Public Interest Law in Ireland

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Using the Law to Change the World

Julian Burnside

> "The trouble with fighting for human freedom is that one spends most of one's time defending scoundrels. For it is against scoundrels that oppressive laws are first aimed, and oppression must be stopped at the beginning if it is to be stopped at all." H.L. Mencken

Minorities and the rule of law

The establishment of the rule of law was the great product of the constitutional struggles in England during the 17th century. The rule of law requires that all people, including the government, are subject to the law, and that independent judges are the arbiters of law.

Majoritarian rule is the central tenet of democracy. Parliament makes laws which reflect the will of the majority. In principle, the combination of democracy and the rule of law should achieve justice for all. In practice, it is different.

The difference is largely felt by individuals or groups who are powerless or unpopular. Injustices generally stem from one of two sources: first, bad laws which operate harshly against minorities, but have the support of the majority who vote and whose interests are not harmed by those laws; secondly it is often the case that powerless minorities do not have the practical ability to vindicate the rights given them by law. Access to justice requires access to lawyers as Lord Darling noted ironically "Like the doors of the Ritz hotel, the courts are open to rich and poor alike". I will watch with interest to see whether the hope raised by *Airey's* case is delivered in *Kavanagh v Legal Aid Board*. Is the right to legal aid genuine and meaningful? Or is it an empty promise to satisfy the conscience of those who are taxed to support legal aid, but can a afford private lawyer when they need one?

To redress injustices of either sort, it is essential that the legal aid system be properly funded and essential that litigation in the public interest should be facilitated, not stifled. In theory, our system offers several ways of redressing injustices. The local MP and the local press are traditional ways to pressure governments to redress injustices. In practice this, too, is different.

The emergence of the 2 party system of government has reduced the relevance and influence of individual parliamentarians almost to vanishing point. Government decision-making, in my country at least, shows an acute concern for the interests of the majority and very little concern for the interests of unpopular or powerless minorities. And the press, which is capable of drawing attention to abuses of power, occasionally falls asleep at the wheel. It has been notoriously indifferent to some important issues in my country in recent years.

In this bleak setting, public interest litigation is one of the few ways of achieving justice for the weak. It is no accident that litigation *pro bono publico* – for the good of the public– is synonymous with litigation undertaken for no fee: the rich do not need it. The strong never have difficulty achieving justice: like a Bill of Rights, public interest litigation is generally concerned with the rights of the weak, the oppressed, and the unpopular.

Fighting for minorities

My first encounter with litigation of this sort, litigation the significance of which transcends the interests of the immediate parites, was the action brought by natives of the Ok Tedi River in Papua New Guinea against mining giant BHP. BHP had established a copper mine in the New Guinea highlands. The tailings dam failed and it was going to be expensive to rebuild it. BHP persuaded the government to allow it to dump the tailings into the river. As a result, millions of tonnes of polluted tailings were poured into the river from which, for generations, the natives had derived their sustenance. The river was polluted beyond recognition and the natives' traditional way of life was destroyed. The government's response was to offer resettlement. A suit was brought in the Supreme Court of Victoria, a building modelled on the Four Courts in Dublin, and just 2 blocks away from BHP's headquarters. When BHP began to recognise that it had some problems in the litigation, an astonishing thing happened. The government of PNG passed an Act which made it a criminal offence to sue BHP for polluting the Ok Tedi River or to continue any such action already on foot; it also made it a criminal offence to assist a person to bring or maintain such an action.

Things looked grim. Plainly, it was not possible to do anything to overturn the legislation; and it appeared to be impossible to continue the litigation since we lawyers, and our clients, would thereby be committing an offence. But we discovered that BHP's lawyers had drafted the legislation: a draft with their word-processing footer was found. We charged BHP with contempt of Court: they had knowingly taken steps to impede our clients' access to the Court in existing litigation. The judge agreed with us, and found BHP guilty of contempt just at the time their annual general meeting was to be held. Their share price fell significantly, wiping millions of dollars off their market capitalisation. Their bad behaviour dominated the AGM. Within a fortnight they came to the negotiating table and resolved the litigation.

