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Human Rights as a Brake on Tyranny

Below are three recent expressions, variously by members of the APF's Advisory Panel and the APF, of the potentially disastrous consequences of Australia having failed to establish a proper legal basis for human rights.

They're in the order of most-recent-first.

Malcolm Fraser

Human rights need defending now more than ever to safeguard us from tyranny

Fairfax

February 4, 2015 - 12:00AM

<http://www.theage.com.au/comment/did-gillian-triggs-hit-a-raw-nerve-with-her-report-20150203-134hex.html>

Many Australians believe basic human rights are enshrined in our constitution. That is not so. The constitution defines a division of power, between Australia and the Australian states, as approved by the British Parliament. The common law is no longer a protection of human rights. The High Court has ruled that the Federal Parliament can override any such right.

...

The government has ... further extended the Australian Security Intelligence Organisation's powers curtailing basic rights and freedoms Australians have too easily taken for granted. It is consistent with the government's clear wish to place its actions outside the rule of law.

These actions make the Australian Human Rights Commission even more important to safeguard remaining freedoms and to prevent a full introduction of a police state. Even so, the powers available to the government and to security authorities in Australia would rest more comfortably with old-fashioned tyrannies from Europe than with any democracy in the 21st century.

...

So many countries in the world have bills or charters of rights. New Zealand, Britain, Europe, Canada and the United States all have provisions in their constitutions or in separate legislation. It is because Australia is a standalone without such protections that we need to be so concerned about the future.

Australian Privacy Foundation

Evidence to the Senate Legal and Constitutional Affairs References Committee
2 February 2015
<https://www.privacy.org.au/Papers/SLCA-TIAA-Notes-150202.pdf>

In other countries, legislation such as [the data retention law] proposed here is subject to challenge in superior courts, and has been disallowed by them.

In Australia, on the other hand, the Parliament has failed its obligation to give effect to the rights specified in the International Covenant on Civil and Political Rights (ICCPR).

As a result, the Parliament, and this Committee, have an obligation to apply as much care to the evidence before it as the High Court would, if it had the opportunity to do so.

George Williams

'The High Court: the Constitution and Human Rights'
The Annual Castan Centre for Human Rights Law Conference
Melbourne
25 July 2014
(Forthcoming in the Australian Journal of Human Rights)

Australia's exceptionalism lies in its lack of a national human rights instrument. It is now alone among democratic nations in not having a national bill of rights or human rights act.

... The Constitution was drafted at conventions held in 1891 and 1897–98, and then enacted for Australia by the British Parliament. In *Australian Capital Television Pty Ltd v Commonwealth*, Mason CJ noted the 'prevailing sentiment of the framers that there was no need to incorporate a comprehensive Bill of Rights in order to protect the rights and freedoms of citizens. ...' (Mason CJ in *Australian Capital Television Pty Ltd v Commonwealth*, 1992, at 136).

The Constitution contains only a few, scattered express protections of human rights [and] the few civil and political rights in the Constitution have, due to a combination of narrow drafting and constrained interpretation by the High Court, had little (if any) effect.

[However,] the High Court's interpretation of ... the external affairs power [is such] as to permit the enactment of a domestic national human rights instrument through the implementation of international human rights conventions. It means that Parliament has the capacity to bring about a national bill of rights.

Among their many roles, Malcolm Fraser and George Williams are members of the Australian Privacy Foundation's Advisory Panel: <https://www.privacy.org.au/About/AdvisoryPanel.html>

So too is Jon Stanhope, architect of the ACT's Human Rights Act. It's an inadequate law, because it's unenforceable. But it, and the very similar Victorian Act that was passed subsequently, are the nearest that Australians get to having human rights.