

Episode 8: Global Thinking with David Burke

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David Burke is a Legal Director at the Human Rights Law Centre in Melbourne.

Emmanuel: The GLSA acknowledges that the land is situated on stolen Wurundjeri land of the Kulin Nation, of which sovereignty was never ceded. We pay our respects to their Elders past, present and emerging.

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Emmanuel: Hi there welcome to the Eighth episode of the Think Global Careers an International Law Podcast Series, brought to you by the Global Law Students Association.

This episode explores what it is like to be working as a Public Interest Lawyer at the Human Rights Law Centre. The Human Rights Law Centre uses strategic legal action policy solutions and advocacy to support people and communities to eliminate inequality an injustice and build a fairer more compassionate Australia. They work in coalition with key partners including community organisations law firms, Ambassadors, academics, experts and international and domestic human rights organisations.

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Emmanuel: Welcome to another episode of the GL SA's Think Global Careers in International Law podcast series. I am Emmanuel, one of the Engagement an Event co-opts and today I'm joined by David Burke one of the legal directors at Human Rights Law Centre in Melbourne.

David it is so great to have you.

David: Thanks for having me happy to have a chat to you.

Emmanuel: thank you so before we begin would you mind just briefly introducing yourself to help listeners?

David: yeah. I'm a legal director for rights of refugees and people seeking safety team at the Human Rights Law Centre. I've been with the organisation for about three and a half years now and before that was a Graduate at Lander and Rogers in the insurance litigation team where I started as a Grad and was there for about four years.

So our work at the Human Rights Law Centre really focuses on using strategic legal action and public advocacy to defend the rights of both refugees and people seeking asylum with a real focus on offshore detention in the PNG.

Emmanuel: Thank you. So something that we're just asking all about guess to start off is really why law, why and how did you end up working in the legal profession?

David: Yeah it's a good question. I feel like I never have a particularly amazing answer to it. I think I fell into studying law a little bit straight out of high school. I studied arts law and was really into arts and thought that law would compliment that as well. I feel quite grateful and lucky to for that to have worked out as it has. To find that I do really enjoy being away. I think the reason why I've kind of stuck with it going into the legal profession and really loving being apart of the legal profession is because of the impact you can have as a lawyer. I think the rule of law and like the guiding rules of our society and early in my experience getting me really amazing opportunities to actually use the skill set that you've learned to help people and to impact change. I feel quite lucky and privileged to be in a position where you have the ability to do that and people trust you to do it and to help them with those situations as well. So I definitely view it as a really rewarding career that I kind of didn't know what I was getting into but I'm very thankful that I'm here now.

Emmanuel: thank you for that it is always great to hear from a working professional who is bringing impact on the law. As you've mentioned you worked in the corporate and private sector Prior to joining HLC, what steps in your career let you to your current role is one of the legal directors of HLC?

David: When I was studying law at Uni I was a paralegal at Refugee Legal which is a community legal centre that focuses on work for refugees and people seeking asylum as well. So I was there for about I think I did one to two days a week as a paralegal there and worked there for about two years in the lead up to finishing my studies and I was pretty clear that I wanted to work in community legal centres. I wanted to do something in the pro bono not for profit area but I spoke to a lot of people and they said I need to do clerkships with corporate firms to see how you find it if nothing else it's actually just a really good way to learn skills and to get admitted and do College of law and those sorts of things.

So I went into that process pretty sceptical of whether I would enjoy it and what I would end up doing and actually didn't mind it. I really enjoyed Landers and got a grad position there. To be honest I went in there expecting that I do a year at a corporate firm and then leave and was probably there for about four and a half years because I think I got a lot out of the experience. I learned a lot as a lawyer. I learned a lot about litigation about processes about all the technical skills I think that you need as a basis for being good not for profit lawyer as well. I was also quite lucky because they were really supportive of this area of interest.

When I started at Landers I didn't do a whole lot of asylum seeker work but with my background from refugee legal I was able to start their programme focused on helping people seeking asylum and really work quite closely with refugee legal from being a grad to a third or fourth year lawyer and start a programme there that ended up being kind of 20-30 lawyers who were all assisting on a regular basis with migration work through refugee legal and through judicial review work. It really highlighted for me about corporate firms and pro bono work at corporate firms is this really massive resource that we have, particularly in Melbourne where there is a culture of every firm contributing in that way and there's a lot of change that can be brought and there's a lot of people that can be helped if you can kind of harness that resource in a really coordinated way.

But my ultimate interests always lay with working in the not for profit space and I was lucky enough to start at the Human Rights Law Centre as the team's lawyer and have now progressed to senior lawyer and then from 2019 I think it was when I started as legal director of the team.

Emmanuel: Thank you for sharing how you ended up in your position right now, I know a lot of our listeners are interested in starting corporate before moving to the not-for-profit sector so it is great to hear from your personal experience of that transition. Your work deals with a lot of migration casework and judicial review cases, can you tell us more about what this entails?

