OFFICE-OF-THE-GUARDIAN
(Don't forget the hyphens!)
The opinion(s) expressed in this letter by the writer, are stated considering the limited information available to him and may not be the same where further information were made available to him, is not intended and neither must be perceived to be legal advice!
WARNING
WITHOUT PREJUDICE from the desk of GUARDIAN: Mr G. H. Schorel-Hlavka
Contact details at: Http://www.office-of-the-guardian.com

Committee Secretary 5-6-2011
Joint Committee of Public Accounts and Audit
PO Box 6100, Parliament House Canberra ACT 2600 Australia
Email jcpaa@aph.gov.au

Submission No.12 - attach 1
Inquiry into National Funding Agreements

Ref: National Funding Agreements – etc.

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AND TO WHOM IT MAY CONCERN

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This submission is extensive (At times repeating the same quotations due to needing to be used at those locations) due to the nature is issues canvassed, unconstitutional State land taxes, including **GST**, Religious tax exemptions, and for the first time a proposed system of obligations to be entitled to a **NON PROFIT** (**NOT-FOR-PROFIT**) registration, etc. This as to clamp down on moneys collected being used for ulterior purposes nothing to do with "**PUBLIC PURPOSES**" Also the issue of taxation used to purchase **WATER** is addressed below. It should be understood that to explain why certain taxation issues ought to be clamped down on and other comprehensive supportive material has been provided to underline the need for tax reforms.

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As referred to below the Commonwealth introduced the Land Tax office, the forerunner of the ATO on 11 November 1910 and from then on land taxes had to be "**uniform**" and were an exclusive federal legislative power. In 1952 the Commonwealth abolished State land taxes but couldn't have the States then reverting to State land taxes. This submission contains also a recent correspondence to the ATO in that regard.

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As a **CONSTITUTIONALIST** I have grave concerns as to how the funding arrangements have developed, some as to "conventions" where in fact it must at all times remain to be within the constitutional framework. Having for example Customs terrorising/extorting monies from people or withhold their goods, as they fin vein tried to do against me, also should be a wake up call that there is a lot drastically wrong.

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This submission is but a mere part of a lot that is wrong but at least let try to start somewhere. What is needed is an **OFFICE-OF-THE-GUARDIAN** (***Don't forget the hyphens!***)a constitutional council that advises the Government, the People, the Courts and the Parliament as to the constitutional meanings and powers and so limitations because currently we have far too many laws that are unconstitutional and so are really no laws at all, but the poor fellow who has to try to pursue justice against the might of a taxpayer funded department.
We must stop the rot while we can because if we fail then we may face rebellion of a kind never experienced in the Commonwealth of Australia as people are just sick and tired on the way politicians elected to represent them are disregarding the **RULE OF LAW**.

Therefore, any national funding arrangements must consider these and other matters also and the same that since the Commonwealth ties pensions and other welfare payments to the CPI then constitutionally the States no longer can increase charges for public housing rent, state charges such as driver licences, etc, and neither could the municipal/shire councils then increase their rates above the **CPI** (Consumer Price Index)for pensioners and welfare recipients. Meaning a

45

total change of funding must eventuate, this as the Framers of the Constitution stated that all and any unconstitutional taxation must be refunded to the person who paid it. Consider a perhaps (estimates) **$35 billion** a year on state taxes to be refunded then this will have horrendous consequences. Hence this extensive submission!

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QUOTE **Michael D'Ascenzo**, Commissioner of Taxation,

WITHOUT PREJUDICE

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Michael D'Ascenzo, Commissioner of Taxation, 3-6-2011
General Post Office Box 9977 Sydney,NSW 2001
C/o Deborah Green deborah.green@ato.gov.au

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Cc: **Anton Pincevic**
c/- 2342 Northern Road, Luddenham NSW 2745 "Robert Pincevic" <roblp@bigpond.com>

Robert Pincevic
c/- 2342 Northern Road, Luddenham NSW 2745 "Robert Pincevic" <roblp@bigpond.com>

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Deborah Green ATO C/o deborah.green@ato.gov.au
Address is PO Box 9977 Newcastle NSW 2300 Ph number 0249 234658

Paul Duffus, Deputy Commissioner of Taxation C/o deborah.green@ato.gov.au

Peter Spring ATO, C/o deborah.green@ato.gov.au phone number; 02 9374 8990 fax; 02 9374 8753

Raelene Vivian, Deputy Commissioner of Taxation C/o deborah.green@ato.gov.au
in care of: General Post Office Box 9977 Sydney, NSW 2001.

