A HUMAN RIGHTS ACT FOR AUSTRALIA

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I ABSTRACT

It is a matter of considerable regret that in 2001 the renewed calls for a bill of rights to be included in the Constitution were ignored. This paper covers the attempts that have been made since Federation to include a Bill of Rights in the Constitution and also outlines the arguments against a bill of rights including the existing protections of rights through the common law and parliamentary sovereignty. The paper submits that Australia is suffering as a result of going against the international trend to include a bill of rights in the Constitution. Australia's failure to include a bill of rights in the Constitution is regrettable because Australia can ill afford to fall behind the rest of the developed world.

II INTRODUCTION

Sir Robert Garran was Australia's first federal public servant. He was appointed head of the Attorney-General's Department in 1901 and remained in that position for 32 years. As the head of this newly formed government department, Sir Robert's first job was to write out by hand, *Commonwealth Gazette No. 1*, containing the Proclamation by the Queen declaring the establishment of the Commonwealth and also the appointment of the Ministers of State. If the adoption of the *Commonwealth Constitution* represented the birth certificate of the nation, the proclamation was the birth notice. Sir Robert also found himself drafting the statute necessary to provide for the election of the first Commonwealth Government. Indeed, he was responsible for the drafting of many of Australia's early statutes and was widely recognised for his clear and concise drafting style. Former Prime Minister Billy Hughes is reputed to have remarked that the best way to govern Australia was to have Sir Robert Garran at your elbow.

His distinguished career, however, did not begin and end with his many contributions to the public service. To this day, he is acknowledged as a fine constitutional scholar – he is most particularly fêted for his seminal text, the *Annotated Constitution of the Australian Commonwealth,*

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which he co-authored with John Quick in 1901. His constitutional expertise, so evident in this work, was gained during his long association with the pro-federation movement in Australia and his involvement in the creation of our *Commonwealth Constitution*.

In an interview with Sir Robert Garran, recorded a few years before his death in 1957, he reflected upon his life and, in particular, the period leading up to Federation in 1901. In answer to the question 'has Federation turned out as you expected?' Sir Robert replied 'By and large the sort of thing we expected has happened but with differences. We knew the Constitution was not perfect; it had to be a compromise with all the faults of a compromise.'

This article revisits something which today we might regard as one such compromise; the failure to include a *Bill of Rights* in our Constitution. It is a matter of considerable regret that at the Centenary of Federation in 2001, the renewed calls for a *Bill of Rights* for Australia were ignored.

The question whether Australia should have a *Bill of Rights* has been the subject of a great deal of public discussion and debate. The omission of a *Bill of Rights* from our Constitution is one of the elements which marked it as different to the United States Constitution, from which a number of provisions were derived. The omission was not by accident. The inclusion of a *Bill of Rights* was proposed and debated at the Conventions which preceded and informed the drafting of the Australian Constitution. Its inclusion was defeated, somewhat ironically, on the basis that a 'due process' provision would undermine some of the racially discriminatory colonial laws in place at that time, including those which were concerned with immigration and others which were to the detriment of racial minorities. It appears that the founders were careful to ensure that the provisions of these laws would not be open to challenge on the basis of individual rights or constitutionally entrenched provisions such as a provision for due process.

III PREVIOUS ATTEMPTS TO SAFEGUARD HUMAN RIGHTS

Over the years since Federation, a number of attempts have been made to correct what many have regarded as a fundamental failure of our Constitution to safeguard basic human rights. In 1929 and again in 1959 successive Commonwealth inquiries rejected proposals to include a *Bill of Rights* in the Constitution. Other proposals failed for lack of bipartisan support and overwhelming opposition from State governments that were loathe to forfeit any sovereign power to the Commonwealth.[1] Most of

1 Brian Galligan, Rainer Knopff and John Uhr, 'Australian Federalism and the Debate over a Bill of Rights' (1990) 20(4) *Publius – Journal of Federation* 53, 57.

the Bills were successfully challenged in the political arena before being put to public referendum, however, the two that were submitted for public opinion were overwhelmingly defeated. The first rights referendum in 1944 merely sought to provide constitutional protection for the right to freedom of speech and expression and extend the right to freedom of religion, entrenched in section 116 of the Constitution, so as to bind the States.[2] The second attempt in 1988, intended to celebrate Australia's Bicentennial, was an even less ambitious version, seeking only to broaden the scope of existing express constitutional rights in light of what were regarded as narrow and legalistic interpretations by the High Court. These proposals were also defeated in the most resounding referendum rejection in Australia's history, gaining the support of only 31 percent of the population.[3]

The reasons behind this manifest repudiation stand testament to the capricious nature of the politics of constitutional reform. They also point to the need for more open political debate in the public realm and comprehensive State co-operation on rights issues. Ironically, until relatively recently, the right to freely debate and express political opinions was open to challenge due to the lack of protection of the fundamental freedoms which formed the very basis of these impugned referendums.

