I pay tribute to Dr Laurie Brooks, a medical specialist who worked here in Penrith for many years. Other than his busy professional life, I understand he was chair of the Adult Education Committee that met regularly here at St Dominic's for almost twenty years. Gideon Goosen tells me:

Laurie’s interests in adult education covered a wide range of topics from scripture to Aboriginal rock art. He was also convenor of a Bible Study/Prayer group that met in the members' homes. He was liked by one and all and many have suggested the best word to describe him is "inclusive" in all he did - no one was left out. He was conscious of his health and was super fit.

Sadly he was injured in a bicycle accident and died after some days on life support. He embodied the finest attributes of the Australian thinking and compassionate Catholic. He lived by fine values and respected the rights of all. Invoking his memory, we come tonight to ponder Australian values and bills of rights.

Just before Christmas 2004, Justice Michael Kirby was receiving one of his many honourary doctorates. He was in the national capital. Before his university audience, he recited a litany of Australia's shortcomings in human rights. He said:

In the past year more than half a million British assisted migrants (who enjoyed common nationality when they came to Australia in the 1960s and 1970s) were revealed as vulnerable to ministerial deportation. If such laws are valid, the courts must uphold them. Earlier, the High Court unanimously upheld a law providing for detention of children behind razor wire in remote parts of this continent. That law is unchanged although Parliament was thrice told that it is contrary to the international law of human rights.

There were many other decisions of the High Court during the past year in which the Court was divided on matters of deep principle... (including) the right under federal law to hold a stateless person in detention indefinitely, despite the lack of any court order to punish him for any offence.

The list goes on. Of course many Australians, perhaps most, do not care. But for me, I confess that it makes depressing reading. Most judges of our tradition - perhaps most lawyers - like to think that in Australia we are always working towards just laws and court decisions that uphold fundamental human rights. Alas, in many things in the law, we seem to fall short. And there is not much that the courts can do about it.
Though there is nothing novel in Kirby's protest against our national shortcomings in the protection of human rights, his note of despair is new. He now sits on a court whose decisions make "depressing reading" for at least one of its members. And what is more disturbing, he has concluded that "there is not much that the courts can do about it." Just a few hours before on the other side of the globe, unknown to those in the Canberra graduation hall, the House of Lords was delivering its opinion in a case which was a damning condemnation of the Blair government's encroachment of civil liberties in the name of national security post- September 11. While the Australian courts were powerless to order the release of children from behind the razor wire, the law lords by a majority of 8 to 1 were striking down a law which permitted the UK government to keep suspected international terrorists in detention. While Kirby sees himself as a lone voice on the High Court of Australia, he would have been very at home amongst the majority of 8 in the Lords.

While the majority of Australia's High Court authorised the long term mandatory detention of a stateless Palestinian asylum seeker who was no security threat to the community, their colleagues on the House of Lords said such detention could not even be imposed on suspected international terrorists. The Lords followed the lead of the US Supreme Court which had already struck down mandatory detention of convicted foreigners who had served their prison terms and who could not be deported.

Their Lordships were very unimpressed with the UK government's attempt to exclude the courts from any role by distinguishing between democratic institutions and the courts. The most senior Law Lord, Lord Bingham of Cornhill said, "The Attorney General is fully entitled to insist on the proper limits of judicial authority, but he is wrong to stigmatise judicial decision making as in some way undemocratic." Meanwhile Australia's Attorney General Philip Ruddock had made an art form of such stigmatisation while Minister for Immigration.

Though the UK decision was shaped by a consideration of the interplay between the European Convention on Human Rights and Westminster's legislation, Lord Hoffmann was insistent: "I would not like anyone to think that we are concerned with some special doctrine of European law. Freedom from arbitrary arrest and detention is a quintessentially British liberty, enjoyed by the inhabitants of this country when most of the population of Europe could be thrown into prison at the whim of their rulers." He had to concede that the judges would have been powerless to intervene in this case prior to the passage of the UK Human Rights Act 1998 which rendered parliament's attempts to suspend habeas corpus or to introduce mandatory detention for persons not convicted of criminal offences subject to judicial review.