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Trouble on the waterfront

On 8th April 1998, Australians awoke to the news that the waterfront had been taken over by security guards wearing balaclavas. The entire workforce of Patrick Stevedores had been removed, apparently because they belonged to the Maritime Union of Australia. Their removal had been achieved by use of attack dogs, chain-mesh fences and grim-looking men more likely chosen for their size than their personality. It quickly emerged that the whole exercise had been planned by Patrick Stevedores with the active connivance of the Howard government, and in breach of John Howard's own Workplace

Relations Act. We went into the Federal Court on the morning of 8 April to begin what looked like a hopeless task, opposed by the government and Patrick Stevedores with its multi-million dollar war-chest. We won the first round, and Patricks appealed the same day; the appeal was heard the following day. We won the appeal, and Patricks lodged an appeal to the High Court the same day. Four days later a full bench of the High Court heard the appeal. Their judgment, less than a month after the case began, vindicated the position of the Union, and the union members were allowed back onto the docks. On that case hung the viability of the union movement in Australia because, as one commentator observed, if they could take out the MUA, they could take out anyone.

One of the finest rewards I have received in the public interest cases I have been involved in came as I left the High Court building after we got judgment on 4 May 1998. A man dressed in working clothes came up to me and said "Thanks mate – we all feel a bit safer". It was a precious moment.

Saving Rozita

But not as precious as another which came a few years later, in a phone call from a woman I will call Rozita. Rozita had arrived in Australia from Iran in mid-1999. She was detained, and while detained she converted to Christianity. She was baptised in August 2000, after the Department of Immigration lifted its ban on baptism in detention. She began preaching against Islam. In late August, Hussein, an Iranian man held in the same detention camp, left Australia voluntarily and returned to Iran. Hussein informed on Rozita. Her family in Iran contacted her to tell her she was in great danger if she returned to Iran. Preaching against Islam is a serious offence in Iran. If she returned she faced the prospect of being stoned to death.

I have seen an official video tape of two women being stoned to death. They are brought out wrapped from head to foot in a winding cloth. They are placed in holes about 3 feet deep. The dirt is shovelled in around them, so that their bodies are buried to waist level. They are then bombarded with medium sized stones from all sides. They cannot flinch in anticipation, because they cannot see. They flinch after each blow. Gradually blood begins to seep through the shroud; their bodies start to sag forward. Eventually they collapse completely, and their bloodied skulls are clearly visible through the torn material. They are dragged out of the holes and are carried away.

A central fact in Rozita's claim for asylum was that Hussein had returned to Iran and informed on her. Five witnesses gave evidence that Hussein had been in the camp at the relevant time, and that he had taken some of Rozita's writings with him when he returned to Iran. No witness contradicted that evidence. Rozita told the Refugee Review tribunal (RRT) Hussein's camp number and his boat number. She asked the RRT to check on Hussein to dispel any doubt about this part of her claim.

The RRT found, as a fact, that Hussein did not exist. The tribunal member found, as a fact, that Hussein's existence had been fabricated by Rozita and her witnesses in order to fortify her claim for asylum.

When the case came to be reviewed in Court, a subpoena to the Department produced documents which showed not only that Hussein existed, but that he had been in the camp exactly when Rozita said he had, and that he left for Iran exactly when she said he had.

The tribunal member had not even bothered to ask the Department whether they had a record of Hussein. That casual indifference would very likely have led to Rozita's death. When the decision came on for review in court, the Government argued that the decision should not be overturned. It appeared not to trouble the RRT or the Government that, if Rozita were returned to Iran, she would almost certainly be stoned to death.

The court overturned the decision on the grounds that failure to make a simple enquiry on a question, literally, of life and death was evidence of bad faith. This meant that Rozita's case was sent back to the Tribunal to be reheard. Several months later, I received a phone call from Rozita: she had just received a decision from the Tribunal. Her claim for asylum was accepted, and she was to be released from detention and given a protection visa. She had been in detention 3 years.

