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Individual rights

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INDIVIDUAL RIGHTS

There is no explicit statement of fundamental human rights in the Australian Constitution.

These cases emphasise the view that the adoption of the framers of the Constitution of the principle of responsible government was probably the major reason for them not writing in comprehensive guarantees of individual rights. as Barwick CJ. stated in Attorney-General (Cth); Ex rel McKinlay v The Commonwealth (1975) 135 CLR 1: "The Australian Constitution is built upon confidence in a system of parliamentary Government with ministerial responsibility".

What this means is that it was assumed that a system of representative democracy (the legislators are elected by the people) would protect the rights of individuals by ensuring that as far as possible each person had an equal share in political power.

As pointed out in Nationwide News (at 679) by implementing the doctrine of representative government, the Constitution reserves to the people of the Commonwealth the ultimate power of governmental control. It provides for the exercise of that ultimate power in two ways.

The first is the election of the members of the Parliament which has the legislative power of the Commonwealth.

The second is the amendment of the Constitution itself. Under the Constitution, the ultimate powers which it reserves to the people of the Commonwealth are exercisable by direct vote. This means that all citizens of the Commonwealth who are not under some special disability are entitled to share equally in the exercise of the power of Governmental control.

These two electoral processes are seen therefore as the mechanism by which the rights of the people of Australia remain protected.

DISCUSSION QUESTION

What is meant by 'some special disability' referred to in the paragraph above?

What examples can you give of people who would fall into this category?

RESEARCH ASSIGNMENT

It is argued by some that we should have expressly written individual rights as found in the American Constitution.

What are some of the rights in the USA which people point to as an example for Australia?

DEBATING TOPIC

"If society is tolerant and rational, it does not need a Bill of Rights. If it is not, no Bill of Rights will preserve it". (a statement by Sir Harry Gibbs, former Chief Justice of the High Court).

