



**Testimony to Australian Federal Senate's Finance and Public  
Administration References Committee**

**INQUIRY INTO NATIVE VEGETATION LAWS, GREENHOUSE  
GAS ABATEMENT AND CLIMATE CHANGE MEASURES**

20 April 2010

Perth, Western Australia

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## **Who Are We?**

We represent the Coalition for Agricultural Productivity, or CAP. We are the face of this coalition, because we were producers who have been put out of business by excessive regulation under the guise of environmental protection. There are many things that concern producers, but they are scared to speak out – frightened to put themselves on the radar screen. We are a voice for those producers.

CAP supports science based, free market agricultural productivity. We believe that with freedom, agriculturalists can continue to feed the world -- and care for the environment.

CAP cuts across all segments of food production, and speaks out proudly on behalf of primary producers and everyone involved in the food supply chain.

We believe a role of Government is to set minimum standards for environmental regulation. The pendulum has swung to the extreme, however, such that true environmental protection is now lost in the “green” noise.

We also believe that our climate changes constantly, but that humans are not responsible for that change. Carbon dioxide is not a pollutant. In fact, it is a naturally-occurring compound essential for life on earth. Enacting legislation and policies that pursue a non-problem (AGW) diverts resources away from adaptation to, and dealing with, true problems. Our ability to produce food, not only in Australia, but around the world, is seriously threatened.

The single largest threat to our ability to produce is the assault on the common law right of private property ownership. These assaults take on multiple forms and methodologies, and we will touch on some of them today. But first, it is vital that we establish the importance of private property rights in any successful (and therefore sustainable) society.

## **Why Is Private Property Important?**

The best example we have found to demonstrate the extremes of collectivist societies (in which personal ownership of property is non-existent) versus capitalist societies (in which private ownership is a fundamental principle) is in the story of the Pilgrims' 17<sup>th</sup>-Century Plymouth Plantation in the “New World.” We table the summary<sup>1</sup> and links to this story for your future reference, but in short, the pilgrims that arrived in America in 1620 had agreed to share everything. There would be no private ownership of land. Governor William Bradford, in his 1647 history, *Of Plymouth Plantation*, wrote that this system was found to “breed much confusion and discontent and retard much employment that would have been to their benefit and comfort.” After three years of lacklustre performance and the real threat of extensive starvation, Bradford distributed the land and allowed families to work that land for their own benefit. So it was that after 1623, the fledging colony began to prosper. The land on which these people were starving (without private property rights) now feeds over 300 million people comfortably, with excess to export food all over the world.

Modern-day Peruvian Economist, Hernando de Soto, has authored two books and formed the world-renowned Instituto Libertad y Democracia (ILD). In his important book, The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else, he asserts that private property rights are the foundation on which capitalism succeeds. Without secure tenure of title, markets will function, but capital development will not occur.

Good title gives one the ability to adjudicate, lease, transfer, exploit for personal use, exploit for profit, use as a guarantee, access credit, access insurance, buy and sell, donate, borrow, and mortgage and pledge.

I noted with interest the United Nations Environmental Programme's suggestion<sup>2</sup> after the Rio Summit that governments should : “(a) *Create the institutional and legal mechanisms to ensure effective land tenure to farmers. The absence of legislation indicating land rights has been an obstacle in taking action against land degradation in many farming communities in developing countries.*” In other words, if individual owners are not responsible, then Government cannot hold anyone responsible.

De Soto's practical application of economic theory in third world countries is equivalent in importance to Norman Borlaug's application of the green revolution's technological advances in crop genetics in lesser developed nations. Both Borlaug and De Soto provide the tools for societies to develop from within, rather than having other societies impose a structure upon them, which is never sustainable.

It is often said that Australia is a “lucky country.” This is a most dangerous and naïve statement. Australia developed relatively quickly and effectively, not because of a nebulous, undefinable “luck,” but due to strong principles and lots of hard work. A belief in the sanctity of private property was core to that establishment.

Australia has developed as a capitalist nation. The common law enshrined in the Magna Carta, and on which our state and nation are based, ensures a protection of private property. Because of this necessary and strong foundation, Australia became a strong and productive nation.