I met Rozita for the first time some months later. My wife and I took her to dinner. Her one wish is to be able to return to Iran to live – she just does not want to return there to die.

Since the abolition of capital punishment, it is a rare claim for a lawyer to save a client's life. But in refugee work it remains possible, and it is a grand thing to do.

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Oppression of the unpopular

Public interest litigation in Australia has been dominated by refugee law in recent years. This is a direct result of the extraordinary harshness of our laws, and the utter and obvious powerlessness of asylum seekers.

Asylum seekers who arrive in Australia without prior permission are immediately detained. By force of the Migration Act they must remain in detention until they are given a visa or are removed from Australia.

The government, and the media, refer to them as "illegals", however the fact is that to come to Australia without authority and seek asylum is not an offence against Australian law. To the contrary, Article 14 of the Universal Declaration of Human Rights guarantees to every human being the right to seek asylum in any territory they can reach. Those who come to Australia trying to exercise that right are locked up in desert camps or, since October 2001, in remote desert islands.

Australia's system of indefinite mandatory detention has been universally criticised by humanitarian organisations both in Australia and overseas. Australia's scheme of mandatory detention of asylum seekers has been criticised by a UN Working Group as

constituting arbitrary detention, in violation of Article 9 of the International Covenant on Civil and Political Rights.[1]

Mandatory detention has been promoted by the Australian government as "border protection". This has proved very popular in the electorate. For two centuries Australians have lived in dread that we will be swamped by uninvited visitors arriving in small boats.

It is useful to put this in context, given the rhetoric that surrounds it. Every year 4.7 million people visit Australia, short term visits for holidays or business. Every year 110,000 people migrate permanently to live in this country. Every year - until the time of Tampa at least - there were on average 1000 people who arrived without authority and sought asylum; of them, approximately 90% were found to have proper grounds for refugee status. The highest number of unauthorised arrivals in one year[2] was just over 4100: most of them fleeing the Taliban or Saddam Hussein.

Lock them up forever

In November 2003 two cases were heard together by the High Court of Australia[3]. Together they tested key aspects of the system of mandatory detention. First, the case of Mr Al-Kateb, a stateless Palestinian, a person who has no country he can go to. He arrived in Australia a few years ago, sought asylum, was refused refugee status and then remained in detention. Why? Section 196 of the Migration Act says that an 'unlawful non-citizen' who is detained must remain in detention until (a) they are given a visa or (b) they are removed from Australia. It was not possible to remove him from Australia, because there is nowhere to remove him to. The government's argument was that, although Mr al Kateb has committed no offence, he can be kept in detention for the rest of his life. On 6 August 2004, the High Court by a majority of 4 to 3 accepted that argument.

The other case, heard alongside *al Kateb* and decided on the same day, was *Behrooz*. Mr Behrooz came from Iran, sought asylum and found himself in the endless loop of rejection and appeal and spent, I think 14 months in Woomera before the circumstances there got so appalling that he couldn't bear it any more. He escaped in November 2001. In November 2001, Woomera was carrying three times as many people as it was designed to carry. The conditions there were abominable. Reports from that time suggest that there were three working toilets for the population of nearly 1500 people. That was the time when women having their period had to make a written application for sanitary napkins. And if they needed more than one packet they had to write and explain why they needed more than one packet and very often they had to go and provide the form to a male nurse who would then dispense what they needed. Conditions in Woomera at that time were unbelievably bad, utterly inhumane. The Immigration Detention Advisory

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[1] for extracts from the report of UN Working Group on Arbitrary Detention see Appendix 2

[2] In 1999-2000

[3] The ultimate appellate court in Australia; equivalent to the Supreme Court of Ireland

Group, the government's own appointed body, described Woomera as "a human tragedy of unknowable proportions".

