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Bill of rights all wrong

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DECISIONS that fundamentally shape our lives, such as euthanasia, abortion and child smacking, should be made by the people (through our politicians), not the judges.

That's why the Rudd Government should resist calls from the 2020 summiteers to follow the Victorian example and introduce a federal bill of rights.

Most people are attracted to rights because the notion is consonant with personal entitlements and protections. However experience shows that a bill of rights, despite its superficial appeal, is a mistake.

Merely declaring, for example, that people have a right to liberty and free speech says nothing about the propriety of practices such as tobacco or alcohol advertising or the pre-trial detention of people suspected of committing serious criminal offences.

This gets us to the crux of the bill of rights debate: Who do you want to make decisions on the core moral issues that define us as a society?

There are only two choices: politicians or judges. At the moment all of the big decisions in Australia are made by politicians.

A bill of rights transfers much of this power to judges, who are among the least adept people in the community to make decisions on matters of cardinal social importance.

When it comes to giving power to people to make decisions, the most important consideration is accountability.

And that's why we should never hand over things that are vital to us to judges. They are the only group in the community that (effectively) can't get sacked or disciplined for incompetence or negligence.

Many people think that judges are smart and hence they're well placed to make important decisions. This is a dumb belief. Judges are simply former lawyers who have no special wisdom or training regarding matters of social importance.

Moreover, ethical choices of all people, including judges, are often more about emotion than logic.

As noted by America's leading legal commentator, Allan Dershowitz: ``Almost all justices vote almost all of the time in accordance with their own personal, political and religious views. That is the reality."''

Of course, there are many politicians that have a wayward moral compass. However, their decisions are made in the full public glare and the community is given an opportunity to lobby them. Many people, including myself, think that federal parliament got it wrong on their two most recent conscience votes, which gave the green light to embryonic stem cell research and the abortion pill.

But nearly all Australians can happily live with these decisions because we all had the opportunity to participate in the public discussion leading up to the conscience votes. And if we are genuinely aggrieved by the moral choices made by politicians we get to boot them out every three years.

In the end, a bill of rights is internally contradictory. It betrays the people of the only right that we can exercise on morally decisive issues -- the right for our voice to be heard in the matters that define us as a community.

Oh, and don't be fooled by Victorian Attorney-General Rob Hulls into thinking that Victorians wanted a bill of rights. Victoria is the only Australian state to have its own "little" bill of rights. During the "debate" prior to the introduction of the rights charter, Hulls was keen to point out that he appointed an "independent" committee to look into the matter.

This is a con. The so-called "independent" committee was chaired by a longstanding passionate and outspoken bill of rights advocate.

Not one person on the committee opposed the bill of rights. So much for the right of Victorians to open and transparent government.

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