The Centenary of Federation stimulated public debate on the subject of the need for fundamental reforms to the Australian system of government. The various popular Constitutional Conventions organised by the non-partisan Constitutional Centenary Foundation, commemorating the constitutional conventions of the 1890s, commencing with the Sydney Convention of 1891. Each tended to identify support for the inclusion of recognition of fundamental human rights in the Constitution, as well as a preamble recognising the prior occupation and special position in Australia of its indigenous peoples. Similar sentiments came out of the various Schools Constitutional Conventions organised under the auspices of the Constitutional Centenary Foundation. In the end, however, the political and constitutional debate in the period leading up to the Centenary was dominated by the republic issue and debate about the preamble. These issues also dominated the official Constitutional Convention sponsored by the Commonwealth, culminating in our latest Constitutional Referendum in 1999. That, of course, dealt with the question whether we should become a republic and the proposals relating to the Preamble to the Constitution. The *Bill of Rights* debate seems to have disappeared in the wake of these other issues. Although

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2 Murray Wilcox, *An Australian Charter of Rights?* (Sydney: Law Book Company, 1993) 211-212.

3 Galligan, Knopff and Uhr, above n 1, 62.

the constitutional change required to implement a republic could have been an opportune time for incorporating a *Bill of Rights*, the fact that the republic issue has faded, at least for the time being, has meant that the crucial issue of the protection of human rights has also been put aside.

Many have argued that the common law and the doctrines of parliamentary sovereignty and responsible government combine to give adequate protection to the rights of citizens. This belief is apparent from the arguments of many delegates to the Convention Debates that preceded Federation. Before considering the merit of this argument, I would like to first clarify what is meant by the phrase 'common law'. The 'common law' refers to judge-made law and judge-developed law. In its broadest sense, it includes the interpretation of statutes and constitutional provisions. The common law has protected civil and political rights in five main ways. First, it has recognised and protected a number of rights and freedoms which it has seen as fundamental, such as freedom from arbitrary arrest and detention by the development of the writ of habeas corpus. Secondly, by the use of prerogative writs and other administrative remedies it has developed a comprehensive array of protections against procedural unfairness and arbitrary decision-making by Ministers, officials and administrative tribunals. Thirdly, by responding to the ever-increasing amount of legislation that regulates our conduct, it has developed rules of statutory construction that limit the degree of legislative encroachment onto our rights and freedoms. Fourthly, in recent years the High Court has begun to give new life to some of the express guarantees in the *Constitution*. These existing constitutional rights, namely the right to a trial by jury, freedom of religion and rights of state residents, had, until comparatively recently, been consistently construed in narrow and literal terms. Finally, some judges have argued that limitations on legislative competence to contravene fundamental rights are to be found in the 'peace, order and good government' formulae in our various Constitutions, or in implications to be drawn from the structure of the Australian Commonwealth Constitution and the free and democratic nature of Australian society.

In 1986, the then Chief Justice of the High Court of Australia, Sir Anthony Mason, wrote that:

> … the common law system, supplemented as it presently is by statutes designed to protect fundamental human rights, does not protect fundamental rights as comprehensively as do constitutional guarantees and conventions on human rights …The common law is not as invincible as it was once thought to be.[4]

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[4] Anthony Mason, 'The Role of a Constitutional Court in a Federation: A Comparison of the Australian and United States Experience' (1986) 16 *Federal Law Review* 12.