Mr Behrooz found it so intolerable that he escaped, along with some others. He was charged with escaping from immigration detention. The defence went like this: The Australian Constitution embodies the separation of powers. This means that the legislative power is vested in the parliament (Chapter I). The executive power is vested in the Executive government (Chapter II) and the judicial power is vested in courts established under Chapter III of the Constitution.

The notion of the separation of powers involves this, that one arm of government cannot exercise the powers given to another arm of government. It is one of the very few constitutional safeguards we have in Australia. Central to the judicial power is the power to punish. As a matter of constitutional theory, punishment cannot be administered directly by the parliament or by the executive, punishment can only be imposed by order of the Chapter III courts. Normally, locking people up is regarded as punishment and therefore it is only Chapter III courts that can lock people up. What about immigration detention?

In *Lim's* case in 1992, the High Court held that administrative detention may be justified in limited circumstances, principally where it is reasonably necessary to the performance of a legitimate executive function. So if a person's asylum claim is to be processed, or if the person is to be made available for removal from Australia, then as long as the detention is reasonably necessary for those purposes it will be lawful even though not imposed by a Chapter III court.

Well, the defence in Behrooz went like this. Assuming mandatory detention is constitutionally valid, if the conditions go beyond anything that could be seen as reasonably necessary to the executive objectives then that form of detention will be constitutionally invalid because it simply amounts to punishment inflicted by the Executive.

We issued subpoenas, directed to the Department and ACM[4], seeking documents that reveal details of conditions in detention. They resisted. They said the subpoena was invalid because the conditions in detention will never affect the constitutional validity of detention. And all the way to the High Court they maintained this argument that no matter how inhumane the conditions are, detention in those conditions is nevertheless constitutionally valid. On 6 August 2004, the High Court accepted the government's argument.

Sadly, the press paid almost no attention to the decisions in those cases, with all their grim implications for human rights in Australia.

What do you do, when faced with a government that is willing to countenance and advocate such gross human rights abuses as we are seeing in Australia at the moment

[4] The commercial operator which at that time ran the detention centres. Its contract has since been taken over by GSL.

under the Howard government? Unfortunately the options are limited, and the limit comes from the fact that the media have been mysteriously silent on most of these excesses.

Billing them for the privilege

A few years ago I discovered the startling fact that when a detainee is released, they are given a bill for the cost of their own detention.

Section 209 of the Migration Act provides that a person held in immigration detention is liable for the costs of their detention. It is a remarkable thing, at the best of times, that an innocent person who is incarcerated is made liable for the financial cost of their own incarceration. A bit of research reveals that no other country in the world makes innocent people liable for the cost of their own detention. Looking back through history reveals only two examples which Australia could look to as precedents. The first is the Law of Suspects, passed on 17 September 1793 whilst post-revolutionary France was ruled by Robespierre, during the period generally known as the Terror. The Law of Suspects empowered the local Committees of Security to detain people suspected of harbouring anti-revolutionary thoughts. Those people, whilst detained, were liable for the costs of their own detention.

More recently, the phenomenon is exemplified by a document held in the Ploetzensee Museum. It is a bill dated May 1944, addressed to the family of a man and charging the family with the daily costs of his detention in a concentration camp, the cost of gassing him to death and the cost of the postage stamp.

In Australia, the detention charge has GST added.

It brings to mind the Chinese practice of sending the family of the executed criminal a bill for the bullet. Win lose or draw they are liable to the Commonwealth for the cost of their own detention. At Baxter, in the South Australian desert, it cost each inmate $350 per day, until recently. Quite a lot to pay for being locked up against your will. For being brutalised and dehumanised routinely.

I have in my Chambers one example of this in which the man is informed of the conditions of his release: he must not study, he must not work and he must make immediate arrangements to pay the sum of $214,000 for his stay in Port Hedland and Woomera.

I told journalist after journalist about this. I could not get a single journalist to write anything at all about this fact, horrifying though it is. Perhaps they were not prepared to believe it, even when shown them the section of the Act and copies of the bills. When we set up a test case to challenge the validity of the provision on constitutional grounds, the press were much more enthusiastic. They ran articles comparing conditions in detention with conditions in a hotel at equivalent rates.

