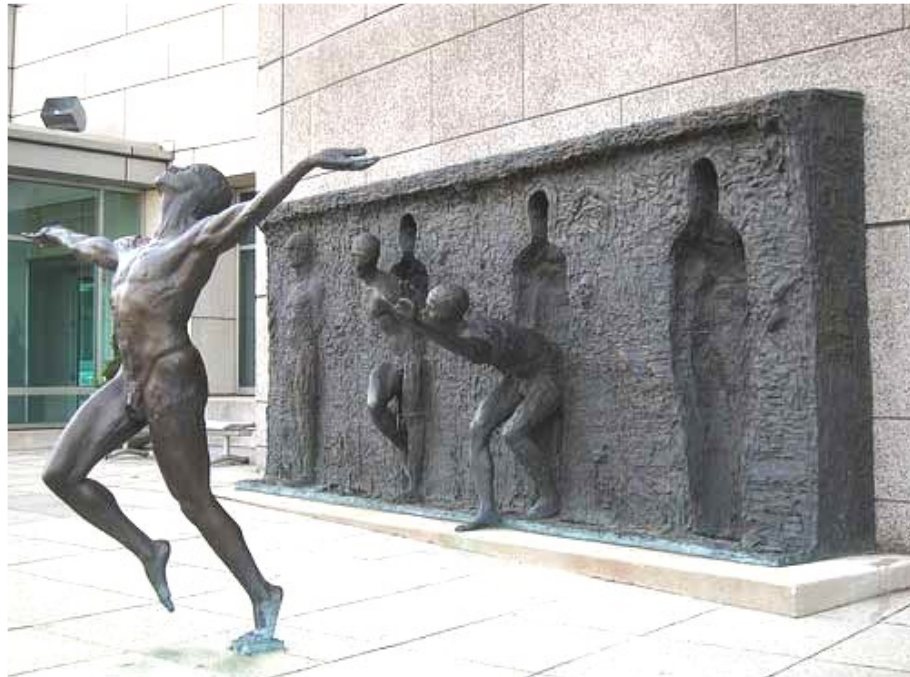
Another beer. This is hot work. I recognise that there are two broad categories of Human Rights. There are civil and political human rights which the 'libertarians' like Tim promote actively; and there are social, economic, and cultural rights, which they do not. The current Attorney General sees the Human Rights Commission as favouring the latter at the expense of the former. He intends to redress the imbalance by the promised appointment of a 'Freedom' commissioner. In the meantime, Tim is there to prevent further perceived oversteering to the social, economic, and cultural left of the human rights highway.

In this interview, something important had been overlooked, the concept of the innate and inherent dignity of the human individual. It is why we have human rights acknowledgments in the first place. In this, they are an illustration of the Common Good which regards human beings as sacred and precious.

The real Freedom is our freedom to do good, not just good for me, but for others. I do not see Tim's libertarian idea of Freedom as underwriting or contributing much to the Common Good.

Perhaps I should write to him at GlaxoSmithKline HQ Philadelphia, suggesting he read some Christian Social Teaching, since I cannot understand how his notion of Freedom amounts to a universal human right, or how his version of Freedom will promote the Common Good.

Great thought, I'll reward myself with another beer.



Freedom 2001 by Zenos Frudakis by sameold2010, flickr cc

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