David: Yeah so I can give you a few examples of litigation that we've run. Our focus is on I guess strategic test cases and then like there's a lot of amazing organisations legal organisations in this space that prioritise high volume case work for a very very large number of individuals. Given that there's a massive legal need constantly because of some really awful arbitrary government decisions and a lack of funding. A few cohorts of cases that we've run, one is for people who being transferred to Australia from offshore detention in Naru and PNG where people have been brought here for medical treatment but then threatened with removal back to offshore when it's not safe for them to be removed. We've run a large number of legal cases to prevent those deportations and removals. We also ran cases arguing that for people in offshore detention the government was in breach of its duty of care by failing to provide appropriate medical treatment and forced the transfer of a large number of people from Naru and PNG to Australia prior to the many bad laws which introduced the statutory process for those transfers. We've done other cases including last year case on behalf of a man who is in an immigration detention centre in Australia arguing that the government was failing to hold its duty of care to keep him safe in the context of the COVID-19 crisis because while immigration detention centres in most other countries the population actually reduced, in Australia the number of people in immigration detention since the COVID- 19 pandemic started has actually increased and add a really massive risk to these individuals. So we litigated on a behalf of someone who was arguing that the government wasn't taking effective steps to protect him.

So our work tends to be a mixture of judicial review and statutory interpretation, public law arguments and duty of care arguments, particularly given the duty of care is kind of the emerging space in public interest litigation at the moment with some judicial decisions that have open the door to get things like injunctions for apprehended harm.

Emmanuel: thank you for that especially since we just passed the eight years anniversary of the offshore detention and under the current pandemics lives are at stake and these are important issues we should be having more conversations on. So thank you for sharing.

As you work with migrants and asylum seekers from different countries, what are some of the struggles you face when working on cases?

David: I think I mean obviously most of our clients or all of our clients are refugees or people seeking asylum. I think that the real struggle that they face and that we face and anyone who is trying to help them faces is just the completely arbitrary nature the treatment that

they are facing from the government. Like it's wild being deep in this system and seeing just how unnecessary the harm that the government does and the trauma that that creates for the people and that goes on top of trauma for people who often aren't recognised by our government has fleeing persecution in the first place. So that that will always be the biggest barrier for anyone in this space because it is so pervasive and ever present the harm that is done and the completely unnecessary at a practical level. I mean we obviously work with interpreters, you have to learn to understand cultural differences and you have to approach clients in this space in a very different way how you would approach a corporate client and those sorts of things, but ultimately I think every as a lawyer every interaction with the client you always just benefits by treating the other person as a human being and interacting them as you would like with compassion and empathy and genuineness as well. And that's kind of how I very much try to approach all of our interactions. It's how I tried to approach my interactions in corporate firms as well. I think the legal profession can sometimes like giving itself as an important sense of detachment from people that I think is really unnecessary in how we interact and it's something that I think the approach is really ultimately the same with a few extra practical barriers and difficulties such as interpreters and those sorts of things.

Emmanuel: Thank you for that I completely agree with what you just said. Thank you for sharing your experience and interacting with people from different cultures and that legal industry can definitely be intimidating to. A lot of people we're curious what does your day-to-day look like?

David: yeah I think my day today is really varied. I think one of the fun things about working at the Human Rights Law Centre is that you have a really wide variety of tools I guess that we use when we're trying to create change. So there's litigation and legal work that we do but there's obviously and the public advocacy and public communications that goes with that in terms of media releases interviews those sorts of things but that's combined with campaigning works or working with partner organisations that have large numbers of members and have really underground campaigns to try to shift public opinion as well as engagement with different politicians. It's really broad and I think you come to the Human Rights Law Centre most people with a legal background and you know how to do something well which for me was kind of litigation and it was using corporate pro bono resources and building relationships and then you have to learn this really wide variety of skills that you certainly aren't taught anywhere in terms of how to do interviews and how to liaise with politicians and how to build much bigger coalitions of organisations so you're all kind of working towards the same thing.

So I think my day to day is massively varied and it just depends on what issue we have on. If we're running a case then it's very litigation focused, particularly if we are at the High Court with the test case and that will take up obviously a lot of the time. But that work is both running the case but also seeing how it fits into a broader strategy for change and so planning stuff that comes and what do we need to be doing to make sure that this case is part of a bigger theory that we have for why we think we can help people. But at other times it will be very advocacy focused or campaign focused or liaising with politician focus and that is part of the challenge of working in this space but also part of the really exciting bit that

keeps it kind of fresh and is why you can look at a problem and feel like you have a lot of different options so how you might address that problem.

Emmanuel: wow really so definitely a lot going on and requires a lot of different skills to deal with what you have to face everyday.