Musing on the relationship between rights and values, Chief Justice Murray Gleeson told his fellow Catholic lawyers in 2004, “In the past, religion provided many of the common values by reference to which conflicts of rights or interest were resolved. Our law still reflects many Christian values.” He then reflected on the nature of a pluralist society:1

By definition, that means that there is competition, not only when it comes to applying values, but also in identifying values. Everybody is aware that our society is rights-conscious. A rights-conscious

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1 Murray Gleeson, “Rights and Values”, Melbourne Catholic Lawyers Association, 18 June 2004
society must also be values-conscious. If it is not, then we have no way of identifying those interests that are rights, or of resolving conflicts between them. Rights cannot work without values.

When interviewed about this speech in a broad ranging, profile interview in 2006, Gleeson told the *Australian Financial Review*:²

I don’t think judges should allow idiosyncratic values to influence their reasoning process. I can’t think of any examples in which I have self-consciously applied my own values except insofar as they are reflected in … legal principles. But self analysis is a risky process. A judge’s duty is to administer justice according to law and if you can’t perform that task then you shouldn’t be a judge.

In his Australia Day Address this year, Prime Minister John Howard looked back on the first century of Australian nationhood and reflected on the balance we have achieved as a nation, encouraging “individual achievement and self-reliance without sacrificing the common good”, valuing our independence, chafing against bureaucracies that deny us choice and the capacity to shape our lives, while being “determined not to let go of the Australian ethos of the fair go for all”. We are now a “diverse society which practices tolerance and respect”.

He set down his own catalogue of our shared Australian values:

- respect for the freedom and dignity of the individual
- a commitment to the rule of law
- the equality of men and women
- a spirit of egalitarianism that embraces tolerance, fair play and compassion for those in need.

Conceding our cultural diversity, he insisted that like most nations we have a dominant cultural pattern, and for us that pattern comprises:

- Judeo-Christian ethics
- the progressive spirit of the Enlightenment
- the institutions and values of British political culture

When addressing the Australian Parliament on 27 March 2006, British Prime Minister Tony Blair said:³

We know the values we believe in: democracy and the rule of law, but also justice, the simple conviction that, given a fair go, human beings can better themselves and the world around them. These are the values that our two countries live by, and others would live by if they had the chance. But we believe in more than that. We believe that the changes happening in the world that make it more integrated, the globalisation that with unblinking speed reshapes our lives, are an opportunity as much as a risk. We are open societies. We feel enriched by diversity. We welcome dynamism and are tolerant of difference.

The public debate about the proposed changes to Australia’s migration laws in recent weeks suggests to me that there are a couple of other strands to our dominant cultural pattern in Australia. They are isolationism, a fear of the Other, an obsessive fear

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³ CPD (HofR) 4; 27 March 2006
about border protection which would be a national pathology unless we were an island nation continent, and a NIMBY (not in my back yard) complex which extends to pretending to ourselves that refugees in direct flight to our shores should be the ultimate responsibility of any country but us.

Just this month, Mr Peter Hughes, the most senior Australian public servant responsible for this area of policy explained to a Senate Committee:  

The situation in 2001 had to do with people who were coming to Australia as secondary movements – it was not a question of first flight – and there was a possibility of returning them to Indonesia, where arrangements had been made for them to be looked after and for them to stay while any protection claims were heard there. I think the situation is different for any people who might be coming to Australia from a neighbouring country as a matter of first flight.

In 2001, these people arriving on our shores were someone else’s responsibility – anyone’s but ours. Fast forward now to 2006. Those boatloads of secondary movers have stopped coming. One boatload of 43 asylum seekers from West Papua flee to Australia in direct flight, fleeing persecution by the Indonesian authorities. They do not engage people smugglers. They make their own way here unaided. Indonesia objects. What do we do? We say we will now treat them in the same way as the secondary movers. So despite the words of Mr Hughes to our parliamentarians, how is their situation now to be different?

