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## Labor mimics US conservative spiel

David Marr

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Living as we do in a fragile land, we know to take extreme care before introducing - even for the best of all possible motives - something foreign that might get out of hand. Foxes and cane toads come to mind. So do rap and lantana.

Politicians and talk-tough columnists have lately been mustering their arguments to save Australia from an introduced menace. They know 2020 has put bills and charters of rights back on the agenda and they know they might ravage our democracy.

That this is the last civilised nation not to guarantee its citizens' rights counts for nothing. We don't have foot and mouth disease or video games for grown-ups. So what's to stop us quarantining Australia against bills and charters of rights?

The Attorney-General, John Hatzistergos, has been thundering against them lately in the best traditions of NSW Labor. Bob Carr was one of the wittiest and most determined opponents of handing out rights we could enforce in court. It's something one-party states never willingly allow.

"We do not live in a perfect society and never will," Hatzistergos solemnly informed the Sydney Institute last week. "There may well be laws perceived by some to be unjust in our community. It is however wrong to suggest that they can be remedied by enacting charters with wide-ranging values and all will be well."

If only our grim-faced Attorney-General had been around in 1791 to tug James Madison's sleeve and stop him making the historic mistake of presenting the US Congress with constitutional amendments guaranteeing free speech and a free press; the freedom to assemble and the freedom to worship; the assurance that life and liberty will only ever be infringed by due process of law - and, alas, the right to bear arms.

Two-and-a-bit centuries later in Australia, the courts are all but powerless to prevent these rights being legislated away. And a good thing too, says Hatzistergos: "Transforming social and political questions into legal ones ... forces the courts to start making decisions ... for which they do not have democratic legitimacy."

That's American talk. America gave the world the great model of entrenched rights and lately America has bred mighty rhetoric attacking the courts as undemocratic for protecting them.

The wisdom of experience? Yes and no. Hatzistergos and his tribe are mouthing the words of those sore losers whose democratic sensibilities are offended by the secular, decent revolution pulled off by the US Supreme Court in the last half century that began in 1954 with *Brown v Board of Education of Topeka*, ending racial segregation of schools.

In 1962, *Engel v Vitale* lit a fire in conservative America by banning prayer in those desegregated schools. But that was nothing to the political volcano that has been spewing lava ever since *Roe v Wade* in 1973 struck down most laws against abortion as a violation of a woman's constitutional right to privacy.

For the clamouring powers of far-right America it just kept getting worse. In 1988 the court gave the nod to pornographic satire in *Hustler Magazine, Inc v Falwell*. In 2003, the judges struck down all state laws - and there were many across America - that still criminalised sodomy and oral sex. Time and again the court refused to allow public money to be poured into churches.

Democratic? Not according to the losers, though in each of those landmark cases the Supreme Court was siding with majority US opinion. The court was with the people though the outcomes were achieved not through fresh legislation but an old constitution.

Conservative commentators began attacking the judges as undemocratic judicial activists. The rhetoric was inventive, vicious and exported word for word to Australia. *Mabo* and *Wik* were attacked in language untranslated from the copybooks of fundamentalist America.

Reagan and both Bushes began to stack the bench with judges who could be trusted to reverse the court's 50-year tradition of tolerance and liberty. That's happening - unpredictably but not slowly. And as it does the brickbats are turning to bouquets.

In June the reconstituted court will decide the ambit of Madison's right to bear arms. If, as is highly likely, the justices decide that Washington, DC, cannot ban handguns as it has for the last 30 years, those who once campaigned against judicial activism will break out the champagne.

Their big wish is still that some day soon the court will reverse *Roe v Wade*. More than anything, the US campaign against constitutional rights we've mimicked on this side of the world is driven by the hope that once again abortion will be a crime.

Was all this history going through John Hatzistergos's mind last week? Probably not. He was borrowing the rhetoric to make his own point: that in this state Labor politicians don't like to be hobbled. He should be listened to politely, of course, but taken about as seriously as a burglar advising citizens not to invest in bars and alarms.