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Ref: Operation Wickenby, taxation and other matters - Re Taxation powers-etc

. **AND TO WHOM IT MAY CONCERN**

Sir,

Further to my previous correspondence I direct myself to you in regard of the ATO's conduct in **Operation Wickenby**, etc, and in particular the legal processes it followed and still follows as I contemplate to publish a book titled:

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INSPECTOR-RIKATI® on the ATO-Operation Wickenby & TAXATION

Subtitled; **Undermining DEMOCRACY-the ATO's abuse of power & legal processes**

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Again I state previously; In this matter I do not represent any specific person.

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I am not a lawyer but a constitutionalist, professional advocate, Attorney, etc, and as Author of books in the **INSPECTOR-RIKATI**® series on certain constitutional and other legal matters have extensively written about taxation matters.

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Since my 17 October 2010 correspondence I have indeed been very busy to investigate certain taxation matters of which I will refer to also to some below.

I am however also concern that the way the ATO applies penalties upon persons who allegedly didn't make a proper tax return declaration is of concern and if since the nearly 8 month time difference since the 17 October 2010 correspondence the ATO has retraining its staff to ensure that they follow proper procedures and do not inflict any penalties merely because they many not understand that a taxpayer may be within his right in not providing certain details and that certain conduct of a taxpayer may be lawful even so not appreciated by the ATO officers as such.

NSW GOVERNMENT

Treasurer
Minister for State and Regional Development
Minister for Ports and Waterways
Minister for the Illawarra
Special Minister of State

Mr G H Schorel-Hlavka
107 Graham Road
VIEWBANK VIC 3084

Ministerial and Executive Services Unit
Telephone: (02) 9689 6484
Our ref: RML 11/0017 AM

02 MAR 2011

Dear Mr Schorel-Hlavka

Thank you for your letters to the Premier concerning land tax. Your letters were referred to the Treasurer, who is responsible for state taxation matters. The Treasurer has asked me to reply on his behalf.

Taxation power in Australia is a concurrent power between the Commonwealth and the States. As you would be aware, under section 107 of the Australian Constitution the States inherited the legislative powers of the former colonial parliaments that existed prior to federation, unless those powers are exclusively vested in the Commonwealth Parliament or withdrawn from the State.

Section 51(ii) of the Australian Constitution grants the Commonwealth Parliament power to make laws with respect to taxation. However, this does not preclude the NSW Parliament from having concurrent taxation powers.

The exception is under section 90 of the Australian Constitution, which grants the Commonwealth exclusive power to impose customs and excise duty. This does not extend to other taxes imposed by the NSW Government, such as land tax.

Section 5 of the *Constitution Act 1902 (NSW)* gives the NSW Parliament power to make laws for the peace, welfare and good government of New South Wales, subject to the provisions of the Commonwealth Constitution.

Land taxes were imposed by the States prior to federation. They were introduced at the federal level in 1910. In 1952, the Commonwealth Government abolished land tax. This did not have the affect of preventing the States from imposing land tax, but rather returned taxation powers back to them. Accordingly, the NSW Government introduced the *Land Tax Management Act* in 1956.

There have been no constitutional challenges to the main revenue sources, such as land tax, in NSW. If you wish to challenge any taxes imposed by the State of NSW on constitutional grounds, you will need to dispute the matter in court involving a particular taxpayer and upon their consent.

I am satisfied the Chief Commissioner of State Revenue has thoroughly considered the issues raised by you. Thank you for the interest you have shown in this matter.

Yours sincerely

Barry Collier MP
Parliamentary Secretary Assisting the Treasurer

Level 36, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Tel: (02) 9228 3535 Fax: (02) 9228 4469

5 You may notice that the correspondence has the statement:

QUOTE

> Land taxes were imposed by the States prior to federation. They were introduced at the federal level in 1910. In 1952, the Commonwealth Government abolished land tax. This did not have the effect of preventing the States from imposing land tax, but rather returned taxation powers back to them. Accordingly, the NSW Government introduced the ***Land Tax Management Act*** in 1956.

END QUOTE

Obviously, contrary to what was claimed by **Barry Collier MP** the Commonwealth Government has no constitutional powers to abolish any legislation as it being the Executive it can refuse to enforce legislative provisions but cannot abolish an act of Parliament. As such it is the Commonwealth Parliament that can only abolish legislation.