This is why so many informed lawyers and advocates are perturbed by this new legislation. We have argued that if every country signed the Refugee Convention and then adopted this policy, persons directly fleeing persecution would have nowhere to land. The Convention would be dead in the water. When this was put to Mr Hughes, he told our politicians, “I do not agree with the basic proposition, in that different countries choose different ways to deal with people under the convention, according to their own circumstances….There are quite different practices around the world to respond to particular circumstances….There are no proposal for everyone to choose this particular policy.”  

So there you have it. There might be problems if other countries followed our lead. But while we go it alone paying Nauru to accept the human flotsam coming to our shores, there is no problem. Mr Hughes who is First Assistant Secretary of our Refugee, Humanitarian and International Division had to concede that 95% of the refugees we shipped under the Pacific solution ended up in Australia or New Zealand anyway. But it has now got to the stage that Australia is not prepared publicly to say that we bear the primary responsibility to accept the few refugees directly fleeing to our shores seeking protection. The government says that the Minister has a discretion to allow some persons to be processed in Australia. But that discretion would not be exercised favourably for Papuans in the future because Jakarta objects. Mind you, Jakarta voiced no objection when Australia gave refugee status to persons fleeing persecution in Ambon. Papuans in direct flight coming to Australia will languish in Nauru until another country agrees to take them or until the media spotlight has turned away and they can be quietly admitted to Australia at a future time. Meanwhile Mr Hughes tells Parliament that the Nordic countries, the US, Canada, the UK, and New Zealand might all be available to do their bit to help us – even though it is our problem, and even though our problem is much less than the

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4 Hansard, L&C 61, 26 May 2006
5 Ibid, 63
problem confronting most of these other countries. Mr Hughes says, “There are clearly opportunities, if it is important to government, for high-level approaches to be made in order to reach some form of cooperation on that issue.” Governments should have better things to do with their limited opportunities for trade-offs in high level approaches. As a matter of course, Australia should accept the handful of people turning up on our shores in direct flight seeking asylum.

Five years on, we Australians need to admit that we have been deceived by the Howard government. We were told that there was a need for harsh and expensive measures specifically to counter secondary movers employing people smugglers. Now those same measures are to apply to refugees in direct flight without people smugglers. The government knew it could not implement such a unilateral non-humanitarian plan in one shot. They needed to take an incremental approach lulling the public into a moral torpor, convincing us first that these people had done something wrong in coming to our shores and then applying the measure to those who had done nothing wrong on any fair-minded calculation, and now in the name of equal treatment.

When the Pacific Solution was first introduced, I was meeting regularly with Minister Ruddock and his departmental officials. The government’s primary concern was to deter asylum seekers from engaging people smugglers and making secondary movements from countries where they were already afforded protection, to Australia’s outlying islands - from which they could then trigger a process delivering themselves a better migration outcome. The government was anxious to maintain “the franchise” on who reached Australia rather than handing “the franchise” to the people smugglers.

The government always assured citizens like me that there was a residual ministerial discretion which would allow the minister to grant permanent protection promptly onshore to any refugee engaged in direct flight to Australia, especially when such a refugee had not employed people smugglers. That discretion must be maintained, and government must confirm that the discretion exists for that purpose.

