

Leader

Francis Wilkins
Editor

US headed for gay abandon?

The US Supreme Court's decision last week, striking down Texas' 'homosexual conduct' law and invalidating laws criminalising sodomy in 13 states, is both a landmark victory for human rights and a welcome clarification of state power.

The court found that criminal convictions in *Lawrence v Texas* violated Fourteenth Amendment guarantees both of equal protection under the law and of interests in liberty and privacy.

The idea that the state should invite itself into the privacy of a bedroom – gay or straight – to regulate consensual sexual behaviour should not sit well with believers in the importance of the rule of law. Nor should the focus of the Texas statute, which criminalises homosexual activity but not identical activity involving heterosexual couples.

The 6-3 majority opinion, which rested on the due process clause of the US Constitution, may open the way for outlawing discrimination in partner financial benefits, parenting and adoption, and gay marriage. Ultimately, it may represent the legal bedrock of cultural acceptance, similar to *Brown v Board of Education* in 1954, which outlawed racial segregation in US schools.

But while the Supreme Court decision has been greeted with jubilation by gay rights activists everywhere (and, one would suspect, with approval by some US constitutional legal scholars), they need to remain cautious. Both economic and cultural conservatives are forces to be reckoned with under the Bush administration – witness Senate Majority Leader and Republican Bill Frist's declaration of support last weekend for a constitutional amendment banning gay marriage.

Conservatives also have two good friends on the Supreme Court bench in Justices Antonin Scalia and Clarence Thomas, both of whom predictably – along with Chief Justice William Rehnquist – dissented in last week's decision. And with two retirements looming, the possibility of a conservative judicial swing is very real. This as a background to growing efforts to overturn *Roe v Wade* and, conceivably, other cases that have established or upheld rights for US citizens.

The founding fathers of the US – whose Declaration of Independence is celebrated today – established both a limited role for Federal government and a separation of church and state. States' rights activists have said the decision in *Lawrence v Texas* infringes on the right of states to legislate according to local values and mores. But given that those values and mores are in some parts of the country, the Deep South in particular, underpinned firmly and explicitly by fundamentalist religion, it can usefully be asked whether legislating according to local values would allow the church, in this case, to enter through the side door. None of this, of course, addresses whether the Texas statute is in breach of international human rights laws.

The US Supreme Court has provided a timely clarification of what is appropriate for its other two branches of government and for that it is to be commended.

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Homelessness and the right to social security

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As part of its ongoing process of welfare reform, the Commonwealth Government is currently reviewing the system of income support for working-age people. This review, which covers payments including Newstart, Youth Allowance and the Disability Support Pension, could have a significant impact on people who are homeless or at risk of homelessness.

In 1996, the Australian Bureau of Statistics estimated there were more than 105,000 homeless people across Australia on census night. A primary cause of homelessness is an inability to access social security payments or an inability to make ends meet given inadequate levels of payment.

The fundamental human right to social security is codified in article 9 of the *International Covenant on Economic, Social and Cultural Rights*. Although article 9 does not specify the type or level of social security to be guaranteed, the United Nations Committee on Economic, Social and Cultural Rights has said it must be available to "cover all risks involved in the loss of means of subsistence beyond a person's control".

In Australia, the *Social Security Act 1991* regulates eligibility for, and payment of, social security. The Act does not confer an enforceable right to social security, but instead confers a benefit or privilege that can be expanded or revoked at the government's discretion. At present, social security payments are pegged at a level well below the poverty line. For many people, the payments are insufficient to access adequate food, housing, clothing and health care. In a recent study it was found that more than 90 per cent of persons observed to be begging in Melbourne were social security recipients. In 2002, more than 83 per cent of people accessing Supported Accommodation Assistance Program-funded homelessness services listed social security as their primary income source. Consistent with article 9, any reform of income support for working-age people must enshrine the fundamental human right to social security at a level sufficient to realise the right to an adequate standard of living.

There are several other important reforms

necessary to ensure that the right to social security is fulfilled for homeless people:

Centrelink's 'proof of identity' requirements need to be changed to enable homeless people to use a letter from a social worker or caseworker as legitimate identification. Proof of identity requirements operate discriminatorily against the homeless, many of whom are unlikely to hold the requisite documents or have the money or resources to obtain them. Accessing documents may be especially difficult for women and children fleeing domestic violence and for refugees and asylum seekers.

Homeless people should be excluded from complying with activity test requirements. Eligibility for payment of working-age payments (such as Newstart) is generally contingent upon the claimant complying with an activity agreement. Activity agreements often impose conditions – such as regularly attending job interviews or promptly responding to Centrelink correspondence – with which many homeless people are unable to comply.

Social security payments should never be reduced below the level necessary to ensure an adequate standard of living. Failure to comply with the requirements of an activity agreement usually results in a person being 'breached', meaning that their payment is reduced or terminated. Breaches often result in a vicious cycle of poverty and homelessness as an individual's energies are directed towards surviving rather than securing employment.

Homeless people should have access to free post office boxes. With no fixed address, many homeless people do not receive Centrelink correspondence.

Finally, an integrated package of social security assistance to homeless people needs to be developed that includes housing, employment assistance and personal support to ensure sustainable outcomes. Studies in Australia, the US and Canada demonstrate that establishing long-term solutions to homelessness reduces the use of other government services and substantially reduces the total cost to the government.

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