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Hansard *22-9-1897* Constitution Convention Debates

QUOTE

> **The Hon. R.E. O'CONNOR (New South Wales)[3.18]: The moment the commonwealth exercises the power, the states must retire from that field of legislation.**

END QUOTE

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Hansard *30-3-1897* Constitution Convention Debates

QUOTE **Mr. REID:**

> **We must make it clear that the moment the Federal Parliament legislates on one of those points enumerated in clause 52, that instant the whole State law on the subject is dead. There cannot be two laws, one Federal and one State, on the same subject. But that I merely mention as almost a verbal criticism, because there is no doubt, whatever that the intention of the framers was not to propose any complication of the kind.**

END QUOTE

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Hansard *30-3-1897* Constitution Convention Debates

QUOTE

> The Hon. R.E. O'CONNOR (New South Wales)[3.18]: We ought to be careful not to load the commonwealth with any more duties than are absolutely necessary. **Although it is quite true that this power is permissive, you will always find that if once power is given to the commonwealth to legislate on a particular question, there will be continual pressure brought to bear on the commonwealth to exercise that power. The moment the commonwealth exercises the power, the states must retire from that field of legislation.**

END QUOTE

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Hansard *2-3-1898* Constitution Convention Debates

QUOTE

> **Mr. OCONNOR**.-**Directly it is exercised it becomes an exclusive power**, and there is no doubt that it will be exercised.

END QUOTE

Again: **Directly it is exercised it becomes an exclusive power**

Where it became "**exclusive power**" and the constitution doesn't provide for a reversal of legislative powers from the Commonwealth to the states then for sure I like to know why the ATO charged with taxation is pursuing if not persecuting people like the Pincevic's while allowing untold billions of dollars to be collected by States/Territories?

It must be clear that the States have no legislative powers whatsoever to collect land taxes because the legislative powers, since 1910, became federal exclusive powers and for the ATO nevertheless to allow this kind of unconstitutional land tax collection to persist in my view is not just scandalous but criminal. **How can the ATO assess people like the Pincevic's where the GST component also is unconstitutional?**

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During the recent Victorian elections Customs (for the ATO) sought to extort from me GST of goods that were imported. Well boy did they get a 40 page complaint from em that customs immediately released my goods without any payment of a declaration or the declaration or any GST. So, was it not for my extensive knowledge about constitutional matters I too could have been suffering under their extortion demands and have paid the GST they unconstitutionally sought to claim from me. It seems to me that if the ATO after more then 100 years so to say

cannot even have its act together to know how to administrate appropriately taxation then sack the idiots in management and get some real people with some brains into the positions.

Are we just having morons in the ATO who are persecuting ordinary people while the real booty is taken by unconstitutional and so unlawful conduct?

To me this smacks of gross incompetence by the ATO.

Now, consider this that if I were to unlawfully levy a tax against people then the ATO would be quick smart with its brainless lawyers on my back that only the commonwealth can levy certain taxes and the States the residue. No such thing as private taxes being levied, and yet the GST basically is what it is because many who sell items to customers and charge GST do not have to pass this on to the ATO because of the level below which they do not have to pay GST, just that the customer already has paid the GST and so vendors are by this technically having their own 10% private taxation.

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What may be noted is the wording "**but rather returned taxation powers back to them**" as such this is a concession that in fact since 1910 land taxes were an exclusive Commonwealth legislative power. The question then is how does one "**returned**" a legislative power to any State, not just NSW, where the Constitution never provided for this? Clearly Barry Collier MP didn't clarify within what constitutional powers, if any, a reversal of legislative power could eventuate and quite frankly the Framers of the Constitution made clear that once a legislative power was a Commonwealth legislative power then this was the end of the States dealing with the subject.

Hansard *27-1-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE

> **Mr. DEAKIN**.-My point is that by the requests of different colonies at different times you may arrive at a position in which all the colonies have adopted a particular law, and it is necessary for the working of that law that certain fees, charges, or taxation should be imposed. **That law now relates to the whole of the Union**, because every state has come under it. **As I read clause 52, the Federal Parliament will have no power, until the law has thus become absolutely federal, to impose taxation to provide the necessary revenue for carrying out that law**. **Another difficulty of the sub-section is the question whether, even when a state has referred a matter to the federal authority, and federal legislation takes place on it, it has any- and if any, what-power of amending or repealing the law by which it referred the question? I should be inclined to think it had no such power, but the question has been raised, and should be settled. I should say that, having appealed to Caesar, it must be bound by the judgment of Caesar, and that it would not be possible for it afterwards to revoke its reference.**

END QUOTE

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HANSARD *1-3-1898* Constitution Convention Debates

QUOTE **Mr. GORDON.-**

> **The court may say-"It is a good law, but as it technically infringes on the Constitution we will have to wipe it out."**

END QUOTE

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Hansard *16-2-1898* Constitution Convention Debates

