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Human Rights in Australia with a focus on women's rights

Summary

Women's rights and their political aspect are inextricably linked in multitudinous ways. The fact that there is no bill of rights entrenched in the Australian constitution makes it fairly difficult for women to address their issues and claim rights on the basis of constitutional rights. The policy impact created by the combination of visible women's movement, receptive political parties and effective women's policy agencies within government had largely dissipated by the mid-1990s. Federalism in Australia has created opportunities in regards to political activism for feminist movements. The advocates of women's rights in Australia are known to have worked „within a multilevel political system”. The Women's Electoral Lobby (WEL) was founded in 1972. WEL's ambition was to take women's interests to the government and making it receptive to their ideas in order to influence policies. A sign of gender equality demonstrates itself through women being able to support themselves financially and be independent, if they choose so. This political engagement by women is a necessity in order to introduce laws and pass legislation.

Keywords: Human rights, Australia, women, suffrage, violence.

Introduction

The trajectory of women's rights and its politicalization in Australia has often been a contentious one. Women's rights and their political aspect are inextricably linked in multitudinous ways. The Australian government helped women to ensure their rights but is also known to respond to them with resistance. The

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fact that there is no bill of rights entrenched in the Australian constitution makes it fairly difficult for women to address their issues and claim rights on the basis of constitutional legitimacy. However, even though there is no doubt that parliamentarism reigns the structure of Australian politics, they have found other legal means in order to pursue protecting their rights. This paper will show what has led women's rights to be politicized by drawing upon women's NGOs, suffrage, reproductive rights, domestic violence and health issues. All of them exemplify how women are connected to the political realm.

One of the responsibilities of the government is to protect its own citizens and ensure their rights are justly protected. This already makes rights political. As Laura Valentini states: "the reason why we care about human rights [...] has very much to do with their political reality. Human rights are a political and legal construct"¹.

Historical background

Historically speaking, the relationship between the Australian government and women's rights could be hardly seen as non-confrontational.

At the onset of the 1970s, groups with a rather weak voice and with a primary aim to improve gender equality, have been provided with funding by the government and have been encouraged to voice its troubling issues and concerns. Until the early 1990s, much has been done to "give women equality of opportunity" an astounding number of programs and laws were enacted². *The Sex Discrimination Act* (SDA), administered by the Human Rights and Equal Opportunity Commission (HREOC), was one of most significant legal enforcements that constituted a milestone in the history of women's rights in Australia³. The Act made sexual harassment a grounds for complaint and outlawed discrimination on the basis of sex in education, the provision of goods and services and employment. However, despite of the Act's advantages, it was not free from imperfections⁴.

Elizabeth Evatt, a prominent public figure renowned for representing and promoting women's rights, gave a speech in 2004 titled *Falling Short on Wom-*

¹ L. Valentini, "In What Sense Are Human Rights Political? A Preliminary Exploration". *Political Studies* 60 (2011), Sydney 2011, p. 181.

² A. Summers, *The End of Equality: Work, Babies and Women's Choices in 21st Century Australia*. Milsons Point, NSW: Random House Australia, Sydney 2003, p. 122.

³ S. Harris Rimmer, "Raising Women Up: Analysing Australian Advocacy for Women's Rights under International and Domestic Law". *Sex Discrimination in Uncertain times*. Ed. Margaret Thornton. Acton, A.C.T.: ANU E, 2010, p. 193.

⁴ A. Summers, *The End of Equality: Work, Babies and Women's Choices in 21st Century Australia*. Milsons Point, NSW: Random House Australia, Sydney 2003, p. 35.

en's Rights, in which she criticized the *Sex Discrimination Act 1984*⁵. Evatt highlighted the shortcomings of the Act according to her, the SDA fails to fulfill all obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As Susan Rimmer notes, the Convention provides an extensive definition of discrimination: Discrimination against women violates the principle of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes it more difficult to fully develop the potentialities of women in the service of their countries and of humanity⁶. Some of the inadequacies of SDA included discrimination being banned only in particular areas of public life, thus neglecting aspects of the private dimension, whereas CEDAW does take the private sphere into account⁷. Evatt voiced her opinion on the “unfair or illogical exemptions to the Act, often based on religious grounds”⁸.