David: that's the same for I'm reflecting on my law degree it's like you certainly learn a lot but then as soon as you start actually practising as a lawyer you learning a whole heap more really quickly and I think that being open next to learning those new skills is one of the key parts about kind of succeeding as you start the career. Because it's like you get a base level of knowledge and a base level of understanding and a base skill set coming out of uni but then the really exciting and interesting thing is that you continue to progress that no matter what area for you go into.

Emmanuel: thank you for that. Just a quick follow up question what advice would you give to yourself as a penultimate year student to get to where you are today?

David: It's a good question. I think I think the advice I would give to myself would probably focus on the well being aspects of working in the legal profession. I think it's really easy to get caught up once you start as a junior lawyer or graduate lawyer anywhere in really achievement oriented environment. And also the idea that you have to work massive hours, you have to make sacrifices for law I think it's so much an intimate part of our corporate law culture not just ours but in so many countries and it took me it took me a while to realise that.

I think working in this job and in this space you combine kind of long hours with a really traumatic subject matter and that probably got me to a point where I realise that that isn't how I could work anymore. That's not how I wanted to work anymore. I would have liked to take that mindset on earlier on in my career and I think that certainly my advice that I would give people is like to not accept the idea that you're working till 10 PM 11:00 PM as normal or good. It's not great. If it has to happen because you're enjoying your work and it's really busy and it's a short period of time that's one thing if you're not living your life because you're in the office the whole time on something that you're not passionate about I would encourage people to question it rather than just accept it as the norm.

Emmanuel: Thank you. This is definitely important to our listeners who tends to be perfectionists who would be pushing themselves.

David: Yeah I mean like of course that like this is group people who tend towards that and then pushed even further along there by the nature of law and those sorts of things and it's like that's a real skill and then it's an asset and I think it's like the ability to be driven and focused in a perfectionist is kind of got me along way in my career but I think you need to really early stage also know the downsides of that and just when the balance can get out of whack because you don't want to be going too far down one way and then happening to change things up dramatically when I think a lot of people can get by just being a bit more conscious of it in the first place.

Emmanuel: Definitely have to take care of yourself first before we can deal and achieve what we want. Can you actually tell us more about your skills and strategies to come to the realisation that you should prioritise your well being?

David: yeah I mean it's something that I think I historically haven't been particularly good at I think I always worked very long hours and always thought that was the way it should be. I think that in terms of strategies and those sorts of things I don't think it's a really easy quick fix. There's a lot of focus on resilience but it tends to put it too much on the individual as well. It's a workplace issue in terms of the culture and the demands of the job, it's all well and good to tell a graduate lawyer or junior lawyer not to be too stressed and work long hours but if they're getting a workload that requires them to work long hours it's not really their choice. I think the broader thing is that we need a change in the legal profession to actually have realistic work lives. But from an individual perspective I think from my experience I probably took on more than I needed to because of that perfectionist achievement. I entered law and didn't prioritise every other aspect of my life and I think it's a matter of a change. Sitting down and actually thinking about what's important to them and not getting swept along by the work and then realising you've worked every day for six months, but at each point in time just very consciously taking stock of how you're spending your time and how you want to be spending your time.

Other ways for you to create a bit of different space but for more short term strategies I think like the biggest change I probably implemented was having a separate phone for a work phone and personal phone which is really simple stuff. But just anything to create that distance between work and the idea of always being on and feeling like you have to always be on and available and accessible to being like no theres set times where I'm not. I think it's a matter of a change and kind of trying out different things and finding what works for them but also recognising that it's often not up to the individual and it's the environment that you're working in and trying to improve that environment more broadly is the actual answer.

Emmanuel: yeah I completely agree and this structural change that will take time before significant improvement will occur and we should start with ourselves with things we have control over.

David: Definitely and I think you can you think about your circle of influence when you're in positions as well like all of the people who are listening now at the start of their careers are going to be more senior at some point in time and or they're going to be in positions where taking a different approach to their well being and work practises and not just doing something because it's the accepted norm and how things are done. It has an impact and I think the more people who take that mindset into their career particularly if they're going into something like corporate law and that's how we do see change in the legal profession to shift away from unrealistic and really damaging demands on people.

Emmanuel Thank you for that we definitely need more people with mindset like you across the legal field.

So just backtracking to what you said earlier as we have been hearing a lot of advice to start in the private sector before entering public interest work, how has your experience working in private firms help prepare you for your work now?