QUOTE **Mr. ISAACS** (Victoria).-

> **In the next sub-section it is provided that all taxation shall be uniform throughout the Commonwealth. An income tax or a property tax raised under any federal law must be uniform "throughout the Commonwealth." That is, in every part of the Commonwealth.**

END QUOTE

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Hansard *19-4-1897* Constitution Convention Debates

QUOTE

> **Mr. MCMILLAN:** I think the reading of the sub-section is clear.
>
> **The reductions may be on a sliding scale, but they must always be uniform.**

END QUOTE

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Hansard *19-4-1897* Constitution Convention Debates

QUOTE

Sir GEORGE TURNER: No. In imposing uniform duties of Customs it should not be necessary for the Federal Parliament to make them commence at a certain amount at once. We have pretty heavy duties in Victoria, and if the uniform tariff largely reduces them at once it may do serious injury to the colony. **The Federal Parliament will have power to fix the uniform tariff, and if any reductions made are on a sliding scale great injury will be avoided.**

END QUOTE

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Hansard *17-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON**.-

But it is a fair corollary to the provision for dealing with the revenue for the first five years after **the imposition of uniform duties of customs**, and further reflection has led me to the conclusion that, on the whole, it will be a useful and beneficial provision.

END QUOTE

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Hansard *17-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON**.-

On the other hand, the power of the Commonwealth to impose duties of customs and of excise such as it may determine, which insures that these duties of customs and excise would represent something like the average opinion of the Commonwealth-that power, and the provision that bounties **are to be uniform throughout the Commonwealth**, might, I am willing to concede, be found to work with some hardship upon the states for some years, unless their own rights to give bounties were to some extent preserved.

END QUOTE

Hansard *31-3-1891* Constitution Convention Debates

QUOTE **Sir SAMUEL GRIFFITH:**

2. Customs and excise and bounties, but so that duties of customs and excise and bounties **shall be uniform** throughout the commonwealth, and that no tax or duty shall be imposed on any goods exported from one state to another;

END QUOTE

Hansard *11-3-1898* Constitution Convention Debates

QUOTE **The CHAIRMAN**.-

Taxation; but so that all taxation **shall he uniform throughout the Commonwealth**, and that no tax or duty shall be imposed on any goods passing from one state to another.

END QUOTE

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Hansard *22-2-1898* Constitution Convention Debates

QUOTE

Mr. BARTON.-I am saying now that I do not think there is any necessity for clause 95 in its present form. What I am saying however, is that it should be made certain that in **the same way as you provide that the Tariff or any taxation imposed shall be uniform throughout the Commonwealth**, so it should be provided with reference to trade and commerce that it shall be uniform and equal**, so that the Commonwealth shall not give preference to any state or part of a state. Inasmuch as we provide that all taxation, whether it be customs or excise duties, or direct taxation, must be uniform,** and inasmuch as we follow the United States Constitution in that particular-in the very same way I argue that we should protect the trade and commerce sub-section by not doing anything which will limit its effect. That is the real logical position.

END QUOTE

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Hansard 3-3-1897 **Constitution Convention Debates** (**Official Record of the Debates of the National Australasian Convention**)

QUOTE

Mr. ISAACS (Victoria).-What I am going to say may be a little out of order, but I would like to draw the Drafting Committee's attention to the fact that in clause 52, sub-section (2), there has been [start page 1856] a considerable change. Two matters in that sub-section seem to me to deserve attention. **First, it is provided that all taxation shall be uniform throughout the Commonwealth. That means direct as well as indirect taxation, and the object I apprehend is that there shall be no discrimination between the states; that an income tax or land tax shall not be made higher in one state than in another.** I should like the Drafting Committee to consider whether saying the tax shall be uniform would not prevent a graduated tax of any kind? A tax is said to be uniform that falls with the same weight on the same class of property, wherever it is found. It affects all kinds of direct taxation. I am extremely afraid, that if we are not very careful, we shall get into a difficulty. **It might not touch the question of exemption; but any direct tax sought to be imposed might be held to be unconstitutional, or, in other words, illegal, if it were not absolutely uniform.**

END QUOTE

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It should be clear that a "**UNIFORM**" law under the Commonwealth cannot somehow revert back to a non-uniform law merely because of the States desiring to pursue their own kind of land taxation. As such, on this basis also the State land taxes are floored (and so also any Territorial land taxes).

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Hansard *8-3-1898* Constitution Convention Debates

QUOTE

> **Mr. ISAACS.-The court would not consider whether it was an oversight or not. They would take the law and ask whether it complied with the Constitution. If it did not, they would say that it was invalid.** They would not go into the question of what was in the minds of the Members of Parliament when the law was passed. That would be a political question which it would be impossible for the court to determine.