Over-regulation is the biggest threat to continued success in Australia's development. This affects all producers...not just producers of food. We hear stories all the time from teachers, policemen, road builders, daycare workers, glass repair shop owners, café owners...the list goes on...of how they are increasingly taken away from core business in fulfilment of regulatory obligations to create paper trails and tick boxes. This not only affects today's productivity, it greatly hinders future advances. We simply do not have time to “think outside the box” and create new and better ways of doing things.

In the case of regulation of activities on private property, the concern is that excessive regulation “sterilises” the productive capacity of that property, so that ability to profit from productive activities and in turn, the inherent value of the property, is significantly decreased. This has come to pass, and that sterilisation (or blighting), as relates to Australia's international commitment to decrease CO2 emissions, in effect constitutes takings by the government for the “common good.” CAP does not believe these Native Vegetation Acts (and others) enhance the common good, but even if they did, they mustn't be done without compensation.

CAP is concerned that property owners are being given hope that they do, in fact, have control over their own property, when it is clear they do not. From our research and case studies, it appears that, at least in the Wheatbelt, the answer is pre-determined. No clearing will be allowed. Good, law-abiding people have been spinning their wheels, working on these processes for years, and it appears they have been wasting their time and resources. Government departments have established kangaroo courts to “deal” with clearing permits (among other related issues), when the outcome is known from day one.

CAP is aware of several families’ stories in our state, some who put in submissions to your inquiry. (There are families, by the way, who refused to put in a submission about their experiences for fear of further reprisals.) I will highlight two of those cases today, but we cannot emphasise enough: many producers have been directly and quite negatively impacted by Native Vegetation Laws and the host of other legislation, policies, conventions, and regulations that are related to alleged protection of the environment. The effect of these over-reaching regulations is wide-spread, wholly negative, and, in the long- (or maybe even not-so-long-) run, our society will reap what we have sown. Without respect of others’ property, society cannot long prosper.

## **What Is Impinging On Private Property Rights?**

What we, as a society, face in regard to erosion of private property rights goes well beyond the current climate change and native vegetation legislation. Fundamentally, at the international level, all sovereign nations have (in most cases unwittingly) signed up for a voluntary assault on those rights. The key start point was the United Nations’ Conference on Environment and Development Rio “Earth Summit” in 1992<sup>3</sup>. (Although the movement had started 20 years earlier at Stockholm out of a logical – at an individual level - desire to consider environment in addition to economic considerations in development decisions.)

Four broad areas were defined at the Rio Summit: Climate Change, Biological Diversity, Agenda 21, and Deforestation. Across all areas, countries were encouraged to think globally and put aside national sovereignty for the benefit of the world.

From the UN’s website:

*The Earth Summit influenced all subsequent UN conferences, which have examined the relationship between human rights, population, social development, women and human settlements — and the need for environmentally sustainable development. The World Conference on Human Rights, held in Vienna in 1993, for example, underscored the right of people to a healthy environment and the right to development, controversial demands that had met with resistance from some Member States until Rio.*

In an essay<sup>4</sup> by Maurice Strong (Convenor of Earth Summit) entitled *Stockholm to Rio: A Journey Down a Generation*, he says:

"Strengthening the role the United Nations can play...will require serious examination of the need to extend into the international arena the rule of law and the principle of taxation to finance agreed actions which provide the basis

for governance at the national level. But this will not come about easily. Resistance to such changes is deeply entrenched. They will come about not through the embrace of full blown world government, but as a careful and pragmatic response to compelling imperatives and the inadequacies of alternatives."

"The concept of national sovereignty has been an immutable, indeed sacred, principle of international relations. It is a principle which will yield only slowly and reluctantly to the new imperatives of global environmental cooperation. What is needed is recognition of the reality that in so many fields, and this is particularly true of environmental issues, it is simply not feasible for sovereignty to be exercised unilaterally by individual nation-states, however powerful. The global community must be assured of environmental security."

Since Rio, we have experienced a stealthy assault on sovereignty. This is dangerous, as the United Nations does not rely on the same common law history and democratic principles that Australia does. In short, our sovereignty is vital in upholding our common law rights, importantly in this discussion the sanctity of private property to a successful and sustainable society.