If only a small number of refugees continue to reach Australia in direct flight from persecution in Indonesia, Timor Leste or PNG, other countries will rightly view them as our responsibility. They should be processed promptly under the rule of law. Their resettlement should not be delayed while government exhausts all other fruitless options for placing them in any country except Australia. Any extension of the Pacific solution must include an exception for refugees in direct flight to Australia. A citizenry accustomed to public debate about rights and international obligations would not countenance their government trafficking a handful of refugees who have come in direct flight to its shores. Why do we do it? Minister Vanstone told the 7.30 Report last night, "We are taking into account what the Indonesians want because they are very helpful to us on border protection." This is code for: we pay the Indonesians to engage in upstream disruption to stop people engaging in secondary movements to Australia. In return we will ferry any bona fide refugees who flee directly from persecution in Indonesia to Pacific islands so as to minimise the political embarrassment to the Jakarta government.

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6 Ibid, 66
While Tony Blair came to office with a passionate commitment to enacting the UK Human Rights Act, John Howard has remained implacably opposed to the introduction of a bill of rights in Australia. In his Australia Day Address he spent considerable time trying to put a bill of rights off the legislative agenda for his remaining time as prime minister. He told the National Press Club that there was always the need to find “the right balance between the legitimate interests of the community on the one hand and individual civil rights on the other. And inevitably this will be a matter for passionate debate.” He then launched a lengthy salvo against a bill of rights in any form:

Some Australians have argued in recent times that the balance has moved too far. They want to shift it in the other direction, principally through a Bill of Rights. I believe this would be a big mistake for our democracy. A Bill of Rights would not materially increase the freedoms of Australian citizens. It will not make us more united, indeed I believe it would lessen our ability to manage and to resolve conflict in a free society. It would also take us further away from the type of civic culture we need to meet the challenges of today and tomorrow. No matter how skilfully crafted, a Bill of Rights always embodies the potential for misinterpretation, unintended consequences or accidental exclusion. History is replete with examples of where grand charters and lyric phrases have failed to protect the basic rights and freedoms of a nation’s citizens.

The strength and vitality of Australian democracy rests on three great institutional pillars: our parliament with its tradition of robust debate; the rule of law upheld by an independent and admirably incorruptible judiciary; and a free and sceptical press of the sort that we politicians simply adore. I’ve called this trilogy in the past the real title deeds of our democracy, a political inheritance that has given us a record of stability and cohesion that is the envy of the world. I have never been persuaded by those who claim that the road to good government is via taking more and more decisions out of the hands of the people’s elected representatives. It bypasses my comprehension that people should devote their life and their energy to securing a place in one of the Parliaments of the nation and then spend much of their time suggesting that decisions should be passed by that Parliament to unelected individuals or unelected bodies. In our parliamentary democracy, politicians are elected to make decisions on behalf of the community. They are elected by the people and, ultimately, they are answerable to the people for the decisions they make. To draw these decisions away from the legislature and the executive and to invest them in the hands of the judiciary would irrevocably change our democracy. And it would hamper our ability to respond to changes in a way that reflects the realities we now face.

And incidentally, does anyone seriously contend that we can improve the education of our children, raise our national productivity, or better care for older Australians by further entrenching the language and culture of rights in our public discourse? Together, responsive democratic institutions and an active civil society provide more effective protection for the rights of Australian citizens than any charter of rights could hope to achieve.

In 1998, I published *Legislating Liberty* in which I opposed the introduction of a constitutional bill of rights for Australia. Conceding the shortfall for the protection of rights in our constitutional machinery, I suggested that the shortfall could be made up in the long term with:⁷

- The passage of a statutory bill of rights similar to New Zealand
- A constitutional amendment guaranteeing non-discrimination against persons so that we could permanently fetter the Commonwealth parliament and government from discriminating against people on the basis of race, gender or sexual orientation

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• Continued access to the First Optional Protocol of the International Covenant on Civil and Political Rights which provides for equal protection and a ban on arbitrary interference with privacy
• A High Court open to the influence of international norms of human rights on statutory interpretation and development of the common law.

In the short term I suggested the creation of a Senate Committee for Rights and Freedoms which could complement and incorporate the existing Scrutiny of Bills Committee, the Regulations and Ordinance Committee and the Legal and Constitutional Committee by implementing a Commonwealth Charter of Espoused Rights and Freedoms as “a precursor to a statutory bill of rights”.