This view was echoed by Hilary Charlesworth who considers that:

> … common law protection of rights is minimal; the Commonwealth government's power to legislate to implement international obligations with respect to human rights has been only partially and inadequately exploited; the States generally have given the protection of human rights a low legislative priority; and Australian participation in international human rights instruments has often been diffident.[5]

The significant step made by the High Court in 1992, to imply a limited right of freedom of political communication into the Constitution[6] heralded a new approach in constitutional interpretation in respect of what are considered to be fundamental civil rights. In employing techniques of constitutional implication, the High Court has made it clear that it will step in to protect individuals where Parliament has failed to act to protect rights. This approach has not been without criticism and there has been something of a retreat in later decisions.

Reliance on judicial implication of rights is not a satisfactory approach. The protection that they offer is dubious. Absent express or implied constitutional provision, the common law is inherently subject to reversal or modification by legislation. Therefore the common law is a rather unsuitable vehicle for the invalidation of legislation that may encroach upon fundamental rights.[7] Moreover, the common law is ambiguous and derives its content from history. Thus, like the racist colonial laws in force at the time of Federation, many common law principles are unsuitable or inappropriate today. An example of this can be found in *Mabo*[8] where the common law doctrine of *terra nullius* was declared obsolete by the High Court. George Winterton has observed that it may be difficult to 'distinguish between those common law doctrines which are 'fundamental' and…those which are obsolete.'[9] There is also the question of how far rights, that are implied judicially, can extend to protect individuals against the arbitrary exercise of government power. In view of this, and in the tradition of democracy, a *Bill of Rights* is a preferable option.

In the absence of a carefully drafted instrument there is a potential danger that certain judicially implied rights may conflict with other rights

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5 Hilary Charlesworth, (1994) 'The Australian Reluctance About Rights' (1993) 31 *Osgoode Law Journal* 195.

6 *Nationwide News P/L v Wills* (1992) 177 CLR 1; *Australian Capital Television P/L v the Commonwealth* (1992) 177 CLR 106.

7 George Winterton, 'Separation of Judicial Power as an Implied Bill of Rights', in G. Lindell (ed) *Future Directions in Australian Constitutional Law* (Sydney: Federation Press, 1994) 205.

8 *Mabo v Queensland (No.2)* (1992) 175 CLR 1.

9 Winterton, above n 7.

which are also considered fundamental. An obvious example is the right to freedom of speech as against the right not to be defamed. This conflict was addressed by the High Court in *Theophanous v Herald and Weekly Times*[10] where it was held that the common law cause of action of defamation must yield to an implied constitutional right. This decision exposes the inherent contradictions that surface when a right implied into the Constitution from the common law is pitted against an equally fundamental and well recognised common law right.

The question whether Australia should have a *Bill of Rights* and, if so, in what form and with what content is essentially a political question. Opinions differ regarding whether it is proper for a judge to express an opinion one way or another on the question. In 1988 the former Chief Justice of the High Court, Sir Anthony Mason, announced that he had changed his mind on the answer to the question and was now in favour of a *Bill of Rights*. He did so because Australia was going against the international trend and was getting out of step with comparable countries such as Canada.[11] Another former Chief Justice, Sir Gerard Brennan, was more circumspect when he said in 1992:

> We could introduce a Bill of Rights and have it administered by our existing courts, but would Australians wish that to be done? The voting at the last referendum suggests that the answer is resoundingly negative. However, non-party political interest in and discussion of the Constitution in the last decade of this century, restores the question to the agenda. I do not propose an answer to the question for reasons which I shall mention. The question is essentially political and should be answered by reference to the political needs that might be satisfied by an entrenched Bill of Rights and the burdens which might be imposed by its introduction.[12]

However, Sir Gerard Brennan spoke without the benefit of the results of research being conducted at that very time. In 1993 a systematic and extensive survey of popular opinion found that fifty-four per cent of Australians did not think that human rights are well protected under the existing system. Seventy-two per cent were in favour of the adoption of a *Bill of Rights* and sixty-one percent believed that the final decision in relation to human rights matters should rest with the courts rather than the Parliament.[13] The same survey also found that the views of most politicians were significantly different from those of the people they represent. Thus seventy-eight percent of Members of Parliament, at both

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10 *Theophanous v Herald and Weekly Times* (1994) 124 ALR 1.

11 Anthony Mason, *A Bill of Rights for Australia?*; Address to the Australian Bar Association Bicentennial Conference (1988).

12 Gerard Brennan, 'The Impact of a Bill of Rights on the Role of the Judiciary: An Australian Response' in Philip Alston (ed) *Towards an Australian Bill of Rights* (Canberra: Centre for International and Public law, 1994) 184.