As an example of the pervasion since Rio, the table below is taken directly from the draft "A 100-Year Biodiversity Conservation Strategy for Western Australia" published by the Department of Environment and Conservation (DEC) in 2006. It illustrates some of the international, federal and state laws, conventions, agreements, policies and regulations that all, by definition, interfere with individuals' ability to manage, use and enjoy their personal property in the way they deem best. These are only with regard to biodiversity:

International	Federal	State
<ul style="list-style-type: none"> <li>• Convention on Biological Diversity (1992)</li> <li>• Local Agenda 21 (1992)</li> <li>• Convention on Wetlands of International Importance (Ramsar 1971)</li> <li>• Convention on the International Trade in Endangered Species of Wild Fauna and Flora (1975)</li> <li>• Asia-Pacific Migratory Waterbird Conservation Strategy: 2001-2005</li> <li>• Convention on the Conservation of Migratory Species of Wild Animals (Bonn 1979)</li> <li>• Japan Australia Migratory Bird Agreement (JAMBA 1981)</li> <li>• China Australia Migratory Bird Agreement (CAMBA 1988)</li> <li>• International Convention for the Regulation of Whaling (1946)</li> </ul>	<ul style="list-style-type: none"> <li>• Environment Protection and Biodiversity Conservation Act 1999</li> <li>• 2004-2007 National Biodiversity and Climate Change Action Plan</li> <li>• National Strategy for the Conservation of Australia's Biological Diversity (1996)</li> <li>• Strategic Plan of Action for the National Representative System of Marine Protected Areas: A Guide for Action by Australian Governments (1999)</li> <li>• Biodiversity Conservation Research: Australia's Priorities (1999)</li> <li>• National Objectives and Targets for Biodiversity Conservation 2001-2005</li> <li>• Directions for the National Reserve System: A Partnership Approach (2004)</li> <li>• Nationally Agreed Framework</li> </ul>	<ul style="list-style-type: none"> <li>• Wildlife Conservation Act 1950</li> <li>• Conservation and Land Management Act 1984</li> <li>• Proposed Biodiversity Conservation Act</li> <li>• Wetlands Conservation Policy for Western Australia (1997)</li> <li>• Environmental Weeds Strategy (1999)</li> </ul>

	for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Australia (1997) • Wetlands Policy of the Commonwealth Government of Australia (1997) • The National Framework for the Management and Monitoring of Australia's Native Vegetation (2001)	
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[http://www.dec.wa.gov.au/component/option.com\\_docman/task.doc\\_details/gid.319/Itemid.7](http://www.dec.wa.gov.au/component/option.com_docman/task.doc_details/gid.319/Itemid.7)

I won't read them all out, but there are 24 on this table alone. Our state's Environmental Protection Act 1986 is not listed above, and there are many acts, regulations and policies associate with that Act alone.

Throughout history, and in modern day comparisons between societies, one thing is clear: Economic success comes first, and care for environment comes as a result. This is not due to inherent "evilness" of people. It is due to the facts of life. Until we have met our needs (food, water, shelter) and move into the realm of leisure activity, we are unable to care about anything other than living one more day.

We cannot consume more than we produce.

The Department of Environment and Conservation exists today because our society was so productive that we could afford the luxury of establishing a government department with a focus only on environment, with no other considerations. At the time this Department was established, as with all such beginnings, society deemed it important and necessary. But the department has evolved now to such a point that they are hindering the very economic activities that support their own existence. Bureaucrats are now making decisions about what producers can and cannot do, without any basis in science or fact, indeed without consideration of true environmental outcomes. Many of these bureaucrats have never produced anything themselves, and exist only because of the very producers they seek to regulate. When non-producers have the power to tell producers what they can and cannot do, without that power being voted on by the people of our democracy, as is the case with regulations, society is setting itself up for failure.

## **What is the cost to society?**

Without fail, the stories that CAP has collated in regard to loss of private property rights have one thing in common: It is the honest people of our society, the ones who try to do things right (environmentally and procedurally), that have been most negatively affected by implementation of these "environmental protection" acts. These people are now cynical of their own government. "If this is the way I get treated after doing the right thing all these years, then I cannot recommend that anyone else attempt to do the right thing," is a comment commonly heard.

