



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**GRIEVANCE DEBATE**

**Bill of Rights**

**SPEECH**

**Monday, 7 November 2005**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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# SPEECH

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**Questioner**  
**Speaker** Ciobo, Steven, MP

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**Mr CIOBO** (Moncrieff) (5.11 pm)—In my first speech in this place on 13 February 2002, I posed the question ‘What is my purpose?’ In answering that question, I sought to outline a map that could guide my deliberations in my role as a member of the House of Representatives. In my first speech I touched on my fundamental beliefs as a Liberal Party member. These beliefs remain true and steadfast for me still today. Those beliefs were:

... in the sovereignty of the individual and their empowerment over the collective; in the responsibility every one of us has in a civil society; in the promotion of the family as the bedrock of any sustainable society; and in the limited role for the state in wealth redistribution and market intervention.

I continued:

Since the nefarious attack on all liberal democracies on September 11, I am steeled in my resolve to defend our freedoms. I am strengthened in my view that the Liberal Party remains in this country the greatest mechanism for resisting the incursion of the collective over the individual.

Today, nearly four years later, our nation and others continue to repel vicious and ruthless attempts to intimidate Western democracies and to curb the freedoms our people enjoy. Indeed, this very week, the executive arm of government is introducing a suite of new powers that will assist in enabling our front-line agencies, the men and women of the various Australian police forces, security agencies and other associated bodies, to fight against those who threaten our very way of life.

These enhanced powers are very necessary. The new threat paradigm the people of Australia and other peoples elsewhere must contend with is not predicated on our traditional view of nation state opposed to nation state. Rather, it is nation state against organised, but loose, collectives that we are preparing ourselves to fight. The men and women directly charged with maintaining Australia’s security need to have wide ranging powers in order to adequately perform their task. In the absence of good intelligence, terrorists are free to enjoy the same freedoms we all do in the West. In the absence of scrutiny, terrorists can plot and make preparations to murder and mutilate as many as their wicked plans aspire to. It is truly only the ability to gather intelligence and closely scrutinise potential terrorists among us that can provide reassurance to all Australians.

The concern, of course, is that in seeking to provide the necessary tools to our front line to adequately protect Australians and provide the security all Australians rightly demand, we must somehow not unduly erode the very freedoms we are fighting to maintain. Essentially, since the Magna Carta in 1215, Western democracies have been set apart from others through our pursuit and steadfast defence of liberty and human rights. The balance that must be achieved is between the desire for security and the individual incursions required to deliver it, on the one hand, and the need to maintain our gaze on individual freedoms and processes which continue to uphold the individual as the supreme focus in a liberal democracy, on the other. I can think of no better enunciation of this principle than the widely quoted American Declaration of Independence:

We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

In Australia, sharing as we do a common heritage with the United States, we enjoy constitutional and common law rights and responsibilities passed down through the generations from Britain. Our forefathers crafted an excellent Constitution that has stood the test of time in better shape than most. Developed as a blend of the US and UK systems of government, the Australian Constitution truly embodies the best forms of government and accountability that serve all Australians.

This parliament is guided by section 51 of the Constitution in the development and implementation of laws. Laws that fall outside of the Commonwealth’s jurisdictional heads of power are unconstitutional and without effect, as determined by the High Court of Australia. This is necessary as a check on the powers of the executive.

Unlike the positive list of responsibilities for the Commonwealth government outlined in section 51 of the Constitution, however, individual rights in Australia are far less clear. The Constitution itself does specify certain individual rights as part of its broader focus on providing limits to executive powers. In the main, however, individual rights are largely outlined through the development of common law precedent and through the mixed bag of statute law providing for rights. This unstructured approach to defining individual rights has served Australia reasonably well also. It does, however, particularly lend itself to individual rights being a product of judicial interpretation.

This characteristic of the development of rights at law within Australia I find troubling. In addition, in light of the new threat paradigm facing Australia and her legislators, I see the potential for increased conflict and uncertainty arising from the legitimate need to curb certain freedoms to uphold the right to security, being tested in courts, at the mercy of judicial interpretation and application of implied constitutional rights and common law precedent. This is a situation that cannot, and should not, continue.

In an environment in which the executive is required to explore the interplay of individual rights against the need to provide collective security, surely there is a role to also explore the reverse. Some Australians are uncomfortable with the executive's stronger pursuit of collective security at the expensive of individual freedom, even in the face of more calculated and malicious terrorist attacks. Other Australians place a higher emphasis on the need for collective security over individual freedom and are not necessarily concerned with a possible erosion of Western democratic principles of individual supremacy. Our personal views will, of course, reflect our respective weighting of these two competing demands. It is my contention that both viewpoints can be suitably comforted through the introduction of a statutory bill of rights in Australia.

This Australian parliament should be the principal tool of the will of the Australian people to legislate the individual-collective balance. A statutory bill of rights, at a time when the executive must tread more heavily in areas of individual rights, will provide the necessary counterbalance of providing and ensuring collectively that the individual remains the focus of a liberal democracy.

Currently, individual rights, because of their common law origin and their limited role and enunciation in the Australian Constitution, are subject to an activist court. A statutory bill of rights would provide greater clarity because it would be formulated by parliamentarians who are accountable to the Australian people. There should be very little scope for the Australian people to have those individual rights, the very keystone of Western liberal democracies, being subject to interpretation and judicial activism by those who are largely unaccountable and unknown—let alone the processes, which many Australians find completely mystifying.

The benefit of a statutory bill of rights will ensure that legislation will operate at the will of the parliament. As the composition of the parliament changes, so too perhaps is there scope for legislation pertaining to the bill of rights act to also change. I would propose that a court would not be able to strike down legislation that may sit in conflict with the bill of rights act. This is a crucial and fundamental keystone that underlies why it should be a statutory bill of rights rather than a bill of rights that perhaps most Australians associate with—that is, the United States Bill of Rights.

A statutory bill of rights will simply sit together with other pieces of legislation for courts to examine and to assess new legislation in comparison with. That legislation that might sit in conflict with a statutory bill of rights would simply have the court issuing, for example, a statement of incompatibility with the bill of rights act. Such a statement of incompatibility would seek to draw the attention of the media, of the opposition as well as of the Australian people to the operation of the new laws. The executive, of course, would then be required to outline the reason why such legislation is necessary or indeed to defend that legislation in the face of a statement of incompatibility by the High Court. A statutory bill of rights is necessary and important.