

Don't Leave Us with the Bill - The Case Against an Australian Bill of Rights

Julian Leaser and Ryan Haddrick (eds) | Menzies Research Centre | 2009



In a world of finite resources and finite wisdom, the exercise of a 'human right' involves four things, protecting one's own freedoms, protecting one's own property, interfering with another's freedoms, and interfering with another's property.

Some systems – systems based on class or ethnicity or ideology – believe interference is the better tool for apportioning rights. Our own common law tradition is a system which believes in the supremacy of weakness, and in the fallibility of power. It prefers not to moralise, and therefore not to interfere. Rarely will our civil law interfere *quia timet*; it prefers to await the wrong and to compensate the injured. Rarely will the criminal law interfere with the liberty of someone who has not yet committed a crime; it prefers to wait for the crime and to punish the criminal. In this cautious, haphazard, piecemeal and often unsatisfactory way, our system tries to ensure that the protection of one person does not become the oppression of another.

Upon this system it is proposed to graft a regime of declared rights. This is the result urged in the Human Rights Consultation Committee report, delivered to the attorney on 30 September 2009. It is a plea for universality.

The attraction of universality is not limited to moralists, of course. Capitalism has known for well over a century that the manufacture of ten mediocre products will yield a greater profit than the manufacture of one lasting one. Indeed, it is something of an irony that those in favour of globalised morality and those in favour of globalised economies often regard themselves as poles apart.

For those of us who remain suspicious of the universal and who prefer the cautious, the haphazard, the piecemeal and the often unsatisfactory, there remains available a valuable collection of essays against a charter, *Don't Leave Us with the Bill – The Case Against an Australian Bill of Rights*.

In it, David Bennett explores the perils of universality: 'The primary objection to a bill of rights is a philosophical one which may be summarised by saying that there is no reason why the principle should always prevail over the exception – indeed the nature of exceptions rather makes the contrary a more logical position.'

The yeas and the nays are all agreed that an ability to check government is a *raison d'être* of a civilised society. It's the means which causes the difficulty. A theme of these essays is a sense that the means lies within our collective us. Sir Harry Gibbs's off-quoted observation is in the introduction, 'If society is tolerant and rational it does not need a bill of rights. If it is not, no bill of rights will preserve it.'

The corollary of this sense is a concern expressed by many authors about the intrusion of law into what they see as a policy issue. For example, Archbishop Pell introduces his chapter with a warning that it is too easy to assume that lawyers are more trustworthy when it comes to protecting rights than politicians.

I confess to finding Pell's attitude generous to politicians. It will be recalled that 2007 brought His Eminence the curious experience of facing a humanists' inquisition, his sin being to engage robustly in a robust public debate over

stem-cell research. He opined that 'Catholic politicians who vote for this [stem cell] legislation must realise that their voting has consequences for their place in the life of the church'. For this, he was threatened with contempt by the Legislative Council. Fearing the contempt of the community, the council sensibly changed tack.

Be this as it may, Pell – with many other essayists in this book – suggests that our politicians are better placed than our judges to make policy decisions. It is not so much that there is something inherently wrong with an unelected person wielding power. Rather, it is the fact that the persons who get their power from elections are necessarily more mindful of electors' views. Some of us seem to hold that politicians should be immune to changing policies to meet changing views of an electorate, a view that steadfastly ignores La Rochefoucauld's maxim that hypocrisy is the tribute vice pays to virtue.

Pell is not the only religionist; Jon Levi reflects on the biblical roots of our rights and Jim Wallace gives a spirited assessment of why Christians should be concerned about a bill. I confess to finding the committee's view on religion odd. On the one hand, it reports that 'For centuries many thinkers who considered questions to do with justice and rights took as their starting point the idea that all human beings were created by God and were thus endowed with particular gifts and divinely commanded to live in a particular way. Such thinking holds little sway in the public domain today, even if some religious people still find it convincing.' On the other, it regards as holy writ Article One of the 1948 Universal Declaration, 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.' Pray tell the difference between this bold and value-drenched assertion and the assertions of the

debunked religionists? The only one I can see is that I have a choice about rejecting the latter.

The only particular criticism I would raise against the book is the general (but not universal!) acceptance that there must be human rights at all. As the report fairly includes in its own potted history of human rights, there is Alisdair MacIntyre's view that 'There are no such rights, and

belief in them is one with belief in witches and in unicorns'.

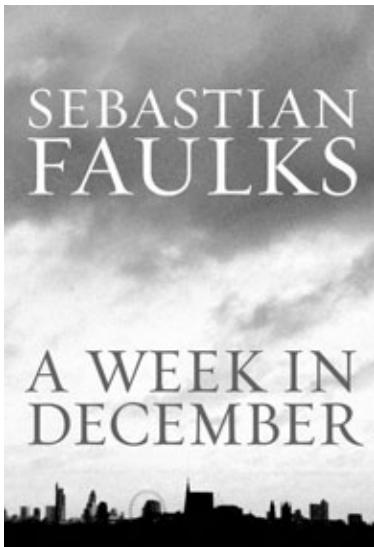
If you take the view that the effect of the committee's report has moved a bill from 'if' to 'when', then the book is a waste of money. And if you are a barrister who is opposed to the bill, your time is better spent working out how to deal with the cry of 'hypocrite' when the cab rank rule requires of you that you formulate your

client's claim against the Department of This or That for its egregious breach of your client's rights. I must confess a sadness that we regard ourselves collectively as so ignorant of the things which each of us should value that we require them to be legislated for. The proper exercise of the rule of law requires due deference to its own anonymity.

Reviewed by David Ash

A Week in December

Sebastian Faulks | Hutchinson | 2009



Sebastian Faulks' latest novel is an exploration of troubling themes in the modern age. Set during the week before Christmas in 2007, Faulks focuses on a group of Londoners, each of whose

separate lives is a vehicle for a portrayal of an aspect of modern urban life. Greed, materialism, Islamic extremism and the dehumanising effects of the electronic age feature strongly. Bear Stearns and Lehman Brothers are still to collapse, but the financial world is beginning to unravel and hedge fund managers and investment bankers continue to trade ever more artificial financial instruments, which they well know will cost someone dearly – some day, somewhere.

Gabriel Northwood, an almost penniless barrister, and a somewhat endearing character in the book, captures one of Faulks' central themes, when he ponders: "Somehow money had become the only thing that mattered. When had educated people stopped looking down on money and its acquisition? When had the civilised man stopped viewing money as a means to various enjoyable ends and started to view it as the end itself?"

Meanwhile, Farooq al-Rashid, a Bradford Pakistani, chutney magnate and benefactor to the Conservative Party, is preparing for his investiture at Buckingham Palace, to receive an OBE. Part of his preparation involves lessons from a literary consultant so that he may discuss books with Her Royal Majesty while she pins a gong on his chest – if the conversation happens to move in that direction. At the same time, his son Hassan, who has been drawn into extremism at his local mosque, is preparing to do what he believes the Koran commands: "Woeful punishment awaits the unbeliever".

Women who do not eat, children who take drugs, virtual reality and psychiatric imbalance constitute threads in the dysfunctional relationships that make up this disturbingly realistic novel by a master story teller.

Reviewed by Michael Pembroke SC