

**1. Who is "human" in the concept of modern human rights?**

Answering in the abstract, I would say human beings – natural persons. And perhaps some human collectives (*peoples, cultural groups*). I recognise that some systems of rights adjudication also count commercial entities as enjoying the benefits of rights protection.

In my own country – Australia – there is no general system/framework of rights protection (see my answer to 2). There are constitutional mechanisms that play somewhat comparable functional roles: a doctrine of political participation; and a doctrine of judicial integrity. Both can confer protection on artificial/commercial entities – the former doctrine if the entity is a vehicle used by electors to engage in political life, the latter doctrine if the entity is engaged in litigation.

**2. How is carried out of the protection of a right which is not regulated in the Constitution in your legal system? What kind of balancing is done when a right uncounted in the Constitution is conflicted with a constitutional right?**

The Constitution in my legal system (Australia) does not protect rights, except in a couple of cases: there is a national non-establishment provision (but no comparable rule applies to sub-federal entities), and a provision which prohibits sub-federal entities discriminating on the basis of residence in a different region.

There is therefore no doctrine of balancing non-constitutional and constitutional rights.

As I noted in my answer to 1, there are constitutional doctrines that occupy, in functional terms, some of the space that would otherwise be occupied by rights doctrine. These are generated by way of a technique of constitutional implication which has been developed over the past 100 years of constitutional adjudication. Exactly how those techniques work, and the legitimacy of the results derived by their application, remain matters of debate among scholars and among some judges. See (eg) the entries by Jeffrey Goldsworthy and Patrick Emerton in Rosalind Dixon and Adrienne Stone (eds), *The Invisible Constitution in Comparative Perspective* (CUP 2018); the entry on "Ideas" in Cheryl Saunders and Adrienne Stone, *The Oxford Handbook of the Australian Constitution* (OUP 2018).

**3. Do International Human Rights Documents applied in your country represent minimum standards that are already provided or the must-reach aims? Are there any regulations in your legal system above**

**international human rights standards? If there are, would you please explain?**

International human rights instruments are applied in Australia in two main ways: they form a basis for parliamentary scrutiny of proposed legislation at the national level and in some sub-federal parliaments; and they are incorporated in part into ordinary legislation, creating civil causes of action that are generally adjudicated via process of private conciliation/mediation.

These modes of application tend to mean that the rights set out in those instruments are “must reach” aims rather than bare minimums.

**4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards? If it is, would you please explain?**

I’m not quite sure I understand this question.

Because there is no constitutional scheme of rights, rights standards are established under ordinary legislation which requires the parliament (and the government, given that Australia has Westminster-style cabinet government) to enact it.

The constitutional doctrines that perform some of the functions that other jurisdictions tackle through rights mechanisms have been established by the High Court of Australia (which is the supreme court of the country in all matters – civil law, criminal law, public/government law and constitutional law) based on its interpretation and application of the Australian Constitution, and in particular those provisions which provide for electoral democracy and which establish a national judicial system.

**5. Are there values and issues in your country that are not covered by human rights documents but need to be protected under the concept of human rights? If your answer is yes, would you please explain?**

This is a controversial question in Australia because the analytic framework of international human rights is quite contested, especially by many mainstream political actors of the centre and centre-right.

There are a number of pressing issues in Australia which could easily be framed as human rights questions: the status and wellbeing of Indigenous peoples, access to housing, and equality of access to education are probably the three most pressing internal matters; and the treatment of asylum seekers is the most pressing external matter.

In Australian political debate the internal matters are normally framed as social policy questions rather than human rights ones; the asylum seeker question is often framed (by those sympathetic to refugees) as a matter of compassion or national shame rather than in human rights terms. At least in part this is because of the limited purchase of human rights discourse in Australian political debate.