END QUOTE

As I previously indicated the Commonwealth could have allowed the States to collect under its authority land taxes but it still would have to be **uniform** through the Commonwealth and as such all States and Territories (quasi States) would be bound to have the same land taxes application and not different rates. This then would clearly be a waste of exercise as why allow different States/Territories to collect taxes when one federal office can do the same?

The issue then is of the Commonwealth somehow could enact legislation to retrospective provide for legislation for the States/Territories to have collected land taxes on its behalf. Again, the first hurdle is that retrospective legislation would be invalid where so to say it makes the conduct of an honest man to be a criminal conduct. Further, where the States raised different levels of land taxes then it cannot be uniform. One couldn't accept that a person of one State having paid less then in another State now suddenly was to pay more by some kind of retrospective legislation and neither that some who paid more now were going to receive a refund of any land taxes paid above that of other States. After all commercial entities are based upon overhead cost, including land taxes, etc, and as such a business enterprise might be determined where the lowest taxation is available. Changing the system after the contracts are already in operation would make a mockery of the reliability of State provisions.

I have indicated for years that what is needed is an **OFFICE-OF-THE-GUARDIAN** which would advise the government, the parliament, the people and the Courts as to constitutional meanings and application as a constitutional council. This is what is missing in Australia and as result we have sport stars and singers and whatever elected to the parliament and basically no one understands let alone comprehend the meaning and application of the constitutions.

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It is obviously of concern to me that it took a massive 6 month period (from 31 August 2010 till 2 March 2011) to present this kind of response that doesn't appear to me to indicate to be any well researched response. By the State of NSW. (when the previous government was in power.)

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EITHER WE HAVE A CONSTITUTION OR WE DON'T!

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Can the Commissioner of Taxation then be deemed culpable for allowing this unconstitutional taxation to continue?

In my view he can because there is no difference for me to stand by watching a criminal to rob a store and do nothing about it then the Commissioner of Taxation knowingly allowing the States to rob taxpayers of their monies by the unconstitutional land taxes and for others to slug and so rob taxpayers of the 10% GST component which has no constitutional validity.

As the Framers of the Constitution made clear that any tax that was deemed to be unconstitutional has to be refunded to the taxpayers. As such the so called CocoPop tax had to be refunded to the purchasers of the drinks as they were the once who paid the taxes. And, the so called CocoPop tax is and remains unconstitutional because there was a failure of a 3-month constitutionally required interval of a new session before it was reintroduced into the Parliament. As like many other bills are failing on this.

While the ATO may hold "**screw you**" to the taxpayers it may eventually eventuate that this will haunt the ATO because as the Framers of the Constitution made clear:

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Hansard *1-3-1898* Constitution Convention Debates

QUOTE **Sir JOHN DOWNER**.-

> **I think we might, on the attempt to found this great Commonwealth, just advance one step, not beyond the substance of the legislation, but beyond the form of the legislation, of the different colonies, and say that there shall be embedded in the Constitution the righteous principle that the Ministers of the Crown and their officials shall be liable for any arbitrary act or wrong they may do, in the same way as any private person would be.**

END QUOTE

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As such if I have my way then every ATO officer who acted ignorant towards the suffering of taxpayers should be made legally accountable even if this means selling their personal property to provide restitution for those they inflicted harm upon.

No excuse as to claim following orders (consider Neurengberg trials) as those who so to say enjoy inflicting harm upon others such as the Pincivic's should suffer the legal consequences.

You cannot have that ATO officers are so to say being standover men obtaining court orders ex parte and then seek to use those orders to persecute people like the Pincevic's. We all must join together to stop this rot as if we don't then soon or later it will be our turn.

I find it totally unacceptable for the ATO to obtain inappropriately ex party court orders and then use this as some kind of weapon against the Pincevic's to force them to release details, etc., they never needed to release.

Those in the ATO, or for that anywhere else, who participate in this kind of rot deserves no pity because they are undermining the provisions of the constitution and they betray the blood that flowed from the australian soldiers who died to protect the rights and privileges of this constitution for all Australians. Only **cowards** will participate or join into this kind of rot and anyone with a bit of backbone will stand up and be counted and stop this rot. Hence we all must ensure that our constitution is the principle governing documents that belongs to the people and will be maintained by the people as not to do so is to betray our rights and subject ourselves to dictatorship and tyranny

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Do understand that as a **CONSTITUTIONALIST** I am more and more so to say lift the cover of the evil deeds that is going on and it is merely a matter of time that people are so sick of it all that finally they will retaliate and hold those involved in it all legally accountable. The **RULE OF LAW** must always prevail and hence make sure that you do act lawfully and appropriate and do not stand by to allow others to commit their crimes perpetrated upon Australians as if you do then I view you are no better then the criminals who do the deed. Just don't wait until others do it for you! As you may notice I may not have written for some time to you but rest assure I didn't forget you, and neither do I think others will do so likewise! Remember: **WE THE PEOPLE**!