David: I feel pretty lucky with the path that I took with the corporate firm. I think Lander and Rogers were exceptionally supportive of me personally in this area that I really wanted to work in. So in terms of how it prepared me, I think it gave me the skills and the technical skills for litigation that I put into practise every time we litigate. Yeah it also means I continue to build a lot of skills that I use in pro bono area as well in terms of like building coalitions of law firms and different organisations to work on an issue. I found for me it was definitely the right pathway but I think looking back at my time in uni I think there was a lot of anxiety about what if I take the wrong path way and I think the more you meet people the more senior you get in your career you kind of realise that there's so many different pathways to get to the exact same spot. It just kind of mirrors the same fear everyone has in year 12 about their base day like if I don't get the right ATAR , my life so over and then your actual ATAR grade doesn't matter like to the massive degree that you think it does at that point in that you can kind of get to places at different way.

I'd say the same thing about law.If you don't go in the path that you think that you were expecting to follow then I think that there's a lot of different avenues for people to do it so I definitely recommend trying out for clerkships just because it's an ability to kind of try that experience in that environment but if that doesn't feel right for you then really explore different ways. But my main thing I had in an early career point, my main advice would be to really just focused on becoming a really technically good lawyer. Like learning the processes, not taking shortcuts, giving yourself the legal skills in whatever area. It is better for the foundation for what you want to do next.

Emmanuel: Thank you for that, it's always reassuring to hear that everyone's journey is different and it doesn't matter how we end up there as we all have control and autonomy in how we get there.

What advice would you give to students who are interested in working with refugees rights internationally?

David: I think there's a lot of really good volunteering opportunities as a student places like Refugee Legal Resource Centre in Victoria, Refugee Advice and Casework Service in New South Wales for instance have really good volunteer programmes that people can sign up for. If possible I think more broadly my advice would be that it's like there's a lot of areas of need when it comes to what you can do with your legal career and any work or volunteering in the social spaces is incredibly valuable and to really embrace those opportunities particularly when you've got time to do what you want. So I think I would really encourage people to be engaged with the issue and to lookout for volunteering opportunities if they exist but also that's not a viable option for a lot of people and that's completely fine as well I think that there's professional opportunities down the track where you can try too. If you're with a firm, push them to getting into pro bono work in this space for instance so if they're already doing it sign up for it and get involved there too.

Emmanuel: thank you for that. Just curious about what you think and what are your thoughts on the development of refugees rights in Australia under the pandemic in the coming future?

David: I think when it comes to refugee policy in Australia, I think we've been on an ever decreasing path ever worsening path since at the very least the Howard government in 2001 where this issue has become a really toxic political issue. And I think that it really ignores the incredible human impact that this has had. On paper right now we've got hundreds of thousands of people in Australia who have come here seeking safety, who have at best temporary protection otherwise more than eight years on it still going through the process to even get assessed. We've still got more than 200 people in offshore detention in the PNG and were in the 9th year of that policy which is unimaginable. We've got 1000 people who have been transferred from offshore detention to Australia but have been told that they're never going to be able to resettle here so I have absolutely no idea of going to happen in their future. And it's because this issue is just one that governments and political parties have used to score political points. So it's a worrying time when it comes to where our government policy is going to go, particularly when we see with COVID-19 pandemic. A lot of focus on borders and a lot of rhetoric that is particularly harmful for this issue. So I think ultimately as a country we need a complete reset on how we view this issue. We need to find a way to make people realise that these are real people who have had really horrific circumstances and have come here seeking safety and yet it's completely devoid of that humanity when it comes to our public discourse. So COVID-19 I think presents an opportunity for us to reset our immigration policies in a way that we've never really had before because obviously we've got the borders closed now so I think it's the next three to five years will say a lot about what kind of country we want to be and that's when it comes to refugees but when it comes to all immigration and a whole host of other issues to be honest.

Emmanuel: Wow definitely interesting to see how the next five years will change the whole structure of the Australian immigration system and as law students we definitely have a big role to play in this reform, especially those who are graduating soon.

Just to finish off our time today we just want to know what do you look forward to in the coming future?

David: I think I'm going to be optimistic and say I think what we always focused on is that dramatic shift in policy when it comes to refugees and people seeking safety. And I'm going to be ever an optimist and say that that's what I look forward to. I look forward to a point where it's not this really toxic rhetoric about boats that's completely devoid of humanity, but where we actually have a sensible discussion and playing our part in what is a global problem. And I think that getting to that point will be the outcome of so many different people's work and so so many people pushing this country in the right direction. But I know in my work there's constantly moments where you're amazed and impressed about what other people are doing and the people who are fighting the good fight in this respect, and I really think that that is that is possible and I feel very grateful for the opportunity to be able to put legal skills and other skills to use as just a very small part of that.

Emmanuel: Thank you so much for that, it's great to hear that even though the issue is burning at hand you are still optimistic about the future and I think that is what we all need especially during this pandemic. Thank you so much David, thank you so much for joining us on this podcast we've learned a lot about your work at the human rights law centre and what the work in refugee rights entails so thank you again.

David: no problem, thanks for having me.

Emmanuel: Thank you for listening this episode of the Think Global Series to learn more about what we've discussed today please see our Facebook page for further links.