

# **Bill/Charter of Rights Consultation 2009.**

## **Submission**

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### **Personal background.**

I am not a lawyer. I am neither proud nor ashamed of that statement; it is simply a fact that may be relevant to this 'consultation'.

We are all influenced by our experiences. English by birth, education and upbringing I worked in schools or Training College in London, Eastern Nigeria, Northern Nigeria and, from 1970, in Queensland. Of those many and varied experiences the three years in Kano, Northern Nigeria, had the greatest effect on my thinking that is relevant to this 'consultation'. During those years, 1965 – 1968 I watched with sadness the collapse of a democracy (badly flawed, but still better than nothing), two coups d'état, the rise of military government, the massacres of 1966 and most of the appalling Nigerian/Biafran civil war.

During that time I was working in a Teacher Training College for women. Note –Northern Nigeria is predominantly Muslim.

### **Personal convictions relevant to this 'consultation'**

Those three years, and other experiences, left me with two definite, unshakable convictions that I stand by to this day, both of which are relevant to this 'consultation'. They are:

(a) Democracy is the best/least bad system of government possible and hence nothing must be introduced that has any potential to interfere with the supremacy of Parliament. I do not have starry eyed ideas that democracy is perfect; merely that, as the old saw has it, 'democracy is the recurrent suspicion that more than half the people are right more than half the time'. It is simply far, far better than any alternative that I am aware of.

(b) It is illogical to the point of puerility to imagine that it is possible to have two desirable objectives simultaneously if they can on occasions be mutually exclusive. An obvious example is that the 'right' to religious freedom re Islam and the 'right' for equality for women and girls. Anybody who thinks that those two 'rights' can exist untrammelled simultaneously should read the works of one of my (very few) heroes Ayaan Hirsi Ali. Another example of tension arising from the 'Right' to religious freedom is the present Canadian affair re a rampant Mormon who is likely to be charged with polygamy. Inevitably he is bleating about his religious 'Rights' under the Canadian Charter of Rights. It is going to be interesting to see what happens, though it is encouraging to see that some women in particular are very sound and outspoken against polygamy. However I have very little hope, the pro Rights/Charter at all costs attitude is very strongly entrenched in Canada.

### **The New Class.**

I have been trying to think of a collective noun to describe people who support the introduction of a Rights Bill/Charter. 'Elite' upsets people. So that will not do. 'Self appointed elite', although certainly true, may also upset people so I would rather not use that, tempting as it is. I dismissed 'doctor's wives' and 'café latte set' as being cheap; so I tried to manufacture a suitable word/phrase that would do without irritating sensitive little souls.

I first considered a phrase used by Costa and others: ‘the Cultural Left’; but that does not catch the *power* inherent in the group. Finally I went right back to Milovan Djilas who coined the term ‘The New Class’ to describe the rise of the Communist elite who were the new power bloc. Of course the pro Rights people are not Communist in any shape or form, but the phrase does catch the sense of an undemocratic and very powerful group.

In the context of this ‘consultation’ the Australian Human Rights Group and Get up! are the most prominent sub sets of The New Class.

### **Comments on web ‘information’ re this ‘consultation’.**

The Attorney General, the relevant Minister is known to favour a Charter of Rights. It is hence unsurprising that the Terms of Reference are loaded. Since nothing is perfect, the ‘questions’ deliberately steer the respondent towards acquiescing to some sort of action. I have no intention of being manipulated in such a crude and blatant manner and will hence ignore the questions and exercise my democratic right to say what *I* want to say.

Reference is made to the fact that this ‘consultation’ ‘builds on human rights ideas emerging from the 2020 summit’. Well of course; the summit was obviously undemocratic, being heavily weighted towards members of The New Class. The government picked the people and the government chose the topics. Consequently people involved were such that it was certain that they would push the currently fashionable ‘Bill of Rights’ line. The ‘summit’ produced, or was presented as producing, just what the government wanted. I say ‘was presented as producing....’ because serious doubts have been raised as to the fairness of the summaries that emerged from that gathering. In the context of this ‘consultation’ it is most surprising that the group that discussed human rights seems to be presented as being totally in favour of a Bill/Charter.

