

Collectivist utopians are invoking 'human rights' to amend the Constitution in ways which would encourage governments to negate the traditional individual rights which should be enjoyed by everybody. They are confusing human rights with privileges, that is, with legal rights to be enjoyed by only some people, such as women, aborigines, the disabled, ethnic minorities, the poor or one-armed footballers. They are being allowed to get away with very sloppy argument.

An Australian Bill of Rights asserting that no Australian shall suffer arbitrary arrest, be held without trial, be made guilty retrospectively or denied due legal processes, and that every Australian is free to speak, think, read, worship, work and associate as he wishes, might help to protect us from over-zealous authority. But that is not what some people want. The Evans Bill of Rights---now withdrawn---by encouraging governments to confer privileges on some people, would have encouraged them to trammel the rights of others.

Privileges (legal favours) must conflict with the rights of people who are not members of the privileged group. Further, in the cases of any of the common commercial privileges, even those who benefit by them must have their liberty restricted to prevent any individuals undermining the monopoly.

It may be asked, are not the underprivileged entitled to (compensating) privileges? There is no simple answer. Certainly not an answer plain enough to set in Constitutional concrete.

We are all underprivileged in something and none of us in everything. The 'underprivileged', whom most people want to help, are those whom on the balance of all their circumstances are seriously disadvantaged. But who are they?

An Australian suffers pettifogging restrictions which are destroying his economy but, with one major exception, basic rights are much better respected here than in most countries. We need not fear arbitrary arrest. We have seldom been conscripted, speech is relatively free. With a few exceptions the right of assembly is respected. We are free to worship. We are governed by ex ante rules most of the time. Retroactive law is uncommon and it never creates criminal offences. We should exercise care lest we make a tolerable situation worse.

Only in the field of industrial relations are our common 'rights' habitually denied. The distinctions drawn in employment between Australian unionists and non-unionists are like those drawn in South Africa between whites and blacks. They are objectionable in both places.

Loss of the property right a person should have in his own skills and effort affects most Australians. The loss is particularly serious in the case of a man who has no other property.

If I were, say, a boilermaker, I would be denied the right to ply my trade for less money than prescribed by law, or under conditions proscribed by law even if that meant unemployment. For all practical purposes, one of my work requirements would be a union ticket. So much for my right of free association! Even when I was working within the law, union pickets might physically harass me if I declined to join a strike or go-slow.

The constitution which, at least in theory, prevents the government taking my car without just compensation offers me no similar protection for my effort, the fundamental property, from which all other property is derived. The government, via the Arbitration Commission, reduces the value of some people's skills and efforts to nothing, offering only the dole in compensation. The poor are forbidden to use what is probably their only useable property.

Stories that freeing-up the labour market will cause children to be put in coal-mines and so forth are fiction. Today the most real and pressing evil is not that some people have to work too hard but that they are stopped from working at all, even though they wish to. The government does not owe these people a job but surely it has an obligation to protect their right to work. Instead it connives in the theft of the poor man's property---his skills.

The most important role of any constitution---honoured by both time and theory---is that of protecting citizens by delimiting the power of governments. The great advocates of constitutional government---Montesque, Madison, Jefferson and de Tocqueville---understood that temporary majorities were not to be trusted and that democracy does not necessarily mean rights will be safe. Blind faith in democratic checks alone should be tempered by recalling that Adolf Hitler was once democratically elected, and given dictatorial powers by due process. Constitutions can in some circumstances be another rein on excesses of democratic enthusiasm.

Human rights defy precise definition but what we generally understand by them has been protected fairly well by custom and the common law. Many scholars believe that attempts to define rights in statutes will unavoidably limit them. Be that as it may, we can say certainly that to define group rights, which are really privileges, must subtract from individual rights. If we are to have a Bill of Rights it must simply reinforce the rights of individuals against anyone willing to use force---particularly governments and unions.

If we are to have a Bill of Rights, it needs to be modelled on

a tried and tested one---the best model would probably be the American, which is short, simple, relatively unambiguous, contains no hidden traps, and has stood the test of time in what is arguably the most free nation. The model certainly should not be taken from United Nations dreamings.

A liberal society is protected by laws but more by widespread understanding of individual 'rights' and the proper limits of government. Therefore the debate is more important than any constitutional amendments actually put to the people in 1988. Unless these are very circumspect the public will not carry them at the necessary referendum anyway.