**Economic** – The cost to individuals is multi-faceted:

1. Paying rates on land they cannot use,

2. Not being able to maximise return on their capital investment in land by operating that land in the way they envisioned,
3. Not being able to recoup capital investment in timber harvesting equipment, cattle watering tanks, fencing, farming equipment, etc., for the same reason,
4. Being unable to obtain bank financing because the land value has been eroded due to conservation notices being placed on titles, or inability to clear, etc.,
5. Being unable to pay back existing bank notes that were taken out under the assumption that the land would be productive
6. The direct costs of hiring attorneys, filing applications, showing government employees around, filing appeals, hiring consultants, etc.

**Economic** – There is a cost to state and federal treasuries:

1. Tax revenue is reduced due to productive land being taken out of use;
2. Administering the legislation, responding to appeals, paying employees to assess applications - both in office and on-site, responding to ombudsman and FOI complaints, etc.

**Social** – The social impacts of impinging on property rights are immeasurable:

1. Suicides,
2. Sickness due to stress,
3. Marriage breakdowns,
4. Negative impacts on children,
5. Delayed retirements,
6. Less risk-taking in general due to lack of support for responsibility-taking that exists within ownership and business formation,
7. Sons and daughters leaving family farms due to uncertainty
8. Loss of community building: It is now illegal for a farmer to cut up dead wood lying on his own property and donate it to the Rotary Club for a wood raffle without a permit. Bureaucracy is killing common sense and communities themselves.

Quickly quoting two of our producers in support of the above assertions:

1. “The stress this situation has caused in our lives has been substantial. I would like to just go in and clear the remaining land now, but my wife is worried about me ending up in jail or with a \$250,000 fine or something. Two of my sons have had to leave the farm, as we’ve been unable to grow as originally planned. Now the DEC is in control of the situation, and we’ve got fresh uni graduates coming out and inspecting our bushland, and they don’t understand anything about production or even conservation for that matter.”
2. “Our family have suffered terribly...emotionally and financially. We have been economically destroyed. We have never experienced a family holiday, and have had to exist on frugal budgets; whilst government employees, making decisions affecting others, receive a good wage and superannuation, farmers’ superannuation is his assets, i.e. farming land.” This man is 70 years old, he is working transporting houses...crawling underneath them to disconnect water and electricity. His wife has a full-time job. They should be enjoying their grandchildren in retirement, but because they had ¾ of their farm tied up, they must work.



**Political** – We have lost another fundamental right as a result of the environmental extremism that ignores property rights: freedom of speech. CAP exists wholly due to this phenomenon. Individuals and organisations alike have learnt that one cannot criticise environmental policy or agendas without retaliation.

### **Environmental**

CAP submits that the best managed land in Western Australia is the 7% held in freehold, followed by the approximately 30% held in pastoral lease (which is heavily under attack).

There have been direct and indirect results of these laws, regulations and policies that limit activity on and thereby sterilise private property:

1. **Direct**: When people cannot clear land, the potential for proliferation of native species, wildfires, pests, disease, declared weeds, etc., onto productive land increases.
2. **Indirect**: Governments are, at this point in time, dis-incenting private landowners from planting and caring for native vegetation. Knowing that once it is planted, they will never be able to touch that land again, landowners are becoming hesitant to plant and nurture native species.
3. **Indirect**: An application to clear 30 acres in the wheatbelt was knocked back because the vegetation “might” in future provide habitat for the Carnaby Cockatoo. This, despite the owners’ offer to put the 100 acres next to it into a conservation reserve. As a result of idiotic decisions such as these, property owners have every incentive to NOT protect flora and fauna that are endangered or threatened because if one of these is discovered on their property, they know that their property value will decrease.
4. **Indirect**: More productive societies are better able to manage their environment for positive outcomes. The Native Vegetation Act and others like it will lead to less economic activity, fewer productivity gains, less risk taking, and eventually, less income for everyone. This, in turn, will lead to less income being spent on positive environmental projects, both at a public and a private level.