13 Brian Galligan (1993) "Protection of Rights", in *Constitutional Centenary*, 17.

Commonwealth and State levels, concluded that human rights were already well protected within Australia. Not surprisingly, seventy-six per cent also considered that Parliament rather than the courts should be the final arbiters in matters affecting human rights.

IV WHAT RIGHTS NEED PROTECTION?

Whether a *Bill of Rights* is constitutionally entrenched or contained in an ordinary statute, the question remains what rights can be considered so fundamental as to merit protection. As a result of two hundred years of relatively open immigration, Australia has developed a rich and diverse culture. Australia today is a multi-cultural, multi-religious, politically complex society which has divergent stances on questions of public and private morality and rights, as well as some projected if not present differences in social status. In a fragmented and pluralistic society such as ours, it will be a difficult task to design a comprehensive set of rights and freedoms that meet with the approval of all constituents. The Bill proposed by the then Commonwealth Attorney-General, Senator Lionel Murphy, in 1973 was modelled largely upon the *International Covenant on Civil and Political Rights*, to which Australia has acceded. It is arguable, however, that the rights enshrined in the Constitution should be more closely adapted to Australia's own specific constitutional and legal traditions.[14] This is especially the case where it is the responsibility of the judiciary to interpret and enforce such rights. Very careful, clear and concise drafting methods, such as those employed by Sir Robert Garran, must be used to guard against unintended interpretation by the courts.

When legislation gives very wide powers to courts to decide issues that may involve questions of social policy, the fear is sometimes expressed that results may differ according to the social or political philosophy of the judges that decide each case. In these circumstances it is argued that uncertainty and injustice may be introduced into the law. Some also claim that the traditional judicial process is inappropriate for the determination of rights because of the restrictive rules concerning evidence and procedure adopted by the courts.[15] For example, certain social facts that are irrelevant to the adjudication of other matters may be highly relevant to the determination of issues concerning individual rights.[16] Of course, those who hold these concerns about the judicial review of a *Bill of Rights* must necessarily have deeper concerns about the judicial implication of rights in the Constitution. The potential

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14 Australia Constitutional Commission, *Final Report of the Constitutional Commission* (Canberra: Australian Government Publishing Service, 1988) 469.

15 Australia Constitutional Commission, above n 14, 473.

16 Australia Constitutional Commission, above n 14, 473.

impact on perceptions if not the reality of judicial impartiality is clearly a problem. Campbell argues that 'drawing the courts into a more overtly political role … reduces their capacity to fulfil their prime role of administering rules chosen for them in an impartial and non-political manner.'[17]. Others point to the necessity of the High Court making value judgments on behalf of all Australians in the determination of what rights are fundamental as something which is undesirable.[18] The uncomfortable reminder of the doctrine of separation of powers underlying the Commonwealth Constitution also resonates in this respect.

V ARGUMENTS FOR AND AGAINST A BILL OF RIGHTS

The arguments for and against an Australian *Bill of Rights* are well known and have been the subject of many monographs and scholarly articles. They were also very thoroughly expounded in the 1987 *Report of the Advisory Committee to the Constitutional Commission on Individual and Democratic Rights*.[19] Briefly, the arguments in favour of a *Bill of Rights* include the inadequacy of present constitutional provisions; the inadequacy of the common law; the statutory erosion of rights upheld by the common law, the enhancement of democratic government; the educational role of constitutional rights; the need for an additional guide for judicial interpretation and a means of meeting Australia's treaty obligations.

The arguments against a *Bill of Rights* in Australia have principally relied upon the protection afforded by the common law, which was dealt with earlier. Others are based on the contention that a *Bill of Rights* would confer too much power on the courts and, in particular, the High Court. Another perceived problem with a *Bill of Rights* is that rights and freedoms tend to be stated in very general terms without qualification. The United States experience has shown how influences such as the political philosophy or values of the person called upon to interpret such legislation can result in widely differing interpretations. This has often been used as an example of the danger inherent in giving broad statements of principle constitutional or statutory effect.

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17 Tom Campbell, 'Democracy, Human Rights and Positive Law' (1994) 16 *Sydney Law Review* 195, 210.