I conceded that “bipartisan intransigence by our federal politicians confronted with violations against unpopular, powerless minorities would remain a problem”. But I suggested, “That intransigence presents an even greater obstacle to a more entrenched proposal such as a statutory bill of rights or a constitutional bill of rights”.

I suggested that we had two distinctive Australian safeguards against majoritarianism:

• A Senate in which the balance of power will be held by minor parties whose political niche, in part, is carved from the espousal of individual and minority rights
• A judiciary shaping the common law and interpreting statutes while responding to international developments in human rights jurisprudence.

So what has changed in eight years? Even before we get to consider the contemporary challenge of balancing civil liberties and national security in the wake of terrorist attacks off shore and threats on shore, let’s acknowledge the profound changes that have occurred to our checks and balances:

• The government no longer takes any notice of procedures under the first optional protocol
• The government now controls the Senate
• The High Court has become isolated from other final courts of appeal. With the passage of the UK Human Rights Act, even the UK courts (like the courts in the US, Canada, South Africa and New Zealand) now work within the template of a bill of rights when confronting new problems, seeking the balance between civil liberties and public security.
• The isolated High Court has found itself unable to interpret a statute so as to avoid the possibility of a stateless asylum seeker spending his life in detention without a court order or judicial supervision.

Days prior to his retirement from the High Court, Justice McHugh had cause to lament publicly the outcome in Al Kateb, the case of the stateless asylum seeker. He told law students:8

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8 Ibid. 185
Al Kateb highlights that, without a Bill of Rights, the need for the informed and impassioned to agitate the Parliament for legislative reform is heightened. While the power of the judicial arm of government to keep a check on government action that contravenes human rights is limited, the need for those with a legal education, like yourselves, to inform the political debate on issues concerning the legal protection of individual rights is paramount.

I must confess to what the ACT legislators would now regard as some short-sightedness seven years ago. I suggested there was no point in any one State jurisdiction going it alone on a bill of rights and that we were better off waiting for a uniform bill of rights at the Commonwealth level.\textsuperscript{10} It may yet be proved that there were good grounds for the ACT going it alone and leading the way. The ACT passed its Human Rights Act in 2004. The Victorian Parliament has now released a report of its appointed Human Rights Consultation Committee. The report entitled Rights, Responsibilities and Respect contains a draft Charter of Human Rights and Responsibilities Act.

The terrorist threat combined with the tight discipline of the government parties and the unwillingness of the parliamentary Opposition to invest much political capital in protection of minority rights in these uncertain times contribute added potency to the call from the community for a statutory bill of rights which can consolidate the checks and balances needed in a modern democracy.

As we have seen recently in the United Kingdom, a statutory bill of rights provides no automatic right answer in striking the appropriate balance between security and liberty. But it does provide a template for public discussion which must precede any novel legislation interfering with long cherished rights and freedoms. The New Matilda draft bill provides some practical checks and balances which ought to have appeal to any political party wanting to ensure that Osama Bin Ladan does not make further incremental gains, by default or by proxy, stripping away the freedoms we cherish. The New Matilda draft proposes:

- The Attorney General will provide the House of Representatives with a compatibility statement assessing proposed legislation against the checklist of human rights in the Human Rights Bill
- A Parliamentary Joint Standing Committee on Human Rights which will receive submissions, hold hearings and scrutinise the Attorney-General’s compatibility statements
- Power vested in the courts to read down subordinate legislation so that it is applied in a manner consistent with the Human Rights Act
- Power vested in the courts even to strike down some subordinate legislation which cannot be interpreted and applied in a manner compatible with the Human Rights Act\textsuperscript{11}
- Power vested in the courts to declare primary legislation incompatible with the Human Rights Act. Such legislation would still be valid and applicable but the Attorney General would be required to report to the House of Representatives once he considered the court’s reasons

\textsuperscript{10} F. Brennan, \textit{Legislating Liberty}, University of Queensland Press, 1998, p. 44
\textsuperscript{11} This can be done only when the primary legislation does not prevent the removal of the incompatibility. (See cl. 52(3))
• Public authorities, including courts and tribunals, are required to act consistently with Human Rights Act.