## **CAP Recommendations**

1. By far, the most practical and simplest solution to the existing problem is to repeal the Acts that allow for the taking (sterilisation or blighting) of property without due compensation. Most landowners simply want their land back. In addition to solving this significant problem, the Australian governments would see an increase in tax revenue, because more productivity would follow, land values would increase, and rate bases would go up.
2. Compensation for past losses in productivity should occur<sup>5</sup>. It is only right that owners be paid for what has been taken. Productivity HAS been taken. These people are unequivocally owed compensation. I’d like to pre-empt your question, Senator Polley, regarding compensation and how to pay for it. Let’s assume the total figure is \$12 billion. Easy. Spread it out over 4 years. \$3 billion per year. The Federal Government’s actual expense total for 08/09 was \$323 billion. Surely we could find less than 1% in our expense budget to re-establish confidence in property ownership such that our entire society does not crumble? It’s that important. Our Government needs to make the tough,

but right decision. Restore private property rights with swiftness, conviction, and unapologetic spending.

3. In the absence of #1, full compensation for the productivity losses and the value of land should be due the landowners. Very real damage – economic, social and environmental – has been caused by these Acts, and our society cannot long endure such assaults on its foundation.
4. The principle of “net gain” of Government-controlled land should be reversed. Privately held and managed land is the best managed in this country. Wild fires, feral animals, weeds, diseases, and pests are much more prolific on public land (where no one person is responsible) versus private land (where owners have every incentive to keep these things under control). Governments would experience a two-fold benefit: tax revenues would increase, and costs to manage public land would decrease.
5. That this committee recommend to state governments that all land currently in leasehold should be converted to freehold (or second-best, leasehold in perpetuity), with the current leaseholder being offered first right of refusal.
6. References to the Precautionary Principle within existing Acts, Policies and Regulations should be removed.
7. We support the formation of independent tribunals being established to hear appeals.

Once again, thank you for being here in Perth, and for allowing us to present.

## Endnotes

<sup>1</sup> The following is directly from <http://volokh.com/posts/1228175111.shtml>, a post from Professor Ilya Somin:

How Private Property Rights Saved the Pilgrims from Starvation - An Underappreciated Thanksgiving Lesson:

As [economist Benjamin Powell explains](#), the Pilgrims were saved from starvation because they replaced collectivism with private property rights:

Many people believe that after suffering through a severe winter, the Pilgrims' food shortages were resolved the following spring when the Native Americans taught them to plant corn and a Thanksgiving celebration resulted. In fact, the pilgrims continued to face chronic food shortages for three years until the harvest of 1623. Bad weather or lack of farming knowledge did not cause the pilgrims' shortages. Bad economic incentives did.

In 1620 Plymouth Plantation was founded with a system of communal property rights. Food and supplies were held in common and then distributed based on equality and need as determined by Plantation officials. People received the same rations whether or not they contributed to producing the food, and residents were forbidden from producing their own food. Governor William Bradford, in his 1647 history, Of Plymouth Plantation, wrote that this system was found to breed much confusion and discontent and retard much employment that would have been to their benefit and comfort. The problem was that young men, that were most able and fit for labour, did repine that they should spend their time and strength to work for other men's wives and children without any recompense. Because of the poor incentives, little food was produced.

Faced with potential starvation in the spring of 1623, the colony decided to implement a new economic system. Every family was assigned a private parcel of land. They could then keep all they grew for themselves, but now they alone were responsible for feeding themselves. While not a complete private property system, the move away from communal ownership had dramatic results.

This change, Bradford wrote, had very good success, for it made all hands very industrious, so as much more corn was planted than otherwise would have been. Giving people economic incentives changed their behaviour. Once the new system of property rights was in place, the women now went willingly into the field, and took their little ones with them to set corn; which before would allege weakness and inability.

Once the Pilgrims in the Plymouth Plantation abandoned their communal economic system and adopted one with greater individual property rights, they never again faced the starvation and food shortages of the first three years. It was only after allowing greater property rights that they could feast without worrying that famine was just around the corner.

UPDATE: It's worth noting that, contrary to some modern mythology, [Native American tribes that relied on agriculture also usually used private property rights to stimulate production](#). Claims that native peoples were opposed to private property rights or had no conception of such a thing until the Europeans came, are for the most part PC myths.

UPDATE #2: For a more detailed account of the role of property rights in saving the Pilgrims, see [this 1999 article by Tom Bethell](#).