However, from the beginning of 1990s, it became clear that many women's NGO's were unduly subject to the government's constraints. In order to expand the distance between these NGO's and policies, thus avoid any potential impact of the former on the latter, these bodies have often been pigeonholed as 'rentseekers' and 'special interests'. The considerable impact of neoliberalism and corporatism resulted in making the feminist movements much less efficacious⁹. There has been talk about “the fall of the Australian femocrat”. Marian Sawer described it as: ...a telling example of the vulnerability of feminist gains within reconfiguring states. The policy impact created by the combination of a visible women's movement, receptive political parties and effective women's policy agencies within government had largely dissipated by the mid-1990s. Multiple institutional and discursive shifts created a hostile environment for feminist advocacy either outside or inside government¹⁰.

The John Howard government versus feminists

During the John Howard government, a large number of new policies have met with women's overt indignation. After 1996, the feminist activism in Aus-

⁵ S. Harris Rimmer, “Raising Women Up: Analysing Australian Advocacy for Women's Rights under International and Domestic Law”. *Sex Discrimination in Uncertain times*. Ed. Margaret Thornton. Acton, A.C.T.: ANU E, 2010, p. 299.

⁶ *Ibidem*, p.294.

⁷ *Ibidem*, p. 194.

⁸ *Ibidem*, p. 300.

⁹ M. Sawer and R. Gail, *Making Women Count a History of the Women's Electoral Lobby*, UNSW, Sydney 2008, p. 71.

¹⁰ *Ibidem*, p. 41.

tralia has met with the government's resistance. The changes that have been made by it were perceived as an attempt to eradicate the feminist influence. After Prime Minister Howard proclaimed Sue Walpole, the Sex Discrimination Commissioner, a 'Labor stoofe' in public, she resigned and her position of Sex Discrimination Commissioner was left vacant for fourteen months¹¹. The government has also been known to make attempts in order to weaken the *Sex Discrimination Act*¹².

Furthermore, some units and bodies such as the Women's Health Unit, the Women's Sport Unit, Women's Subcommittee of the Australian Health Ministers Advisory Committee, the Office of Indigenous Women, the Migrant Women's Advisor, the Gender and Curriculum Unit, the Equal Pay Unit have been abolished in the 1990s due to substantial cutbacks. Even Women's Electoral Lobby (WEL) was denied further funding. Later on, in 2003, WEL was still unable to obtain any financial support from the government. The feminist organizations that managed to get the money were required to sign a contract that would forbid commenting on any women-related topics without obtaining a permission from OSW or the Prime Minister before¹³, which undermined the right to free speech.

Childcare and employment opportunities emerged as other issues under the John Howard government. Both of them have become limited to a great extent in its accessibility. Howard's budgets in 1996/97 and 1997/98 made it impossible for many women to afford childcare, which led them to quit their jobs and thus forced them into fulltime motherhood. Moreover, mothers who decided not to discontinue work were burdened with financial penalties¹⁴. It therefore became obvious that the "right as the equality of the sexes could be subjected to the whimsy of political fashion"¹⁵.

Women in politics

The Australian federation came into existence in 1901 and at this time only women living in Western and South Australia were allowed to vote. However, they still managed to engage themselves politically¹⁶. Despite the overwhelmingly male-centric structure of Australian politics, rather than perceiving the federation as a constraint, they have chosen to see it as an opportunity, especially in

¹¹ Ibidem, p. 28-29.

¹² Ibidem, p. 31.

¹³ A. Summers, *The End of Equality: Work, Babies and Women's Choices in 21st Century Australia*. Milsons Point, NSW: Random House Australia, Sydney 2003, p. 129.

¹⁴ Ibidem, p. 143.

¹⁵ Ibidem, p. 122.

¹⁶ M. Sawer and R. Gail, *Making Women Count a History of the Women's Electoral Lobby*, UNSW, Sydney 2008, p. 152.

regards to the rights of women, children and welfare¹⁷. As Marian Sawer states: They engaged in debates about the merits and structure of Australian federalism including the contentious matter of which powers should be accorded to the new federal government. Federalism in Australia has created opportunities in regards to political activism for feminist movements. The advocates of women's rights in Australia are known to have worked "within a multilevel political system"¹⁸. When possible, feminists took advantage of the division and disparity within the state and federal levels, thus utilizing federalism in a pragmatic way. Also, by evoking international law and international organizations, the domestic norms and practices have become the targets of subversion. In short, Australian feminists resorted to the States in cases when nothing could be achieved at the federal level (and vice versa), skillfully 'playing the two-level game'¹⁹.