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MAY JUSTICE ALWAYS PREVAIL®

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Our name is our motto!

Awaiting your response, **G. H. Schorel-Hlavka**

END QUOTE **Michael D'Ascenzo**, Commissioner of Taxation,

QUOTE **Chapter 0008 SUBMISSION - taxation issues non-profit-etc**

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Chapter 0008 SUBMISSION - taxation issues non-profit-etc

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* Gerrit, as a **CONSTITUTIONALIST** would you say that the States can tax the Commonwealth and visa versa? Also what about religious finding and tax concessions for **NON-PROFIT (NOT-FOR-PROFIT)** organizations?

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**INSPECTOR-RIKATI®**, let's first attend to the issue of taxation in general, *The Commonwealth of Australia Constitution Act 1900* (UK)…

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* You mean the *Commonwealth of Australia Constitution Act*?

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No, the title is *The Commonwealth of Australia Constitution Act 1900* (UK)

http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/high_ct/1999/27.html?query=%22thi+act+and+all+law+made+by+the+parliament%22#fn50

QUOTE

> **Constitutional interpretation**
>
> **The starting point for a principled interpretation of the Constitution is the search for the intention of its makers[51].**

END QUOTE

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KING v. JONES ; McEWEN v. HACKERT ; JONES v. JONES. (1972) 128 CLR 221

Barwick C.J.(1), McTiernan(2), Menzies(3), Walsh(4), Gibbs(5) and Stephen(6)JJ.

QUOTE Barwick C.J.(1)

> 10. There are some basic propositions of constitutional construction which are beyond controversy. **The words of** the Constitution **are to be read in that natural sense they bore in the circumstances of their enactment by the Imperial Parliament in 1900.** That meaning remains, beyond the reach of any Australian Parliament, subject only to alteration by the means provided by s. 128 of the Constitution. **The connotation of words employed in** the Constitution **does not change though changing events and attitudes may in some circumstances extend the denotation or reach of those words.** These propositions are fully documented in the reported decisions of this Court which has the task of finally and authoritatively deciding both the connotation and the denotation of the language of the Constitution. (at p229)

END QUOTE

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HANSARD *7-2-1898* Constitution Convention Debates

QUOTE

> **Sir EDWARD BRADDON** (Tasmania).-I have an amendment to move on behalf of Tasmania, and also an amendment of my own. The clause we have before us says that a state shall not make any law prohibiting the free exercise of any religion. It is quite possible that this might make lawfull practices which would otherwise be strictly prohibited. Take, for instance, the Hindoos. One of their religious rites is the "suttee," and another is the "churruck,"-one meaning simply murder, and the other barbarous cruelty, to the devotees who offer themselves for the sacrifice.
>
> **Dr. COCKBURN**.-The Thugs are a religious sect.

Sir EDWARD BRADDON.-Yes. If this is to be the law, these people will be able to practise the rites of their religion, and the amendment I have to suggest is the insertion of some such words as these:-

But shall prevent the performance of any such religious rites, as are of a cruel or demoralizing character or contrary to the law of the Commonwealth.

The leader of the Convention is, I believe, in a hurry to conclude the evening's proceedings. I will leave the amendment with him, in the hope that he will be able to make something of it.

END QUOTE

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This document is to be understood to attend to TAXATION matters, and albeit it also refers to "religious "issues this must be appropriately understood to relate to TAXATION matters and not as some kind of witch hunt upon any particular religion. The primary issue is the use/misuse of TAXATION.

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http://au.news.yahoo.com/a/-/latest/6920207/scientology-inquiry-blocked-in-senate/
Scientology inquiry blocked in Senate

QUOTE

Labor frontbencher Joe Ludwig said a Senate inquiry was unwarranted, as there were already two other inquiries looking into taxation matters, including the tax-free status of religious groups.

END QUOTE

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In my view a specific inquiry by the Commonwealth of Australia into religion is unconstitutional however an inquiry into TAXATION matters dealing with the issue of TAX EXEMPTION referring to **NON PROFIT** (**NOT FOR PROFIT**) registered entities legitimately can deal with code of conduct, etc, regarding **NON PROFIT** (**NOT FOR PROFIT**) registered entities irrespective it this include religious entities.