<sup>2</sup> UNEP website:  
<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=52&ArticleID=82&l=en>, 32.15 (a)

<sup>3</sup> [WHAT HAPPENED AT RIO?](#)

[A. The United Nations Framework Convention on Climate Change](#)

[1. A Review of the Convention on Climate Change](#)

[2. The Convention on Climate Change: What Happens Now?](#)

[3. The Convention on Climate Change and Canada](#)

[B. The United Nations Convention on Biological Diversity](#)

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1. A Review of the Convention on Biological Diversity

2. The Convention on Biological Diversity: What Happens Now?

3. The Convention on Biological Diversity and Canada

C. Agenda 21

1. An Overview of Agenda 21

2. Canada's Financial Commitment to Agenda 21

D. Statement of Land Resources: Deforestation

1. An Overview

2. Statement of Land Resources and Canada

E. The Rio Declaration

F. The Ocean Resources Meeting

1. General

2. The Ocean Resources Meeting and Canada

From 3-14 June 1992, Rio de Janeiro hosted the United Nations Conference on Environment and Development (UNCED). The focus of this conference was the state of the global environment and the relationship between economics, science and the environment in a political context. The conference concluded with the Earth Summit, at which leaders of 105 nations gathered to demonstrate their commitment to sustainable development. This paper will summarize the goals of the Conference, what was accomplished, and what it all means to Canadians.

A. History of the Summit

In 1972, Stockholm, Sweden, hosted the first United Nations Conference on the Human Environment, which was attended by 113 delegates and two heads of state (Olaf Palme of Sweden and Indira Gandhi of India). This conference raised a generation's awareness of an issue hitherto little talked about, the global environment. The Stockholm conference secured a permanent place for the environment on the world's agenda and led to the establishment of the United Nations Environment Program (UNEP). The conference and its aftermath made known the international nature of the environment and introduced the idea of the relationship between development and the environment. It has been said that the only way to unite the countries of the world is for them to face a common enemy; perhaps environmental degradation will be that enemy.

Since the 1972 conference, there have been many international environmental agreements, a number of which have been ratified by Canada. These include the 1978 Great Lakes Water Quality Agreement; the 1979 Geneva Convention on Long-range Transboundary Air Pollution; the 1985 Helsinki Agreement (a 21-nation commitment to reduce sulphur dioxide emissions); the 1988 Montreal Protocol on Substances That Deplete the Ozone Layer; and the 1989 Basel Convention on Transboundary Movements of Hazardous Wastes (see Appendix).<sup>(1)</sup> It was this kind of international cooperation that the 1992 Rio conference sought, but on a larger scale.

In 1983, the UN General Assembly set up the World Commission on Environment and Development, known as the Brundtland Commission after its chairperson, Norwegian Prime Minister Gro Harlem Brundtland. Its aim was to link environmental issues to the findings of the 1980 Brandt report on North-South relations. The Brundtland report, published in 1987 as *Our Common Future*, declared that the time had come for a marriage between the environment and the economy and used the term "sustainable development" as the way to ensure that economic development would not endanger the ability of future generations to enjoy the fruits of the earth.<sup>(2)</sup>

On the twentieth anniversary of the Stockholm Conference on the Human Environment, representatives from 178 nations, non-governmental agencies (NGOs) and other interested parties (approximately 30,000 in total including members of the media), met in Rio de Janeiro to discuss global environmental issues that would become central to policy implementation. The conference sought agreement on concrete measures to reconcile economic activities with protection of the planet to ensure a sustainable future for all people.<sup>(3)</sup> This first UN Conference on Environment and Development -- UNCED for short, but better known as the "Earth Summit" after its final three days -- was the culmination of two and one half years of world-wide consultation that demonstrates the best intentions of the human race to live responsibly.<sup>(4)</sup>

<sup>4</sup> <http://www.sovereignty.net/p/sd/strong.html>

<sup>5</sup> All projects to be undertaken by the cooperation of people (i.e. government) must be prioritised. If society deems that no native vegetation should ever again be destroyed, then the cost of that project must be considered. When landowners cannot use their own property for whatever purpose they deem necessary or desirable, in progressing that common goal of the people, there is a very real cost that must be paid. It is unfair and unjust for that cost to be born by less than 1% of our population.