These are modest and sensible proposals. They are not anti-Howard, anti-Ruddock, or anti-Liberal Party. Our national fuel tank of checks and balances is running low. It needs to be topped up. In this realm, popularity cannot be equated with infallibility. Governors as well as the governed should welcome responsible checks and balances. In the legislative rush of recent weeks, we the public have become dependent on closed door assurances within the party room that the legislative outcomes strike the right balance, even when they cannot withstand scrutiny before a parliamentary committee dominated by the government’s own members. Then we are told that new sedition laws, which admittedly are not perfect, can be submitted for later review by the law reform commission.

Such shoddy lawmaking would be precluded by a Human Rights Act that required the Attorney General first to submit a compatibility statement of the Schedule 7 sedition laws before passage of the legislation. The Human Rights Act would ensure that Parliament specifically address the prospect of life-long detention for stateless persons. In these practical instances, one can credibly and dispassionately part company with the Prime Minister who says, “I regard a free press as more important to the maintenance of liberty in Australia than a bill of rights. I don’t believe a bill of rights works”.\footnote{12} A free press with a bill of rights is a better protection than a free press without a bill of rights for us who cherish liberty as well as security.

Prior to the present threat of terrorism, we Australians could not accept any government’s plea “Trust us” in setting the balance right between liberty and security. Confronting terrorism, we need to enhance the checks and balances so that government, police and security services will remain trustworthy. Government alone, unchecked and unfettered, sometimes makes mistakes, especially in the wake of populist sentiment and when the focus falls on an unpopular minority of outsiders.

Don’t forget that our present Attorney General never tired of telling us how necessary it was to lock up children in detention post-Tampa. Recall the words from the courageous backbencher Bruce Baird who told Parliament in June:\footnote{13}

I am sure that all members from both sides of this chamber would absolutely endorse this as fundamental. Let us never again see children in detention in this country. They should not be behind barbed wire or razor wire. It is an indictment that we have let it happen. Both sides of the House have been involved in that but we are changing this process through the bill. I really stress the importance of these changes.

Don’t forget it took 15 years of community agitation to reverse the bipartisan approach of the major parties and then have government reverse the policy and law of mandatory detention for all asylum seekers who came to Australia without a visa. With a bill of rights, we could shorten the time needed to put right any unchecked abuses on members of minorities unnecessarily held in detention or under control orders should there be even just a few untrustworthy operatives zealous for our security at all costs.

\footnote{12} ABC Insiders, 4 December 2005
\footnote{13} (2005) CPD 91(HofR), 21 June 2005
To any government pleading “Trust us», we the people reply, “Maintain that trust with appropriate checks and balances. Provide us with a bill of rights as well as a free press.”

A bill of rights does little for most citizens most of the time and that is because they do not run foul of the law enforcers nor of the government which is popularly elected attending to their needs for security and economic well being. Anti-terrorism laws too widely drawn are still unlikely to have an adverse impact on the person of Anglo-Celtic appearance going about their daily affairs. They are far more likely to have an adverse impact on the person of Middle Eastern appearance or on the Muslim person wearing distinctive head dress. Migration detention laws too widely drawn are unlikely to have an impact on the citizen who is mentally well and able to explain himself. But as David Marr said recently, it is a very different matter for any schizophrenic on our streets who speaks with a foreign accent.

Our problem is not just that we are without a bill of rights. But the general populace is oblivious of laws which abandon the traditional British safeguards including the provision that persons are not taken into lengthy detention by the state without a court order and without court supervision. Our elected politicians have convinced the majority that unelected judges are bad news when it comes to detention of persons suspected of being unlawful non-citizens.