The last man on Manus Island

Something similar happened a while later with the last detainee on Manus Island. To understand this, you need to appreciate that, in the wake of the Tampa, Australia implemented its notorious Pacific Solution. This involves intercepting would-be asylum seekers at sea and taking them to Manus Island (part of New Guinea) or to the Republic of Nauru. There they are held, sometimes for years, while Australia seeks another country to take them. To be eligible for this special torment, the asylum seeker must not have set foot in the Australian migration zone.

(The migration zone is simply a construct for the purpose of the Migration Act. The islands off shore, 3000 or so that have been excised, are all still part of Australia's territory. But they do not form part of the 'migration zone'. The importance of that is that if an officer of the department finds a person, a non-citizen, in the migration zone, or seeking to enter the migration zone, then the officer has an obligation under law to take that person into detention. That of course means that they are in detention in Australia where they can make application for a protection visa. The trick about excising the islands to the North and West from the migration zone is that even if you reach Australian territory you are not required to be taken into immigration detention. Rather, you will be taken, against your will, either to Manus Island or to Nauru, where you are then held for months or years at Australia's expense.)

Aladdin Sisalem was born a stateless Palestinian, to an Egyptian mother and a Palestinian father. He was born in Kuwait. Kuwait will not allow them to live there. Palestine will not allow him to live in Gaza or the West Bank because he was not born there. Egypt will not allow him to live there. Since 1990 his family have been seeking permission to live in any country in the world that they can get to, and no country will have them because they have no country of their own. Aladdin made his way to Jakarta where for the next 12 months he waited while his application for asylum was considered and then rejected. He went to Papua New Guinea where he applied for asylum and for his troubles was arrested, imprisoned and beaten up. He bribed a fisherman to give him a ride across to Saibai Island which is part of Australia and not then excised from the migration zone.

On Saibai Island he surrendered to Australian Federal Police. He was unquestionably in Australian territory and in the migration zone. He told them his story and he told them he had come to Australia to seek asylum. They then took him to be interviewed by the Department of Immigration. He said why he'd come, and that he wanted to seek asylum. They then took him to Thursday Island, another part of unexcised Australia, where he was again interviewed. He said he wanted to seek asylum. He was then part of a telephone hook up with a Department in Canberra. He told them he wanted to seek asylum in Australia. They then took him to a small aircraft and said 'Your claim to asylum will be processed elsewhere'.

They then took him to Manus Island where he was locked up in the detention centre, created under an agreement between Australia and Papua New Guinea, run by IOM, paid for by Australian taxpayers. He was told he has no asylum claim in Australia; that he had to deal with the Papua New Guinea authorities.

After some months, all the other detainees on Manus Island were taken to Nauru, but not Aladdin. He remained there, a solitary prisoner in a jungle island on the equator. When we learned of this we brought an action for mandamus: seeking an order that he be brought into Australia and be processed according to law. The government's answer was this: "It is true that he entered the migration zone, so he cannot be taken to Nauru, and protected from the Papua New Guinea authorities who previously beat him up and gaoled him. He has not got an asylum claim in Australia because the only way you can seek asylum is by filling out form 866, and although he said he wanted to seek asylum, he didn't ask for form 866; only if he fills out form 866 does he have a valid application for a protection visa. Therefore the Minister does not have any obligation to consider his claim for a protection visa. And there is no point giving him form 866 now, because they can only be completed in Australia."

By this Kafkaesque logic, Aladdin was trapped in the mindless, heartless machinery of malevolent government.

Aladdin Sisalem had been alone on Manus Island since July 2003. It was costing the Australian taxpayer about $23,000 per day to keep him in his solitary torment. The tabloid press got onto this. They published front page articles showing the luxury you can enjoy for $23,000 per day in a hotel in Melbourne or Sydney. They were not driven by compassion, but by the politics of envy. It worked all the same. Quickly the government's treatment of Aladdin made a laughing stock of the Immigration Department. They approached us with a view to a quiet settlement. Aladdin now lives in Melbourne, and is slowly getting his life together again.

