

# 'God is love': the politics of bills of rights

Eddy Gisonda reviews

## *Bills of Rights and Decolonization*

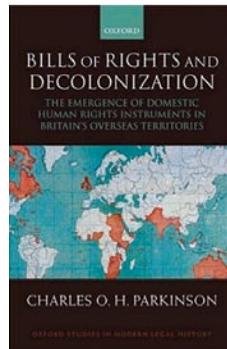
by Charles O.H. Parkinson  
(Oxford University Press,  
2007, 299 pages)

In 1988, Sir Anthony Mason stood before the Bicentennial Conference of the Australian Bar Association and announced his tentative support for a national bill of rights. It was a watershed moment. No other Australian Chief Justice had before him dared utter such views.

Sir Anthony claimed that human rights had become a 'rallying cry across the world', that there had been 'widespread entrenchment of fundamental rights in constitutions throughout the world', and that Australia's failure to follow suit would 'emphasise our legal isolation'. It was a line of reasoning that would occasion constant repetition in the years to come by fellow advocates.

But those who follow Sir Anthony in demanding some form of constitutional comity amongst nations often pitch their argument at a level too superficial to warrant serious consideration. They fail to acknowledge the basic proposition that the constitutional arrangements of each nation must respond to matters of history and experience unique to that country alone. The existence of a bill of rights in one country does not provide an inherent mandate for the adoption of a similar instrument in another. Often, all such an instrument will do is stand as a testament to the intricate, and at times rather unflattering, political exigencies that existed at the time of enactment.

*Bills of Rights and Decolonization* provides a clear demonstration of this point. Charles O.H. Parkinson has entered the vast ignorance currently masquerading



as bill of rights discourse and provided a masterful study of the constitutional politicking that surrounded the enactment of bills of rights in Britain's non-Dominion African, Asian and West Indian territories. Set during the end of Empire, Parkinson gives the reader a guided empirical tour, often with the aid of private diary entries and hitherto unseen correspondence and archival material, of the complete reversal of official Colonial Office policy into one that ultimately mandated the insertion of bills of rights in all overseas territories.

To read the details of this metamorphosis is as rewarding as it is startling, with numerous treasures of information scattered along the way. There is the explanation for the absence of a constitutionally protected right to vote in the Sudan (namely the necessity of assuaging traditional Islamic resistance to universal suffrage), Oliver Lyttelton's ridiculing of the Nigerians (to his mind, the insertion of a bill of rights was the equivalent of writing 'God is love' into a constitution), and Lord Reid's exacerbation that, with respect to the Malayan Constitutional Commission, there 'never was an important commission for which less preparation was made'. (The contribution of Andrew Gaze to the Diceyan tradition had not yet begun in earnest.)

But the most astonishing feature of *Bills of Rights and Decolonization* lies in its conclusion: bills of rights were ultimately offered by the British government to its former colonies and adopted by local political interests for entirely political reasons unconnected with any belief in the intrinsic importance of the rights

recorded. In fact, the British government was openly dismissive of the capacity for such instruments to offer any protection of minority or individual rights.

The British were correct. Many of the former colonies, notwithstanding their bill of rights armoury, quickly fell apart. Of this phenomenon, Dr Parkinson notes that a 'bill of rights cannot guarantee the protection of rights or the continuation of a civil society'. South Africa, which has extremely high levels of crime and violence, enjoys the protection of the world's most progressive bill of rights regime.

People may be quick to dismiss the relevance of Parkinson's work to that debate on the grounds that the subject matter is little more than a footnote of history rooted in a far away time and place. After all, in New Zealand, Victoria, the ACT, and even the mother country herself, rights instruments have now been introduced, and it is to these far more contemporaneous examples that we should look when deciding our own constitutional arrangements.

But *Bills of Rights and Decolonization* reveals how the most recent bills of rights, both here and abroad, are not the result of some grand civilising mission, nor are they the result of groundswells of community support, of some widespread consensus that transcends the political, legal and academic divide. Put simply, these instruments do not represent a victory in the contest of ideas. Instead, they are instruments introduced by social democratic parties, over the objection of their mainstream conservative opponents, for the chief purpose of placating that core activist constituency whose support these parties continue to pocket in their accumulation of political successes.

With that in mind, those wishing nonetheless to engage in serious intellectual analysis about the instrumental entrenchment of rights are well advised to read this book. Those who do not may continue to observe that, when it comes to bills of rights, Australia is the odd man out.

R

---

*Eddy Gisonda is an associate to Justice Hayne of the High Court of Australia. These views are his own.*