Incredible. Either there was no minority in opposition (which would be both extraordinary and worrying), or there *was* a contrarian minority but there views were not reported (which would be underhanded at best).

The Minister states that Parliament must be supreme. What is his motivation for saying that?

#### Possibility

(a) is that he genuinely thinks that it is possible to have a Bill/Charter and leave the supremacy of Parliament undamaged. Well, either a Charter will have an effect or it won’t. If it does have an effect (influence/power) then that must come at the expense of Parliamentary supremacy. If it will not have any effect, what on earth are we going on about it for?

#### Possibility

(b) is that he thinks that a Charter would be more acceptable if it gave lip service to Parliament. That is simple spin or sugar coating the pill. He may think that since ‘Hull got away with that line in Victoria, why shouldn’t I?’

#### Possibility

(c) is that he thinks that he can push a Charter through on the whips but that a Bill of Rights would require a referendum to change the Constitution and he thinks (correctly I suspect/hope) that it would fail. Can’t let those plebs decide important things like this now can we? Oh dear me, no.

The material re this ‘consultation’ advises, recommends, the reader ‘to find out more’ about Human Rights at a couple of sites, one of which was the UN Rights group. Even though that

organisation has had a terrible reputation for decades, I did have a bit of a look at it - and associated sites - in the hope that things had improved. A few facts that emerged were:

### **Comments on UN Human Rights organisation**

This is all so terribly sad. When the original UN Rights organisation was created it had such high hopes and ambitions. I was 13 or 14 at the time and it was a time of relief from the war and we all had such hopes for a better, more decent and more just future. Sadly the whole thing has become a perversion of what was intended, a travesty. Poor Eleanor Roosevelt worked so hard and had such hopes. She must be turning in her grave.

After reaching a scandalous depth of degradation about 10 years ago a feeble attempt was made to improve things. That happened because even the most fanatical members of the 'Rights' lobbies thought that it was somewhat inappropriate that Libya was prominent. (Perhaps they had heard of Lockerbie). So in the new purified body, members elected (to the UN human Rights Council) must show 'the highest standards in promoting ... human Rights'. Currently membership includes Russia, China, Pakistan, Saudi Arabia and Cuba. So, apparently, those five countries are really 'up there' promoting human Rights and are, presumably, a light to lead countries such as UK, Australia and that appalling place the USA. In an article on Female Oppression in *Oracle*, an Education Foundation, I find (re Saudi Arabia) 'In the legal system, just like in Pakistan, women are not considered to be legitimate witnesses. They are considered to be emotional, intellectually weak and forgetful, thus unable to provide accurate testimonies.'

Just this month (January 2009) we have the situation that the Pakistani government, either because it does not *want* to control the NW of the country, or, because the military and Intelligence services are so riddled with Islamist sympathisers that they *cannot* control that area, is unable to prevent the Taliban from stopping girls from going to school in Swat province. So 40,000 girls are now prevented from getting an education because of the manic and brutal religious ideas of the Taliban. In so doing the Taliban are only acting according to their nauseating *religious* convictions.

But do not ask me to support the enshrining of freedom of religion in a Bill/Charter.

(Later, (February 09): now the Pakistani government is considering signing a deal with the Taliban, so from here on the area will be subject to Sharia Law. The schools have been burnt).

The idea that we proles should look at the UN 'Rights' body and 'find out more' about human Rights would be funny – if it were not so sick.

60% of condemnatory motions are against one country – Israel. On the other hand there has been no criticism re Darfur, Tibet, North Korea or Zimbabwe. That is a consequence of block voting by some Middle Eastern and African nations plus China, Russia and Cuba. Even the very restrained Ban Ki Moon has criticised the Council for its ineffectiveness and urged countries to 'drop rhetoric' and 'rise above partisan posturing and regional divides'. The probability of that happening are somewhere between vanishingly small and nil.