Two cases

Speaking for the rights of minorities can make you unpopular. There are two cases I have taken which I will remember to the grave and which, if I ever considered giving up, would have persuaded me to keep going despite consequences.

The first concerns a family who had arrived in Australia from Iran in early 2001. They were members of a religious minority who have been traditionally oppressed, a group regarded as 'unclean' by the religious majority.

The family fled Iran and ended up in Woomera, a desert detention camp. There, over the next 14 months, the condition of the family deteriorated inexorably.

Mother and father, eleven-year-old daughter, seven-year-old daughter were gradually getting worse and worse until the Child and Adolescent Mental Health Service of South Australia became aware of the problem. They sent a psychologist to speak to the family. He wrote a disturbing report in which, amongst other things, they say of the eleven year old:

> She refuses to engage in self-care activities such as brushing her teeth. She has problems with sleeping; tosses and turns at night; grinds her teeth; suffers from nightmares. She has been scratching herself constantly. She doesn't eat her breakfast and other meals and throws her food in the bin. She is preoccupied

> constantly with death, saying ‘do not bury me here in the camp. Bury me back in Iran with grandmother and grandfather’.
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> She carried a cloth doll, the face of which she had coloured in blue pencil. When asked in the interview if she’d like to draw a picture, she drew a picture of a bird in a cage with tears falling and a padlock on the door. She said she was the bird.

After a number of pages to similar effect the report observed:

> It is my professional opinion that to delay action on this matter will only result in further harm to this child and her family. The trauma and personal suffering already endured by them has been beyond the capacity of any human being.

The report urged that the family be transferred from the desert camp to a metropolitan camp where at least they would get proper clinical attention which the eleven-year-old desperately needed. No action was taken, and a month later the psychologist wrote another report trenchantly criticising ACM and DIMIA for keeping the family in the desert instead of somewhere where they could get something like appropriate help.

Eventually they relented and the family was brought across to Maribyrnong detention centre in suburban Melbourne. However, on a Sunday night at about 8.00 pm, when the mother, father and sister were out of the room having their dinner, the eleven-year-old hanged herself. She did not die, and when they found her and had taken her down, she swallowed shampoo, and that didn’t kill her. So she and her mother were taken to the emergency ward of the local hospital where she was put into intensive care straight away. The lawyer who had been looking after their refugee application heard about this and went to the hospital at about 8.30 pm or 9.00 pm on a Sunday. He went to the ACM guard who was there – guarding them in the intensive care unit for God’s sake, as if they were about to make a run for it. The lawyer didn’t need to introduce himself because he is well known at the Detention Centre. He asked to see them and was told: ‘No you may not, because lawyers' visiting hours are nine to five’.

After a long struggle in court, and after the 11 year old had spent a year in a psychiatric ward, the family was released on protection visas. I will never forgive my country for its treatment of that family and that child.

The second case also concerns asylum seekers from Iran. Amin arrived in Australia in March 2001 with his daughter Massoumeh. She was then 5 years old. They were held in Curtin, then in Baxter.

On the 14th of July 2003, 3 ACM guards entered Amin’s room and ordered him to strip. He refused, because, apart from it being deeply humiliating for a Muslim man to be naked in front of others, his 7-year old daughter was in the room. When he refused to strip, the guards beat him up, handcuffed him, and took him to the “Management Unit”.

The Management Unit is a series of solitary confinement cells.

Officially, solitary confinement is not used in Australia’s detention system. Officially, recalcitrant detainees are placed in the Management Unit. The truth is that the Management Unit at Baxter is solitary confinement bordering on total sensory

deprivation. I have viewed a video tape of one of the Management Unit cells. It shows a cell about 3 ½ metres square, with a mattress on the floor. There is no other furniture; the walls are bare. A doorway, with no door, leads into a tiny bathroom. The cell has no view outside; it is never dark. The occupant has nothing to read, no writing materials, no TV or radio; no company yet no privacy because a video camera observes and records everything, 24 hours a day. The detainee is kept in the cell 23 ½ hours a day. For half an hour a day he is allowed into a small exercise area where he can see the sky.