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It is important to understand that While the first Amendment of the U.S.A. constitution has similarity with s.116 of *The Commonwealth Constitution Act 1900* (UK) there is a considerable difference in not only that the U.S.A is a CONFERATION and the Commonwealth of Australia is a FEDERATION, but also that the religious prohibition includes this being against the States in the U.S.A. whereas in the commonwealth of Australia s.116 only applies to the commonwealth of Australia and the Framers of the Constitution specifically stipulated not to apply to the States.

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For this certain ruling by the Supreme Court of America may not as such apply to the Commonwealth of Australia and/or the States as a reliable Authority. The same for example applies to the issue of "**citizenship**" the issue of "**eminent domain**" relating to "**FEE SIMPLE**", etc.

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http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=397&invol=664
Frederick WALZ, Appellant, v. TAX COMMISSION OF the CITY OF NEW YORK. No. 135. Argued Nov. 19, 1969. Decided May 4, 1970.

QUOTE

The exemptions have continued uninterrupted to the present day. They are in force in all 50 States. No judicial decision, state or federal, has ever held that they violate the Establishment Clause. In 1886, for example, this Court in Gibbons v. District of Columbia,

116 U.S. 404 , rejected on statutory grounds a church's claim for the exemption of certain of its land under congressional statutes exempting Washington churches and appurtenant ground from real property taxes. But the Court [397 U.S. 664 , 686] gave not the slightest hint that it ruled against the church because, under the First Amendment, any exemption would have been unconstitutional. To the contrary, the Court's opinion implied that nothing in the Amendment precludes exemption of church property: 'We are not disposed to deny that grounds left open around a church, not merely to admit light and air, but also to add to its beauty and attractiveness, may, if not used or intended to be used for any other purpose, be exempt from taxation under these statutes.' Id., at 407. 6

Mr. Justice Holmes said that '(i)f a thing has been practised for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it ....' Jackman v. Rosenbaum Co., 260 U.S. 22, 31 , 10 (1922). For almost 200 years the view expressed in the actions of legislatures and courts has been that tax exemptions for churches do not threaten 'those consequences which the Framers deeply feared' or 'tend to promote that type of interdependence between religion and state which the First Amendment was designed to prevent,' Schempp, supra, 374 U.S., at 236 (Brennan, J., concurring). An examination both of the governmental purposes for granting the exemptions and of the type of [397 U.S. 664 , 687] church-state relationship that has resulted from their existence makes clear that no 'strong case' exists for holding unconstitutional this historic practice. 7

END QUOTE

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In the Commonwealth of Australia however not only was s.116 of the constitution inserted in 1898 but more over the following quotation makes it abundantly clear that the Framers of the Constitution for the Commonwealth of Australia didn't follow this kind of reasoning;

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Hansard *2-3-1898* Constitution Convention Debates

QUOTE

Mr. REID.-**I suppose that money could not be paid to any church under this Constitution?**

Mr. BARTON.-**No; you have only two powers of spending money, and a church could not receive the funds of the Commonwealth under either of them.**

[start page 1773]

END QUOTE

.

QUOTE

Peter Costello - Treasurer

Tax deductibility of gifts to St Paul's Cathedral restoration fund

23 April 2002 – Press Release

Today I am announcing the Government's decision to amend the income tax law to allow tax deductions for gifts to the value of $2 or more to the St Paul's Cathedral Restoration Fund.

As a result, gifts made to the Fund from today to 22 April 2004, **will be deductible for income tax purposes.**

END QUOTE

.

It must be clear that to announce an amendment to the income tax specifically for a religious project, as it is a building used for religious purposes, then this is providing "**funding**" otherwise not permissible in law, being it to claim tax deduction or otherwise.

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The mere fact that a person claimed to be the best treasurer of the century, for whatever this might stand for, then goes through the extra ordinary step to announce something for which there is no constitutional power to do so itself may underline that there is a grave deficiency in those involved in taxation to understand and comprehend what is constitutionally permissible. Hence, this document address matters regardless of what any politician/lawyer may claim to know because as like with "citizenship-" more then likely politicians/lawyers "**ASSUME**" there is a legislative power even so constitutionally there might be none.

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http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=450&invol=707

THOMAS v. REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION ET AL. CERTIORARI TO THE SUPREME COURT OF INDIANA. No. 79-952. Argued October 7, 1980. Decided April 6, 1981.