Domination by Islamic states and their opportunistic supporters has led to a clamp down on criticism of, for example, aspects of Sharia Law. In June 2008 a representative of The Association of Education, in concert with the International Humanist and Ethical Union, denounced practices such as the stoning of women for adultery and the marriage of pre-teen girls, claiming that they were abuses of human rights. (I would also describe them as sexist, cruel, inhumane, primitive and evil.) Islamic representatives worked up a head of steam stating that 'Islam will not be crucified in this Council'. But, much worse, the President of

the Council ruled that such talk about religion would not be allowed and that ‘declarations must avoid judgements or evaluation about religion and I promise that next time a speaker judges a religion.... I will interrupt him and pass on to the next speaker’.

Each and every one of us has to decide: do you back Hirsi Ali’s (and many others) criticisms or do you support the muzzling of free speech in the name of religious freedom? You can have one or the other or neither, but you cannot have both. If you *do* think that you can have both then I can only conclude that you are a Hogwarts alumna/us.

On the issue of freedom of speech, the Australian media of all types effectively self censored itself at the time of the publication of some cartoons of Mohammed in Denmark. We heard saw and read plenty about all the Islamists throwing things, burning things and injuring people, so clearly it was news. But no Australian paper published the cartoons themselves. Why not? Pathetic, you could smell the fear. Clearly the Australian (and much other) media put abject terror above their responsibility fearlessly to tell the public what is happening. (Like me, a lot of people would have disliked a piece of ‘art’ called ‘Piss Christ’. I saw pictures of *that* in the press - but then I do not relapse into primitive violence when somebody offends me). The real or pretended hypersensitivity of some people and groups of people to perceived slights is, when combined with a propensity for violence on the one hand and spineless fear on the other, another major threat to freedom of speech. We must stand up for freedom of speech or we are lost.

I have spent a lot of time on the UN Human Rights body. **You** told me to so that I would ‘find out more’, a suggestion that leads me to presume that the Attorney General and his obedient minions support the UN lot.

I do not, and cannot, for I see them as being at best useless and at worst actually bad because they connive with people who commit terrible breaches of human Rights in the name of religion and culture. In the process they provide an imprimatur of respectability to those breaches.

### **A few comments on the rise of Parliamentary democracy**

The drive to democracy via elected representatives meeting together (called Parliament or Senate or Congress or whatever) has been a slow struggle over the centuries. People have suffered and died so as to achieve the supremacy of Parliament. The 1688 Bill of Rights in England makes it crystal clear that the monarch was to operate with the consent of, and to an extent *under*, Parliament. It also makes it clear that William and Mary were being handed the crown by *decision* of Parliament. The Bill was read out to them at the ceremony just to make sure everybody knew who was boss. The implications were transparent: an earlier Parliament chopped the head off one king who was full of the divine right of kings (and while they were at it got rid of the Archbishop of Canterbury); we, the Parliament, have just got rid of another – so we can do it again if need be. It is noteworthy that King James had a very large standing army, parliament did not, but James was almost bloodlessly kicked out. The worm turned.

The 1688 Bill did two things. It got rid of James because he was a ‘papist’, had cuddled up to France and had sidelined parliament by a string of actions. Reading those sections of the Bill seem peculiar, unacceptable these days, unless, using *Sitz im Leben*, it is put into the context of the previous decades.

The bulk of the Bill is a sequence of assertions that emphasise the supremacy of Parliament. The following are a few of those assertions and it must be remembered that this was read out to William and Mary *before* being crowned. It is their job statement.

