

THE CASE FOR AN AUSTRALIAN BILL OF RIGHTS

Freedom in the War on Terror

George Williams; UNSW Press 2004; 95 pp; \$16.95 softcover.

Professor George Williams has for many years been at the forefront of the battle to promote human rights in Australia and elsewhere — he was, for example, counsel in the groundbreaking Prasad case in Fiji. He has also been a tireless campaigner and advocate for an Australian Bill of Rights.

This slim volume, an 'instant guide' to the subject, is a Briefings publication, described as 'a series of short, topical books exploring social, political and cultural issues in contemporary Australia'. It is directed at the politically aware, well-informed layman and avoids academic theorising. Instead, Williams seeks, in a succinct and practical way, to set out the background to the rights debate, place it in an historical context, outline pressing areas of present concern and suggest a blueprint for a local Bill of Rights. In all this he succeeds admirably.

He acknowledges that Australians are in many ways fortunate in this area and runs through a catalogue of our basic rights. However, he argues that there is no room for the blasé complacency displayed by the Prime Minister and some of his colleagues setting out instances where human rights in Australia have been or are inadequately protected: mandatory sentencing, the *Langer* and *Hindmarsh Island* cases and indefinite mandatory detention. His brief critique of the post-2001 ASIO powers legislation paints a vivid picture of the chilling Orwellian cast of these provisions.

Williams goes on to note that Australia is out of kilter with our closest legal kin, Canada, New Zealand and the United Kingdom where human rights charters have operated successfully for some years.

Chapter 6 discusses and applauds the *Human Rights Act 2004* (ACT), a measure derided as 'ridiculous' by the Prime Minister, but Williams wonders if it goes far enough as it does not protect social, economic and cultural rights. The Hon Jon Stanhope, Chief Minister of the ACT,

convincingly spells out the rationale for the Act elsewhere in this edition (p 54).

Williams is sanguine about the prospects for the passage of an Australian Bill of Rights in the foreseeable future but argues that such charters have immense symbolic value and act as an important restraint on unrestricted legislative and executive power.

Dr Michael Head's article on detention without trial, also in this edition (p 63), demonstrates just how impotent the High Court is in the face of a determined executive. The misgivings expressed by Kirby J, one of the minority justices in the key cases, that the decisions had 'grave implications for the liberty of the individual in this country which this court should not endorse' graphically confirm the cogent arguments put forward by Williams for immediate action to introduce a Bill of Rights.

KEN BROWN is a retired lawyer in the Northern Territory.

WHO RULES?

How government retains control of a privatised economy

Michael Keating; Federation Press, 2004; 224 pp; \$34.95; softcover.

Who Rules? considers the question of whether the past two decades of pro-market reform in Australia have stripped government of the power to make a difference. Does government retain effective tools to achieve economic and social objectives, and is it inclined to use them?

As head of central Commonwealth agencies during Paul Keating's time as Treasurer and Prime Minister, Michael Keating was an important figure in devising and implementing the hugely significant economic reforms undertaken by the last Labor Government. These were years in which the exchange rate was floated, centralised wage arbitration ended, state assets were privatised, and public probity was linked to ideas of competitive neutrality.

It is not surprising, then, that this book is very supportive of Australia's market-

oriented policy shifts. Keating is of the view that the introduction of competition, in any of a number of forms, to spheres of state activity encourages more efficient and responsive performance in both the public and private sectors.

Crucial to his argument, however, is the distinction between a broad pro-market orientation and neo-liberalism. While neo-liberalism is hostile to an interventionist role for the state, Keating contends that Australian governments have reserved the will and capacity to play a positive role in achieving policy outcomes. What have changed are methods and approaches. 'Command and control' regulatory models have been deliberately abandoned for more subtle tools that complement, stabilise and buffer market processes. Keating therefore characterises the pattern of reform as one of re-regulation rather than de-regulation.

He takes us through a range of policy areas to illustrate his argument. In relation to macroeconomic policy, pro-market governments have abandoned the old tools of exchange rate and wages policy, but are willing and able to modify spending, inflation targets and interest rates to stabilise economic growth. On the microeconomic reform, governments have rolled back protectionism and state provision of goods and services, but have developed a strong regulatory regime of industry incentives, consumer protection and competition facilitation. In the area of human services, Keating points to a range of 'managed markets' in which the government continues to be at least as active as it was prior to economic reform. In each of these areas, government does what, in Keating's view, it has always done — attempts to maintain employment, achieve stable economic growth and facilitate social equity.

