Chapter Two

Human Rights Bureaucracies

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Some people choose their opinions according to the cheer squad theory. If they like the people expressing an opinion, they'll agree.

Hence the intellectual power of the movie star.

At a speech for the Centre for Independent Studies in Sydney recently, American satirist PJ O'Rourke was asked why something couldn't be done about Hollywood's pervasive left-wing bias; what was needed were some right-wing actors to balance the books.

O'Rourke shook his head about the prospects of conservatives on a recruiting drive on Hollywood Boulevard.

"I have only two words to say to you", he told his questioner. "Mel Gibson".

Be careful what you wish for.

When it comes to a Bill of Rights, the cheer squad mentality of Australian opinion forming prevails. It tends to be a bleeding heart cause. Lefties love the idea of a Bill of Rights because they want it as a vehicle for shoving unpopular ideas down the throats of the majority.

As John Howard says, their approach is hopelessly élitist:

> "The notion that typical citizens, elected by ordinary Australians, cannot be trusted to resolve great issues of public policy, and that the really important decisions should be taken out of their hands and given to judges who, after all, have a superior capacity to determine these matters".

Having said that, I must confess to have been a fan of the idea. And not just because I am an élitist.

I was born in America and grew up with the first ten amendments to the US Constitution, which form their Bill of Rights, in the architecture of my brain. I ascribe the extraordinary openness, independence and self-reliance of the American character to this very clear emphasis on individual rights. The Bill of Rights is embedded deep in every American psyche.

Even when my family left the US and moved to Tokyo, my primary school friends and I used to punctuate our arguments with the ultimate punch line: "It's a free country".

While not a big fan of the right to bear arms, which is the Second amendment, as a journalist, the First amendment enshrining freedom of speech and a free press seemed a wonderful innovation.

For one thing, it made my job a lot easier. You could stick your microphone in the face of anyone on the Chicago lakefront and they would talk happily and in perfect sound bites.

You could ring the CEO of a company or the local mayor, and she would think nothing of picking up the phone and answering your impertinent questions.

Politicians and public servants did not hide behind institutionalised barriers to journalists' questions. They felt obliged to answer, and knew that it was not the *Boston Herald* they were answerable to, but the people. Journalists were the conduits.

Americans instinctively feel it is their right and civic duty to speak to the press. In return, journalists believe it is their right to access information, and their duty to accurately report it.

Unlike in Australia, they are not supplicants owing favours in return for information doled out on a need-to-know basis.

In my experience, American journalists took the responsibilities of their craft far more seriously than did journalists on Fleet Street, where I once worked for a few dismal months on *The Sun*. I attributed the superiority of American journalism to the fact that freedom of the press had been elevated by the Founding Fathers to a special place in the Constitution.

But context is everything.

The American Bill of Rights was drafted in a very different world, by men of the Enlightenment who aspired to freedom for the common man, and believed authority derived from reason and natural law. Its main author, James Madison, "the Father of the Constitution", initially opposed a Bill of Rights. He agreed with Alexander Hamilton it was dangerous, since "enumeration of some rights might be taken to imply the absence of other rights" – which is why they had to include the Ninth amendment, protecting any rights not mentioned in the Bill of Rights.

Which is what happens when you let lawyers lose on codifying rights – they never stop.

But today in Australia the whole notion of a Bill of Rights has been hijacked for fashionable left wing pet causes, from gay marriage to so called "carbon pollution". It's just a vehicle to impose the progressive left agenda, as espoused by the Getup crowd, onto a reluctant populace, and usurp the role of elected governments.

The human rights bureaucracies which already exist in Australia give you a clue to their agendas. Marcus Einfeld, former President of the Australian Human Rights Commission – now serving time at Her Majesty's pleasure – is their pinup boy.

As Julian Leeser points out, the Human Rights Commission's "Work Out Your Rights" campaign is almost indistinguishable from the Labor Party's "Your Rights At Work" manifesto. And when Sex Discrimination Commissioner Elizabeth Broderick conducted a national "listening tour" recently, the people she "listened" to were the organised groups such as Getup and the Australian Liquor, Hospitality and Miscellaneous Workers' Union.

Sir Ronald Wilson, Einfeld's predecessor, brought down the *Bringing Them Home* Report, which popularised the idea of a Stolen Generation. It succeeded only in ensuring that a new "generation" of children would be left in intolerable situations of abuse and neglect, because authorities were too timid to intervene for fear of creating another Stolen Generation.

The Human Rights Commission's Social Justice Commissioner, Tom Calma, has opposed the Northern Territory intervention, on the basis that it does not meet the standards of international Conventions on the rights of children not to be discriminated against on the basis of race.

He admits these are not "easy tests to meet". He supports the aim of the intervention, to protect children from neglect and abuse, and yet is willing to wreck it for what he must see as a higher purpose.

But as PJ O'Rourke might say, the Getup crowd should be careful what they wish for.

A Human Rights Bill can also become a vehicle for causes they despise.

In the September issue of *Quadrant* magazine, out next week, is a beautiful example of unintended consequences in a piece by Angela Shanahan, about the consequences for abortion of a Bill of Rights.

It features a submission to the National Human Rights Consultation Committee last month by law lecturer Rita Joseph.

Joseph points out that any move towards a Bill of Human Rights in Australia will mean a change to abortion law, to accord with our international obligations to protect the right to life of the unborn child.

"Legal protection for unborn children is one of the founding principles of modern international law… As one of the Nuremberg judgments, this principle was mandated to be codified in the International Bill of Rights", writes Jospeh.

"Abortion constitutes arbitrary deprivation of life in breach of international human rights law".

In 1959 the UN General Assembly declared recognition, in the *Universal Declaration of Human Rights*, that the child "by reason of his physical and mental immaturity" is entitled to "special safeguards and care, including appropriate legal protection before as well as after birth".

In other words, the "right" of a woman to choose to abort her unborn child does not trump the right of the child to live.

You can bet the Bill of Rights cheer squad will be silent on this.

We are told often that we are the only democratic nation in the world that does not have a Bill of Rights, and that this is a great failing.

But Victoria's rights charter, which is being held up as a model for a federal Bill of Rights, demonstartes the kinds of complications which arise.

Frank Brennan, the Jesuit priest who heads the consultation committee and is something of a bleeding heart, has actually attacked the charter for forcing a doctor, who was conscientiously opposed to abortion, to refer a patient to a doctor who would perform the procedure. In this case, the charter has overridden the rights of the doctor to have freedom of conscience.

He described Victoria's charter not as an upholder of human rights, but "a device for the delivery of a soft-Left sectarian agenda [to be discarded when] the rights articulated do not comply with that agenda".

And that is the problem. Whoever's ideology prevails at the time will have their rights elevated over the rights of those outside the cheer squad.

So, as attractive as is the idea of an American Bill of Rights, I don't trust those who aspire to meddle with a system which has served us pretty well.

We have the foundations necessary to preserve human rights – a representative government, an independent judiciary and a free and fair press.

There is no water boarding at Long Bay jail as far as I am aware, much as we might wish it for certain terrorism suspects. I'm sure Marcus Einfeld would let us know.

Which brings me to my last cliché of the morning, a favourite of good conservatives: if it's not broke, why fix it?