*That the pretended Power of Suspending of Lawes or the Execution of Lawes by Regall Authority without Consent of Parlyament is illegal.*

*That levying Money for or to the use of the Crowne by pretence of Prerogative without Grant of Parlyament for longer time or in other manner than the same is or shall be granted is Illegal.*

*That the raising or keeping a standing Army within the Kingdome in time of Peace unless it be with Consent of Parlyament is against the Law.*

*That the Freedom of Speech and Debates or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament.*

The supremacy of Parliament was a necessary but not sufficient condition for representative democratic government. At that time Parliament was not very democratic because of the deplorable narrowness of the electorate. In UK it took well over two centuries of further struggle such as the Chartist movement and later the Suffragettes to achieve proper democratic representation. At that point the UK Parliament became what Australia had to some extent achieved earlier: representative democracy. In Australia people such as Fisher worked for years to get the vote given to all men and women (shamefully whites only but at least a start). Now, consequent to the demise of the White Australia policy and constitutional amendment re Indigenes, all adult citizens are electors. Please note that these improvements did not just happen by magic, people had to work, struggle and often suffer vilification or worse to achieve them.

It is an undeniable fact that we are ruled by a democratic Parliament and that Parliament is supreme. We should be grateful to all those who struggled to give us the system we have. Furthermore we should be hyper cautious in taking any action(s) that has the potential to relatively weaken our democratic Parliament. That caution should be 'in spades' if such a proposal is to be 'whipped' through a Parliament seemingly dedicated to self harm as opposed to a constitutional change accepted at a referendum of the people.

The almost casual, furtive way that this country is (probably) going to make fundamental change for almost no reason at all is in stark contrast to the situation in America when their so called Bill of Rights was introduced when the original Confederation was expiring. The draft of the new Federal constitution lacked many rights pertaining to the individual. The Anti Federalists considered that the new constitution would give fewer rights than the old Confederate one did, so they were going to vote against the Federation in the various State plebiscites. They demanded a promise of ten constitutional amendments. Those ten are *called* the 'Bill of Rights'. The Federalists had to promise that they would be implemented immediately after the Federation came into existence. It was enough to swing the vote in many States. Without those constitutional amendments - the so called a Bill of Rights, - there would have been no Federation. Note that *all* other amendments in the US have had to go through a proper, full and democratic process. Can anyone tell me *any* even vaguely similar reason for a Bill/Charter here? Is the Commonwealth in danger?

### **Current suggestions to reduce the power of the democratic parliament**

One of the two 'ideas' that are extant are a 'Bill of Rights', an 'idea' that would empower a group of (presumably) lawyers to 'examine' legislation that is before or has been passed by the democratic process in Parliament and then, to decide whether the proposal/Bill/Act should be allowed or struck down.

The Attorney General, the pro rights agenda Minister responsible for this 'consultation' has stated words to the effect that parliament must remain the boss. Since he thinks a Bill would clearly demean Parliament and lose votes he is against that idea.

So now we are having Mr Hull's Victorian 'Charter of Rights' pushed down our throats. That 'idea' is to empower the same group of lawyers to examine the Bills/Acts and then, to 'ensure the supremacy of parliament' they will not be able to strike the Bills/Acts down but will be able to declare them to be contrary to the Charter. Not to mince words, they will be stating that the Parliament is acting immorally. No Parliament will allow that to happen so they will back off. A Charter is a tricky idea that Richard Nixon would have been proud of.

So far as I can tell that is essentially what happens in UK since they signed on to the European Rights Convention. The Minister responsible for 'rights' arrangements, Mr Jack Straw, after seeing the thing in operation for ten years or so seems now to think that things have not worked out quite as expected. He describes the arrangements as 'a villains charter' that is 'beloved by ambulance chasing lawyers'. A nice chap I am sure, but so innocent: what on earth did they think would happen? He is now rather desperately talking about incorporating 'Responsibilities' into the law – but his Party will not even allow that, meaningless as it would be.

I notice that the material on the web to do with this 'consultation' manages to drag in the word 'Responsibilities'. As for 'Rights', those are also going to be fantastically hard to define so that will be another fine sounding farce.

A Charter of Rights is a sophisticated (in the pejorative sense of the word) way of getting all the effects of a Bill whilst at the same time pretending that Parliament is not weakened. It is hence a sharp and morally dubious way of getting a Bill of Rights. I find that quite revolting.