Organizations

The Australian feminist organization called The Women's Electoral Lobby (WEL) was founded in 1972. Globally, it became well-known for launching "Australia's femocratic experiment"²⁰. At the beginning, the term 'femocrat' was associated with "abuse for feminists entering government"²¹ but later on it transformed into a commendable signifier. A femocrat was a feminist bureaucrat, a label specifically identified with Australia coining this term automatically conveys a message about the political nature of women's rights. WEL's ambition was to take women's interests to the government and making it receptive to their ideas in order to influence policies. The organization worked towards establishing policies ensuring gender equality and women's rights, which entailed women's election to Parliament, access to contraception and safe legal abortion (Australian National University).

WEL's objectives received attention from the Royal Commission on Australian Government Administration (RCAGA) and have been embraced in its discussion paper called *Sexism in Public Service*. The paper delineated how the machinery of women's policy can be ameliorated. One of the mentioned options was to expand "the existing women's affairs section within the Prime Minister's Department"²².

The Equal Opportunity for Women in the Workplace Agency (EOWA) was created in order to improve women's equal work opportunities. The agency's

¹⁷ Ibidem, p. 150.

¹⁸ Ibidem.

¹⁹ Ibidem.

²⁰ Ibidem, p. 156.

²¹ Ibidem.

²² Ibidem, p. 157.

role was to work with employers in such a way that this goal would be achieved²³. In 2001, 23% of EOWA organizations managed to provide maternity leave in 2005 this figure redoubled to an impressive 46%²⁴. The Office of the Employment Advocate (OEA) also helps women through using Working Women's Centres in Australia to assist and give them advice in regards to employment matters²⁵.

In 1997, the Howard government has attempted to reduce domestic violence and protect women against it by channeling \$50 million to the programme called *Partnerships Against Domestic Violence* (PADV)²⁶. In 2001, another programme emerged – the National Initiative to Combat Sexual Assault²⁷.

Health

The Commonwealth provided some funding that benefited women. For example, the Public Health Outcomes Funding Agreements (PHOFAs), valid until June 2004, enabled eight programmes with a primary focus on disease prevention and health education to come into existence²⁸. Some of them included the National Education Program on Female Genital Mutilation, BreastScreen Australia, National Cervical Screening Program and National Women's Health Strategy.

Also, the Commonwealth Government endeavored to pass legislation prohibiting the practice of Female Genital Mutilation (FGM), which constitutes a violation of human rights.

It was agreed in July 1995 that each state would enact legislation banning female circumcision (with the exception of Tasmania and Western Australia they decided to include this offence in its Criminal Codes). It is now illegal in Australia²⁹. However, there is evidence that FGM is still being practiced in Australia. The Melbourne's Royal Women's Hospital reported "seeing between 600 and 700 women each year who have experienced it in some form"³⁰. Obviously, a cultural clash often occurs when women may be convinced what has been done

²³ Commonwealth Office of The Status of Women 2003, Barton A.C.T., p. 10.

²⁴ Ibidem, p. 46.

²⁵ Ibidem, p. 11.

²⁶ A. Summers, *The End of Equality: Work, Babies and Women's Choices in 21st Century Australia*. Milsons Point, NSW: Random House Australia, Sydney 2003, p. 129.

²⁷ M. Sawer and R.Gail, *Making Women Count a History of the Women's Electoral Lobby*, UNSW, Sydney 2008, p. 34.

²⁸ Commonwealth Office of The Status of Women 2003, Barton A.C.T., p. 13.

²⁹ Ibidem, p. 31.

³⁰ E. Bourke, "Female Circumcision Happening in Australia". *A BC News*. 5 Feb. 2010. Web.8 May 2015. <<http://www.abc.net.au/news/20100206/femalecircumcisionhappeninginaustralia/2594496>>.

to them is right because of their religious beliefs. Thus, quite disturbingly, a practice banned by law and considered as an abuse of human rights might not always be abominable to the victims.

Reproductive rights and childcare

A sign of gender equality demonstrates itself through women being able to support themselves financially and be independent, if they choose so. To make this feasible, they need to have control over their fertility, which includes having access to contraception and affordable abortion. As Anne Summers states: “as a prerequisite to equality, women had to be able to make the same choices men could”³¹.

The Howard government transcended as extremely natalist once it realized Australia’s low fertility rate, it started to enforce policies that forced women to stay at home and give up work. They were expected to “start the baby boom”³². Funding for childcare decreased and introducing paid maternity leave was unashamedly refused³³. As Peter Costello said: If you have children it’s good to have one for the father, one for the mother and one for the country, if you want to fix the ageing demographic³⁴.