**6. Are there such human right regulations in the legal system of your country that is protected by the constitution but contradicts social reality and justice?**

The Australia Constitution has three important aspects to do with economic policy: it provides for free-trade between the sub-federal entities which federated in order to create the nation; it provides for a national power to legislate for pensions and other social security benefits; and it provides for a national power to establish mechanisms for ensuring wage justice.

The effects of “globalisation” and “neo-liberal” economics mean that, while interstate free trade continues to be an important constitutional value, the powers in relation to wages and non-wage income support are no longer working as they were expected/intended to.

**7. Are there any social realities contradicting international human rights concept based on individualism?**

Australia has an official policy of multi-culturalism. Eg although English is the only official language, many public information resources are provided in other “community” languages (eg Greek, Vietnamese, Turkish, Chinese, Somali, Italian). Relations between state agencies and non-English speaking/non-north western European communities tends to be managed through community organisations and representative bodies rather than in direct relations between the state and individuals.

Australian labour law, including the law around strikes and wage bargaining, gives a particular role to trade unions as privileged actors.

Some elements of Indigenous policy operate by engaging with “tribal”/national representative bodies rather than directly with Indigenous individuals. The extent to which this should happen – eg whether the role of Indigenous collectives as intermediaries – is contentious, especially among conservative politicians.

**8. In your legal system, are there legal mechanisms to protect human rights if fundamental rights are violated by private persons? Are these mechanisms effective?**

Mostly this is done through private law – that is, the law of torts (delicts). There is not a comprehensive system of horizontality. However, there is an established rule that the private law must respect and reflect constitutional values. But that rule which was only declared by the High Court in 1997 has not had a large effect to date.

As mentioned above, there are legislative schemes that give (partial) effect to some international human rights instruments. These schemes govern private actors as well as state actors, especially in relation to non-discrimination and non-vilification requirements.

Where “state action” is involved in aiding private action (eg legislation or administrative action) then that state action can be reviewed for conformity with constitutional requirements.

**9. Are there groups in your country who have their own national, ethnical, religious and linguistic identities? Could you please give some information about them (especially if you feel yourself one of them)?**

Yes. There are Indigenous/first nations peoples (Australian Aboriginal and Torres Strait Islander).

Australia’s approach to multiculturalism supports the maintenance of cultural and linguistic identities, but not national identities. Traditionally, Australia has made it very easy for migrants to obtain citizenship and thus to identify as Australian, although legislative changes over the past decade or so have made citizenship less easy to obtain by increasing both residency and English language proficiency requirements.

**10. What is the definition of the notion “minority” according to your constitutional system? What is your opinion on this concept? Do you think that minority rights should be protected broadly by the constitutional level? Do you think that constitutional regulations that would broaden the rights of minorities will solve the conflicts between majorities and minorities?**

Australia does not have a constitutional notion of “minorities”. There is a legislative power to make national laws that specially effect the members of particular races. This was envisaged, when included in the Constitution in

1901, as a power that might be needed to deal with non-white people in Australia. It has not been used in that fashion, however, and today it is used only to create special laws for Indigenous peoples. Some of those laws confer benefits, but others impose special requirements.

**11. What do you think on the notion and the concept of minority rights in international law? Could the international regulations/treatments be a response to the reality and problems of the peoples in your country? In other words, do they cover the reality in your country from the view of the state and the view of peoples?**

The international legal concept of minority rights does not have a significant degree of applicability to Australia – issues of religion, culture and language are generally analysed through a non-discrimination lens rather than a minority rights lens.

The concept of Indigenous rights does have a high degree of applicability, however. There is some disagreement among Indigenous persons (eg on whether the better path is to seek treaties, or to seek constitutional recognition and status) but the larger disagreements are among non-Indigenous political actors – there is no consensus there on whether Indigenous peoples should be recognised and accorded rights in the manner envisaged by international law, or should in legal terms at least be treated the same as other Australians.

**12. What you think is the most current human rights problem in your country?**

The status and wellbeing of Indigenous peoples and persons.