I put to the 'consulters' that either nothing should happen or a Bill of Rights should be put to a formal referendum to change the constitution. (If such a referendum occurred I would work, speak and vote against it, but if it passed that would be it; the people would have spoken and I would support their right to have done so).

The New Class, whose lust for a Bill/Charter of Rights is equalled by their contempt for the people at large, will not go for a referendum for fear of losing. They know perfectly well what happened in 1988. One of the amendments put to the people '*sought to enshrine in the constitution various civil rights, including freedom of religion, rights in relation to trials, and rights regarding the acquisition of property*'.

I voted against that amendment because of the reference to freedom of religion. I was not alone! A grand total of 30.8 % of the voters said 'yes'. **The lowest Yes vote ever.**

No wonder the New Class intends to get what they want by crafty means. The proletariat got it wrong, so forget all this democracy stuff, let's slither our way in through the back door.

### **Lawyers versus dentists**

There is a phrase frequently used in my old stamping ground the East End of London; it is 'that's a nice little earner'. The group, whatever pukka name they get given, that will sit and then pontificate on the rights or wrongs of Parliamentary actions, will be a group that I would like to be a member of. Just think about it. Unelected, unsackable but total power and no responsibility at all. Power without responsibility is proverbially the prerogative of the harlot throughout the ages. I can almost see the lawyers salivating at the prospect. It will be a nice little earner (NLE) or, probably, a nice damn great big earner. It will be as near certain as makes little difference that they will get paid more than the people's representatives in Parliament! So we shall have power without responsibility the prerogative of the courtesan in *our* age. Certainly Jack Straw knows that his legislation has become a NLE!

Queensland has been pathetic historically in respect of the fluoridation of water. One of the few groups that came out strongly in favour of fluoridation was an association of dentists. As it happens I am totally in favour of fluoridisation, but what impressed me was the fact that dentists – who stand to *lose* work if fluoridisation comes in were still willing to come out, year after year and say so. That is definitely *not* the way to get a NLE. Consequently I believed them. However, the sight and sound of lawyers pushing the rights agenda to get a Bill or Charter is the reverse of the dentist's position. Lawyers stand to gain, and gain significantly, from the introduction of a Rights thing under any name. It is possible of course that some of the lawyer advocates for a Bill/Charter really do think it would be good for the nation, but whatever their motivation they must recognise that they can be and will be seen as feathering their own nest.

### **General comments and Submission.**

There is going to be a most dreadful problem when a Charter is recommended by the Consulters and then whipped through Parliament; that problem will be the degree of detail for each and every 'Right' that the New Class can excogitate.

In essence the problem will be: do we try to anticipate everything that may occur in the future and then detail that long list in the Charter or do we make a wide general motherhood statement? The first possibility – a detailed list cannot possibly work because nobody can foretell the future. So that is out.

That leaves the generalisation approach. Because generalisations must be interpreted, the motherhood statement approach will be the basis for the years of (highly paid) discussion by the Great Ones who will judge our Parliament (and hence us the proles who elected them). A really good NLE that, because of the never ending stream of issues, will make the Jarndyce case look speedy. After all, that case stopped when the money ran out. This NLE's costs will be borne by the proletariat and they can be taxed ad nauseam. Interesting thought for you: would Dickens be allowed to publish his material nowadays? *Bleak House* generally and the first few pages in particular would see him in all sorts of trouble.

Has anyone tried to see if it is possible to find the correlation, if any, between quality of Democracy in a country on the one hand and the actual quality of human Rights on the other? Terribly difficult to do, of course, because of the innate difficulties that exist in measuring, or even defining, either the 'standard' of Democracy or the quality of human Rights. However, as a mere proletarian (who won't even get a vote on the issue) I would suggest that there is a very significant correlation between the two.

Equally interesting is: has anyone tried to find the correlation between the existence of a Bill/Charter of Rights in a country on the one hand and the actual quality of human Rights on the other? Because there are blatant examples of places that have lots of Rights on the books

but are/were very bad from a human Rights viewpoint. Try USSR and Zimbabwe for example. (I use those two because I know that they annoy the New Class the most. There will be a Charter here, so I am going to lose – but I may as well have fun whilst I sink!) Again, as a prole with no vote on the issue I would suggest that the correlation is much smaller than that between Democracy and actual Rights.