Much evidence in favor of the politicalization of women’s rights can be presented in relation to reproductive rights. Zoe’s law, also known as The Crimes Amendment Bill serves as a good example. This law was a truly contentious matter, which was followed by fervid protests and evoked considerable outrage amongst many women in Australia. Although the officials mentioned that the law has nothing to do with abortion, its specific reception and distinctive backlash suggests otherwise³⁵. The controversy of Zoe’s law can be explained by the women’s reactions saturated with rage and dissatisfaction, who claimed that in reality the state has made an blatant attempt to enforce laws that irrefutably limit their freedom of choice. one may risk saying that Zoe’s law has become a ghastly synonym of the governments ‘sneaky subterfuge’.

The Sex Discrimination Act was amended by *The Sex Discrimination (Pregnancy and Work) Act 2002*. The amendments outlawed asking questions about

³¹ A. Summers, *The End of Equality: Work, Babies and Women’s Choices in 21st Century Australia*. Milsons Point, NSW: Random House Australia, Sydney 2003, p. 25.

³² *Ibidem*, p. 38.

³³ *Ibidem*, p. 39.

³⁴ “So, Will You Do It for Your Country?” *So, Will You Do It for Your Country?* The Age. Web. 8 May 2015. <<http://www.theage.com.au/articles/2004/05/14/1084289883805.html>>.

³⁵ “Zoe’s Law to Protect Foetuses Passes NSW Lower House”. *A BC News*. ABC News, 21 Nov. 2013. Web. 8 June 2015. <<http://www.abc.net.au/news/20131121/zoe27slawtoprotectfoetusespassesnswlowerhouse/5108666>>.

pregnancy while being interviewed for a job, thus ensuring a greater degree of gender equality in Australia³⁶.

Suffrage

Australian women would not have the right to vote if suffrage would not have been a political matter. The Commonwealth Franchise Act 1902 was salient in this respect it allowed most women to obtain greater political participation and made their voice count. Also, according to Marian Simms: it set the scene for the first national vote of Australian women in the 1903 general election and the running of female candidates for the Senate in New South Wales and Victoria³⁷. The Act stipulates: all persons not under twenty-one years of age whether male or female married or unmarried (a) Who have lived in Australia for six months continuously, and (b) Who are natural born or naturalized subjects of the King, and (c) Whose names are on the Electoral Roll for any Electoral Division, shall be entitled to vote at the election of Members of the Senate and the House of Representatives³⁸.

Conclusion

In sum, as seen through the provided examples of women's suffrage, NGO's, reproductive rights, domestic violence and health issues in Australia, it is impossible to talk about women's rights without any political references attached to them. Women's activist seek to engage themselves politically and want to have an impact on the government's policies. This political engagement by women is a necessity in order to introduce laws and pass legislation, which have been mentioned in this paper.

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³⁶ Commonwealth Office of The Status of Women 2003, Barton A.C.T., p. 48.

³⁷ Simms, Marian. "A Woman's Place: Women and Politics in Australia". *The American Political Science Review* 2 (2002), p. 1.

³⁸ *Ibidem*, p. 8.

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Prawa człowieka w Australii ze szczególnym uwzględnieniem kobiet

Streszczenie

Prawa kobiet i ich polityczne aspekty są ze sobą nierozzerwalnie połączone w różny sposób. Fakt, iż w australijskiej konstytucji brakuje odniesienia do karty praw człowieka, sprawia trudności kobietom, aby walczyć o jednoczesne uwypuklenie swoich praw. Wpływ ruchu kobiet na politykę oraz na partie polityczne i efektywną politykę rządu dotyczącą kobiet w znacznym stopniu pomniejszył się przed połową lat 90. XX w. Natomiast federalizm w Australii stworzył możliwości dla aktywizmu politycznego na rzecz ruchu feministek. Obrońcy praw kobiet w Australii pracowali na wielu płaszczynach istniejącego systemu politycznego. Już w 1972 r. utworzono *Women's Electoral Lobby*, którego zadaniem było wpłynięcie na rząd w taki sposób, aby uwzględnił ich idee na rzecz zmiany politycznej. Pomimo tego, równość płci odznacza się między innymi poprzez zdolność kobiet do utrzymywania się finansowo i bycia niezależnymi. Polityczne zaangażowanie kobiet jest potrzebne do zmian w ustawodawstwie oraz wprowadzania praw.

Słowa kluczowe: prawa człowieka, Australia, kobiety, prawo wyborcze, przemoc.