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Extra

Don't trust politicians with your human rights

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MORAL MAZE

YOU might think I am the sort of person who has always favoured a charter of human rights, but it isn't so.

Having come of age in America, I had seen first-hand the social ructions caused by the Supreme Court's invalidation of laws that violated the bill of rights. I watched my country struggle to come to terms with that court's banning of unconstitutional racially segregated schools, its upholding of the separation of church and state and its striking down of laws banning abortion.

In principle I agreed with each one of these decisions, yet as a new migrant to Australia in the early 1990s I thought this nation's more incrementalist approach to social change had much to commend it.

I thought, for example, that it may have been the less radical liberalisation of abortion laws in this country in the early 1970s that kept the issue off the political agenda, in contrast to the US where Roe v Wade's assertion of a woman's right to choose had sparked the creation of a violent and tireless anti-choice opposition.

I was wrong. The wishy-washy refusal of Australia's varied abortion laws to dignify women as choosers did little to stop John Howard putting the issue firmly on the political agenda, where it has remained ever since.

More importantly, I discovered the American take on human rights is just one of many. Australia is now the only democratic nation without a rights charter and many nations, including Britain, have devised rights protection frameworks that are upside rich and downside poor. Frameworks that depart from the American example by defending the existing power ratio between Parliament and the courts while enabling a reasonable balancing of the individual rights of citizens and the collective wishes and entitlements of the majority. Here's how it could work. First, Parliament would pass a law defining the civil, political, economic, cultural and/or social rights of Australians.

From that point on, all bills would be checked against this list of human rights. Where a bill is deemed incompatible, Parliament must formally explain how and why, though it can still become law.

The courts would also perform their interpretive role with an eye to human rights. Where a law appears incompatible with the rights charter, the courts could ask Parliament to reconsider it, but could not strike it down.

So far, arguments against a human rights act for Australia have been few and weak. This is not surprising, given the essential challenge of those in the "no" camp is to explain why our elected representatives should not even be asked to consider human rights, much less uphold them. The

main argument has been to claim that the existing system has done such a good job of protecting our rights so far there is no need to fix it.

I suspect David Hicks, Cornelia Rau and refugee children living in detention would disagree. And this is the point: that while a human rights charter would leave ultimate legislative power in the hands of MPs, it would require them to exercise that power more methodically, progressively and transparently, something many seem keen to avoid.

That is why David Marr reminds us we would be wise to treat politicians who object to a human rights charter with the same seriousness that we would burglars who object to alarm systems. Not very seriously at all.

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