The Chairman of the Consultation team, in a brief statement on SBS about the Consultation gave examples of the sort of thing that might be affected by a Bill/Charter. It seemed to me that they were all to do with individual examples of dubious treatment of some people such as Ms. Rau by government Department officials during recent years. Interestingly enough the Chairman also said (if my old memory serves me correctly) that the existence of a Bill/Charter might not have had any effect on some of those issues.

It is noticeable that former Senator Susan Ryan who is the Chair and lead spokesperson for the organisation Australian Human Rights Group gives examples of ‘system failures’. They are all to do with refugee detention centres and associated issues plus matters to do with Indigenous Australians. In explaining why a Bill/Charter is needed, Ryan asserts that claims that the system (without a Bill/Charter) was successful are wrong. Why? Because of all the problems referred to above that happened over ‘*over the last decade*’.

Lets not beat about the bush here; both the Chairman and, far more crudely, Ryan, are saying that the problems arose because of the Howard government. Was everything satisfactory until the election of the sequence of Howard administrations? Since Howard has gone, complete with horns and tail, things will presumably improve. But against the possibility that the proles get it wrong again and an equally evil government is elected in the future we need a Bill/Charter which will preclude the problems that have occurred ‘in the last decade’ from happening again.

As an English migrant who came here in 1970, I state that in my opinion Australia has a very good and very resilient system of government, certainly at the Commonwealth level. I do not say that I could not think of improvements because I can. I think the use of the Hare Clark voting system with Robson rotation would be a significant improvement, but nevertheless the set up here is good, certainly far better than in UK. I find it strange that native born Australians seem to lack my degree of respect and admiration for the Australian system.

It is, I think, fair to say that over the decades and centuries the thrust for representative, Parliamentary democracy has generally come from the Left of the political spectrum at the time. For me it is by far the greatest achievement of that side of political thinking and action.

I therefore find it somewhat unpleasant to see the push for a Bill/Charter – which *must* weaken the authority of Parliament (unless it does nothing at all) – coming mainly from the Left. Worse still is the fact that because they do not trust the people they do not wish to go for a Referendum. (That is why I earlier described The New Class as undemocratic). So they want to get the government whips going and push it through Parliament on the quiet.

There may be some who would deny that the motives of the New Class for a Bill/Charter are essentially undemocratic. For those people I quote a prominent ‘Rights’ person, Prof. Judith Brett. Glad to see the return of the ‘middle class progressives’ to what she sees as their rightful place, she sneers at Howard because he liked to take note of opinion polling, saying that under that approach

**“the opinions of the ignorant or uninvolved are given equal weight to those of the passionate and knowledgeable”.** (Quoted from ‘Rear View’ section of ‘Review’ *Weekend Australian*, 10/01/09)

At best that is egotistic elitism, at worst it is simple authoritarianism. The New Class exposed in all its nauseating arrogance. I find that attitude revolting. It is axiomatically anti democratic.

In the weeks since that quotation appeared in the paper I have waited and hoped that there would be a strong denial that such a statement was made. Alas. I have not seen any denial. I would like to think that there was a denial and I missed it.

I make the assumption that the attitudes that Brett apparently holds are common within the New Class. It explains why they do not want a Referendum: all those ignorant people would be given equality with the passionate and involved – meaning themselves.

We are the fortunate heirs of many who have striven and suffered for our democratic system. We have done nothing to deserve it, we are just lucky.

But it is surely our responsibility to defend it at all costs.

Please. Make a stand. Defend Democracy and freedom of speech.

**My submission to the Consultative Committee is that they either**

- (a) Recommend to the government that they do nothing vis a vis a Bill/Charter or**
- (b) Recommend to the government that a Bill of Rights be constructed and put to the people of this nation as a whole in the form of a Constitutional amendment.**