18 Leslie Zines, 'A Judicially Created Bill of Rights?' (1994) 16 *Sydney law Review* 166, 183; Jeremy Kirk, 'Constitutional Implications From Representative Democracy' (1995) 23 *Federal Law Review* 37, 71; Michael Coper, 'The High Court and Free Speech: Visions of Democracy or Delusions of Grandeur?' (1994) 16 *Sydney Law Review* 185, 191.

19 Australia Constitutional Commission, *Report of the Advisory Committee to the Constitutional Commission on Individual and Democratic Rights* (Australian Government Publishing Service: Canberra, 1987).

Arguments against the constitutional entrenchment of a *Bill of Rights* can also be compelling on a practical level. In view of our method of constitutional alteration by referendum under section 128, and, in light of the previous abortive attempts to entrench very basic fundamental rights in Australia, the odds do not look good for a *Bill of Rights* incorporated in the Constitution. However, there is the option of legislating for a *Bill of Rights*. Professor George Williams has expounded upon the benefits of statutory *Bills of Rights* enacted by both the State and Commonwealth legislatures.[20] He suggests that State governments could take a leading role in this process. The New South Wales Parliament took such an initiative with its Standing Committee on Law and Justice holding an inquiry into whether New South Wales should enact a *Bill of Rights*.[21] The ACT has enacted a Bill of Rights.

It is conceivable that complementary rights statutes could be enacted simultaneously like the *Australia Acts* of 1986 to ensure that all Australian citizens are equally protected. Statutory charters of rights, like that recently adopted in the United Kingdom, can be very effective. Many commentators see the subject of a Bill of Rights as the exclusive domain of the elected representatives of the people. An active judicial role in relation to the extension of the fundamental rights which are already protected by the common law is seen as an affront to 'parliamentary sovereignty' and the inherently democratic nature of the operation of our parliamentary system. It is often argued that the judges should not seek to change the existing common law or make new law because they are not elected, not representative and not sufficiently accountable. However, the parliaments of Australia have, in recent years, failed to take up the High Court's lead in respect of the protection of core human rights.

VI INTERNATIONAL TRENDS

Of the nations that previously relied upon the common law to defend human rights, Australia stands out as the only one that continues to put faith in this method of protection. Canada, South Africa, India, Pakistan, and New Zealand have all adopted a *Bill of Rights*, whether in statutory form or constitutionally entrenched. More importantly, in recognition of its accession to the *European Convention on Human Rights*, the United Kingdom enacted a *Bill of Rights* in 1998 as part of its domestic law. This latter development is of great significance to Australia, because it is from the English common law that we have drawn in the protection

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20 George Williams, 'Legislating for a Bill of Rights' (2000) 25(2) *Alternative Law Journal* 62.

21 Williams, above n 20, 64.

of human rights. There can be no doubt that this step was necessary because the protection offered by the common and statute law did not provide sufficient protection to comply with the obligations imposed by the *European Convention*. Given that the United Kingdom has recognised that its common and statute law provides insufficient protection for fundamental human rights by pan-European standards, on what basis can Australia justify a lesser legal standard of protection of human rights than all of Europe, Canada, India, New Zealand, Pakistan and South Africa?

The fact that Australia is 'behind the times' in this regard, is both a blessing and a bane. It is a bane because Australian citizens must currently rely upon the limited powers of the courts to protect their rights and freedoms. While section 92 of the *Commonwealth Constitution* provides that 'trade, commerce, and intercourse among the States…shall be absolutely free' and guarantees freedom of movement by citizens around Australia, there are few other guarantees. The provision in section 80 of the Constitution, for trial by jury, can be nullified by the creation of offences tri-able summarily. Section 116 of the Constitution, however, contains a constitutional guarantee of freedom of religion that goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion.[22] However, we have no other positive freedoms 'as of right' without judicial decree. But it is also a blessing because we are in a position to learn from the mistakes and misfortunes of others. For instance, a criticism of the 1982 *Canadian Charter of Rights and Freedoms,* is that 'except in criminal cases, the major beneficiaries of Charter rights are corporations, professionals and other privileged interests'.[23] This runs counter to conventional notions that a *Bill of Rights* in a liberal democracy is supposed to express the will of the majority and protect the rights of minorities. In fact, one commentator has argued that the Canadian experience has shown that, for human rights to be adequately protected, they should be enforceable not only against the State but also against individuals and corporations who infringe such rights.[24]

The experience of the United Kingdom since the enactment of the *Human Rights Act* in 1998 is encouraging. There is already a body of scholarly commentary which has debated the scope and impact of its application. This is healthy. Necessarily, the domestic recognition of

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22 *Adelaide Company of Jehovah's Witnesses Inc v Commonwealth* (1943) 67 CLR 116, 124 (Latham CJ).