No court has found him guilty of any offence; no court has ordered that he be held this way. The government insists that no court has power to interfere in the manner of detention.

There he stayed from 14 July until 23 July: each 24 hours relieved only by a half-hour visit from his daughter, Massoumeh. But on 23 July she did not come. It was explained to him that the manager of the centre had taken her shopping in Port Augusta.

The next day, 24 July, she did not arrive for her visit: the manager came and explained that Massoumeh was back in Tehran. She had been removed from Australia under cover of a lie, without giving Amin the chance to say goodbye to her.

Amin remained in detention for another 8 weeks. It took three applications in court to get him released from solitary. The government did not contradict the facts, or try to explain why they had removed the child from the country: they argued simply that the court had no power to dictate how a person would be treated in immigration detention.

The judge found otherwise and ordered that Amin be removed from solitary confinement and be moved to a different detention centre.

The government appealed. That appeal failed. Eventually, after Amin had spent another 2 years in detention, he was given a protection visa.

If ever my resolve weakens, I will have in my mind's eye the sight of an 11-year old girl hanging herself, and the sight of a man grieving for the daughter stolen from him as he tried to find protection for her in Australia.

This is Australia's system of mandatory detention. It offends every decent instinct – and for what? To deter people smugglers. The Human rights Commission report into Children in Detention concluded that the treatment of children in Australia's detention centres was "cruel, inhumane and degrading", and that it constituted systematic child abuse. The Minister did not seek to deny the facts or the findings: instead, she said simply that it was "necessary", that the alternative would "send a green light to people smugglers".

Many test cases have been brought in Australia in an attempt to ameliorate the harshness of the mandatory detention laws. Most of those cases have failed. But public sentiments have shifted as case after case has exposed to public view the worst of what my country has been doing. The shift in public sentiment has provoked a shift in the way the policy is implemented.

Changing the world?

Some people do not like to acknowledge that litigation is a legitimate instrument of social policy. But if the law offers a right which can be invoked in novel ways to redress injustice, then surely this is exactly what litigation is designed to do. And if an injustice is embedded in the fabric of the laws society has made, litigation may be the only way to redress those injustices.

Arundhati Roy, the famous Indian writer, best known outside India as the author of The God of Small Things, once wrote that 'A thing once seen cannot be unseen, and when you have seen a great moral wrong, to remain silent is as much a political act as to speak against it.'

It is a true and sustaining idea. Most people in this room will understand it immediately. The practice of law offers many rewards: at best, each of us as practitioners can play an important role in achieving real justice in society. Every case is important to someone and we serve the law by making sure that it is properly administered in every case. This is why properly funded legal aid is so profoundly important: to speak of access to justice while leaving it beyond the reach of those who most need it is sheer hypocrisy. To make justice available to all will help change the world.

And then there are times when the law itself betrays justice, when injustice is built into the structure of the law. We face a stark choice: we can lend our arm to enforcing bad laws, or we can try to change them. It is one of the few truly great things about the practice of law that we have the skills to understand the law and the ability to challenge it. We have the training to administer justice and the ability to seek it. Public interest litigation has a vital role to play in exposing and redressing structural injustices.

As lawyers we can help the weak and unpopular find justice, by making sure beneficial laws are invoked in their interests and by challenging the moral authority of bad laws. If justice is a lawyer's vocation, then we must not ignore its call when justice itself is threatened. But this challenge will only present itself in the cause of the unpopular and powerless. That is the nature of things.

Litigation in the public interest will not make you rich and might not make you popular, but it will be the most satisfying and valuable work you ever do. If you run a case which leaves society better and more just, you will have a reward beyond riches and you will have change the world.