Consider the recently reported case from the Commonwealth Ombudsman of Mr T. Section 189 of the Migration Act imposes and obligation on an authorised migration officers to detain any person who is “reasonably suspected” of being an unlawful non-citizen. Persons once detained are not brought before any court. It is up to a government department which the Ombudsman reports to have Mr T is an Australian citizen and has been since 1989. Since 1989, he has been taken into immigration detention three times for a total of 253 days. He was held in detention from 19-23 March 1999, 17 January – 16 September 2003, and a month later from 17-22 October 2003. The ombudsman concluded, “Mr T’s case is disturbing as it involved the detention on three occasions of an Australian citizen. Mr T’s mental illness, his homelessness and lack of an effective personal social support structure, his poor English language skills and his ethnic background were all factors that contributed to the decisions taken by DIMA officers to detain and continue to detain him as a suspected unlawful non-citizen”. The Ombudsman listed the following systemic failures in the department which has the power to remove anyone off the streets and put them in detention should an ill-trained officer of the department suspect someone who is schizophrenic of being a non-citizen:
If there were a Commonwealth Bill of Rights, it would presumably contain a clause similar to section 18(6) of the ACT Human Rights Act 2004 which provides that “Anyone who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention and order the person’s release if the detention is not lawful.” Mind you, it would still need someone to assist Mr T in his lamentable state so that he might gain access to a court. But the difference is that his case would need to be considered in open court and a department with a negative organisational culture would be more likely to be called to account more promptly. Those hallowed national values espoused by our prime minister such as respect for the freedom and dignity of the individual, a commitment to the rule of law and a spirit of egalitarianism that embraces tolerance, fair play and compassion for those in need would be more evident in a polity that ensured Mr T access to the courts at the time of his detention rather than access to the Ombudsman years after his release once there has been a political purge on a government department. Perhaps a future bill of rights should provide that a person detained on suspicion of being an unlawful non-citizen is entitled to a statement of grounds for the official’s suspicion, such a statement of grounds being required to be produced to a magistrate for review within a prescribed period. In these matters, it is always a question of how far are we prepared to go so as to ensure justice for all, thereby witnessing to those cherished Australian values listed in the Great Hall of Parliament this last Australia Day.

In 2003, Lord Lester of Herne Hill surveyed the background to the passage of the UK bill of rights legislation and offered this circumspect assessment of the Blair government’s attitude to the five year old UK Human Rights Act.¹⁴

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Six years on, the Government’s attitude towards the Human Rights Act is at best ambivalent. On the one hand it professes parental pride in its awkward and demanding child. On the other hand, we may be sure that the Government which takes credit for the Act would not have given birth to such a measure today; and there is no certainty that the Act will remain secure from abridgement or outright repeal by a future Government. There is always a risk, even in countries with entrenched written constitutional charters of fundamental rights of future emasculation or worse. In the case of the Human Rights Act that risk is both increased by the relative ease with which the executive can persuade an executive-controlled House of Commons to pass legislation, yet also diminished by the fact that the Convention rights contained in the Act are internationally protected by the two European Courts. We should not place too much faith in supra-national legal mechanisms to deter a future Government hell-bent on weakening or destroying the Human Rights Act. The best safeguard is surely the nurturing of a deep-rooted culture of respect for human rights among governors and governed.

For us Australians, whether or not we have a national bill of rights, the question will always be how to nurture a deep rooted culture of respect for human rights among governors and the governed. I suspect it will be increasingly difficult for the jurisprudentially and geographically isolated Australia to strike the right balance, maintaining respect for the freedom and dignity of the individual, a commitment to the rule of law, and a spirit of egalitarianism that embraces tolerance, fair play and compassion for those in need. As even the British have found, a statutory bill of rights will probably be the needed fourth institutional pillar on which will rest an Australian democracy true to Australian values.