23 Andrew Petter, 'Canada's Charter Flight: Soaring Backwards into the Future' (1989) 16 *Journal of Law and Society* 151, 152.

24 Charlesworth, above n 5, 230.

human rights will give rise to a new key area of jurisprudence. There clearly will be a significant impact upon the practice of private law in the United Kingdom and also upon judicial reasoning and methods of interpretation.[25] Nevertheless, the incorporation of the *European Convention on Human Rights* into domestic law by the *Human Rights Act* has been heralded as a great step forward for that country. Many commentators expect that the development of a new culture of respect for human rights will result from the Act and eventually permeate British society.[26]

Currently, Australia's obligations under the *International Convention of Civil and Political Rights,* which follow this country's accession to the *First Optional Protocol,* can only be tested by application to the United Nations Human Rights Committee in Geneva. This is not a formal or binding judicial process and its effectiveness is questionable. The best outcome an aggrieved Australian can hope for is a short-lived international embarrassment for the government. In the absence of action by parliament to incorporate Australia's human rights treaty obligations into domestic law, the High Court found it necessary in the past to make some moves in this direction itself. Australia is a party to the *United Nations Convention on the Rights of the Child* under which the best interests of the child are declared to be a "primary consideration" in all relevant actions concerning children. In *Minister for Immigration v Teoh*[27] it was held that the provisions of the Convention were relevant to a decision to deport the father of children. While such provisions were not incorporated into domestic law, accession to the Convention resulted in an expectation that those making administrative decisions in actions concerning children would take into account as a primary consideration the best interests of the children, who were themselves Australian citizens. Their father was not, although he had applied for resident status. Mason CJ and Deane J[28] said that the provisions of an international convention to which Australia was a party, especially one which declares universal fundamental rights, may be used by the courts as a legitimate guide in developing the common law. It was acknowledged, however, that courts should act in this fashion with due circumspection, when the Parliament itself has not seen fit to incorporate the provisions of a convention into domestic law. A

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25 James Spigelman, 'Access to Justice and Human Rights Treaties' (2000) 22 *Sydney Law Review* 141, 144; Gavin Phillipson, 'The Human Rights Act, 'Horizontal Effect' and the Common Law: A Bang or a Whimper?' (1999) 62 *The Modern Law Review* 824, 825.

26 Lord Chancellor, Lord Irvine of Lairg, in a keynote address to the Annual Conference of the Bar, UK, 9 October 1999 as cited in Spigelman, above n 25, 145.

27 *Minister for Immigration v Teoh* (1995) 69 ALJR 424.

28 *Minister for Immigration v Teoh* (1995) 69 ALJR 424, 430-431.

departmental instruction which, in effect, ignored the interests of the children was held to render the proceedings invalid for want of procedural fairness.

VII CONCLUSION

Whether the Australian government will seek to revisit the issue of domestic recognition of international human rights obligations, in light of the experience of the United Kingdom is yet to be seen. In the meantime it is vital that the judiciary, lawyers, and the public keep the issue on the agenda. In an address in 1999 to the National Conference of the Australian Plaintiff Lawyers Association, Chief Justice Spigelman of New South Wales warned that a failure to keep up with other common law countries in respect of human rights could result in significant intellectual isolation for Australia.[29] In this country we still draw significantly upon the judicial experience in England and Canada in our interpretation, application and development of the common law. The effect of the developing human rights jurisprudence on the common law in Canada is already limiting our comparable base. In this context it is also relevant that Hong Kong has incorporated the *International Convention on Civil and Political Rights* into its domestic law.The same may follow in the case of New Zealand, although their legislation is not the 'full Bill' as in the case of Canada and the United Kingdom. The British decision to enact a domestic *Bill of Rights* could cause the common law in each of our countries to seriously diverge.[30] Australia will not only be geographically isolated, but also legally isolated. In these times of growing globalisation, Australia can ill afford to fall behind the rest of the developed world.

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29 Spigelman, above n 25, 150.

30 Spigelman, above n 25, 150.