

Features

LETTERS TO THE EDITOR

2625 words

15 August 2008

[The Australian](#)

1 - All-round Country

23

English

Copyright 2008 News Ltd. All Rights Reserved

Hostile to human rights

BOTH James Allan ("Balancing competing rights requires trade-offs", Opinion, 11/8) and George Brandis ("Liberals aim to wedge Labor on bill of rights", Opinion, 11/8) appear to be to be incapable of mounting anything other than specious arguments against an Australian charter of rights.

Allan persistently trots out the tired and erroneous argument that human rights enactments destroy the powers of parliaments. He knows, as any serious scholar of modern human rights instruments should know, that this is not the case. The UK Human Rights Act, the New Zealand Bill of Rights Act, the Canadian Charter of Rights and Freedoms, the ACT Human Rights Act and the Victorian Charter of Human Rights and Responsibilities all preserve parliamentary sovereignty and prevent courts from being the final arbiters on the legitimacy of legislation.

Allan would also have us believe that courts are incapable of making rational determinations about abstract concepts like the right to privacy and freedom of expression. Can he really be serious? The logical consequence of his argument would be that courts should be deprived of their decision-making functions and discretionary powers. Courts decide enormously complex issues every day, the vast majority of which involve the balancing of competing interests and social concerns. Ask any defendant in a criminal case if this isn't the case. Ask any litigant in a civil case.

Brandis makes equally risible arguments against an Australian charter. For example, Glenn Milne quotes as Brandis's "clinching argument" against a charter his proposition that "where the public culture is essentially inhospitable to the rights of the individual, no amount of grandiose language will change it". His view appears to be that the Australian culture is essentially hostile to human rights.

Terese Henning

Fern Tree, Tas