This aspect of Keating's argument is convincing. Our economy is nowhere near laissez faire and the government expends much revenue and energy pursuing its goals with its chosen instruments. The public certainly expects governments to actively steer the economy and guarantee equitable access to services, and readily holds them accountable if they fail to

do so, despite the common feeling that domestic governments are beholden to global market forces.

However, Keating's discussion of market outcomes can be overly blithe. He is offhand about concerns as to who loses out from the reform process, and tends to state idealised outcomes as fact. He writes, for example, that human services recipients now have more choice of service provider and have the right to go elsewhere if not satisfied. I wonder if that rings true for clients of Centrelink, community housing and childcare services in certain suburbs. And when faced with, for instance, disproportionately increased telephone line rental charges, I am reluctant to agree that competition among government business enterprises has necessarily increased responsiveness to price signals and consumer needs. Keating is willing to dismiss problems with the contracting out of government work as 'inexperience'. At what point do the various examples of geographical inequities in access to services and collapsed public-private infrastructure partnerships cease to be a learning experience and become policy failures?

A strong feature of the book is its illumination of the thinking behind such a significant period of reform. As an insider and practitioner, Keating provides an interesting discussion of the actual motivations behind government action. He also considers the social impacts of marketisation, providing a good example of 'third way' thinking — while the benefits of marketisation should be harnessed, any adverse social effects can be headed off through fostering social capital. Government's role properly includes programs that encourage education and training, communal activity, and capacity-building and decision-making at the local level. In fact, in one of the book's few statements strongly critical of current government policy, Keating describes as 'morally repugnant' any employment policy that forces job-seekers to go through the motions of searching for non-existent jobs without the opportunity to retrain to meet the requirements of the new economy.

Most interestingly, Keating highlights the other constraints that limit government

activity perhaps more than does adherence to market principles. In particular, community aversion to higher tax rates has been a deadening influence on more active state intervention pretty much since Federation, echoed now by a political aversion to increased public debt levels. This is something to think about as we wonder about government's response to the future challenges of environmental degradation and ageing infrastructure and population.

MICHELLEWOOD is a Sydney lawyer.

NOVELS AS CRIMINOLOGY OVER TIME

Ed McBain is an American crime writer most noted for his 87th Precinct novels. His works were first published in 1956 and deal with crime in a fictional city called Isola. The author did his research with New York cops.

His books are in the process of being reissued and represent a time capsule of police procedure and society generally, with undertones of racial tension as it affects policing (think 2005 Sydney) and changes in social attitudes about drugs, women, homosexuals, informers and corruption.

I have now collected every 87th Precinct novel published by scouring second-hand book shops, going to online book search places and buying the newly reissued original works. My project is to examine them over time.

The first five were *Cop Hater*, *The Mugger*, *The Pusher*, *The Con Man* and *Killer's Choice*.

A unifying theme of all the books is the existence of the main plot along with several sub-plots. Cops come and go, they are often killed off after a few stories but the 'hero' who survives and unites the stories is Steve Carella. Steve was to die in *The Pusher* but was saved by McBain's agent. McBain wanted no heroes, he lost the argument.

Consider two factors in the early novels: both the cops and the crims are often linked by their experience in World War II. It serves as a point of rapport and enables them to locate their suspicions and their

motives in a common way. Certainly even now military experience is more highly significant in US affairs than it is in Australia. Consider the chasms existing here.

The police also have a procedure called 'the line-up' where two detectives from each Precinct gather at a parade of all those recently arrested, where they are publicly questioned about their crime and their history by the Chief of Detectives. It is meant to tell the assembled 'bulls' who is up to what in the city. This procedure dies off in later novels for very good reason. The novels are also set prior to the Miranda and Escobido decisions of the US Supreme Court.

If you get a chance to get some of the early works have a read and try to imagine yourself as a lawyer in the 1950s.

PETER WILMSHURST is a Sydney policy officer.

MR BIG

The true story of Lennie McPherson and his life of crime

Tony Reeves; Allen & Unwin 2005; \$24.95; softcover.

Tony Reeves, a journalist, has walked the mean streets but Lennie McPherson was no doubt a person who was himself mean [Thanks Ray].

Reeves paints a picture of a small time thug who pulled himself by his bootstraps further down to be an insignificant thug. Bypassed by the US mafia, when it diversified to Australia, he represented a typical Australian nobody who saw himself on the world stage, much like many of our politicians.

A wonderful read, especially the bits about the ease with which police and politicians could be enlisted to do McPherson's bidding, without a second thought as to why. McPherson is documented in the book as a regular police informer, which begs the question why was he accorded reverential status by the cops, irrespective of how such valuable such folk might be. Do they still behave this way?

PETER WILMSHURST is a Sydney policy officer.