QUOTE

> The "aid" rendered to religion in these latter cases may not be significantly different, in kind or degree, than the "aid" afforded Mrs. Sherbert or Thomas. For example, if the State in Sherbert could not deny compensation to one refusing work for religious reasons, it might be argued that a State may not deny reimbursement to students who choose for religious reasons to attend parochial schools. **The argument would be that although a State need not allocate any funds to education, once it has done so, it may not require any person to sacrifice his religious beliefs in order to obtain an equal education.** See Lemon, supra, at 665 (opinion of WHITE, J.); Nyquist, supra, at 798-805 (opinion of BURGER, C. J.). There can be little doubt that to the extent secular education provides answers to important moral questions without reference to religion or teaches that there are no answers, a person in one sense sacrifices his religious belief by attending secular schools. And even if such "aid" were not constitutionally compelled by the Free Exercise Clause, Justice Harlan may well have been right in Sherbert when he found sufficient flexibility in the Establishment Clause to permit the States to voluntarily choose to grant such benefits to individuals. [450 U.S. 707, 728]

END QUOTE

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While the Commonwealth of Australia time and time again seems to allocate different funding to private versus public schools and this always is a point of contention the truth is that the Commonwealth of Australia cannot differentiate between private and public schools as the amount per student spent on a student must be the same where it is for private or public education. It makes not one of iota different if parents have their children attending a private school may be so to say stinking rich or not, as many may just do without ordinary pleasures of life to sacrifice it all for their child, as the issue is that the Commonwealth with student financial aid must ensure that there is no financial difference between State public and private education facilities. The States themselves however are not bound by s.116 of the Constitution and entitled to fund State public schools without having to fund any private (including religious) education facilities.

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Hansard *10-3-1891* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE **Mr. DIBBS:**

> where we are giving the people of the country practically a free education-and it should be common to all Australia-we should instil into the minds of our children the necessity for training, **and, as a *quid pro quo* for that free education,**

END QUOTE

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A LAW DICTIONARY ADAPTED TO THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND OF THE SEVERAL STATES OF THE AMERICAN UNION

With References to the Civil and Other Systems of Foreign Law by John Bouvier

Ignoratis terminis ignoratur et ars. - Co. Litt. 2 a. Je sais que chaque science et chaque art a ses termes propres, inconnu au commun des hommes. - Fleury

SIXTH EDITION, REVISED, IMPROVED, AND GREATLY ENLARGED. VOL. I.

PHILADELPHIA CHILDS & PETERSON, 124 ARCH STREET 1856

QUOTE

QUID PRO QUO. This phrase signifies verbatim, what for what. It is applied to the consideration of a contract. See Co. Litt. 47, b; 7 Mann. & Gr. 998.

END QUOTE

.

It is also of concern to me that basically the very ministers in government who may have all benefited from free university education now have done an about face and deny the very opportunity to others to have likewise a free education, even so as is with the State of Victoria **FREE EDUCATION** is a constitutional provided for.

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WELSH v. UNITED STATES, 398 U.S. 333 (1970), 398 U.S. 333**, *WELSH v. UNITED STATES*, CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 76., Argued January 20, 1970, Decided June 15, 1970**

QUOTE

1. The language of 6 (j) cannot be construed (as it was in United States v. Seeger, supra, and as it is in the prevailing opinion) to exempt from military service all individuals who in good faith oppose all war, it being clear from both the legislative history and textual analysis of that provision that Congress used the words "by reason of religious training and belief" to limit religion to its theistic sense and to confine it to formal, organized worship or shared beliefs by a recognizable and cohesive group. Pp. 348-354.

2. The question of the constitutionality of 6 (j) cannot be avoided by a construction of that provision that is contrary to its intended meaning. Pp. 354-356.

3. Section 6 (j) **contravenes the Establishment Clause of the First Amendment by exempting those whose conscientious objection claims are founded on a theistic belief while not exempting those whose claims are based on a secular belief. To comport with that clause an exemption must be "neutral" and include those whose belief emanates from a purely moral, ethical, or philosophical source.** Pp. 356-361.

4. In view of the broad discretion conferred by the Act's severability clause and the longstanding policy of exempting religious conscientious objectors, the Court, rather than nullifying the exemption entirely, should extend its coverage to those like petitioner who have been unconstitutionally excluded from its coverage. Pp. 361-367.

END QUOTE

.

With social security benefits there is a further problem in that considering the Welsh case the commonwealth of Australia has a problem that if religious objection is maintainable for a person to refuse to work in a particular position, if not in a weapon manufacturing factory then perhaps in a slaughter house then likewise the same should be applicable for an ATHIES. As one cannot claim benefits upon religion that others would be denied as then it would allow a “benefit” to religion to advance a particular religion above that of others.

The moment the commonwealth allows exceptions for a person of one religion but not that for another religion or ATHIEST then the commonwealth of Australia would be to enhance the promotion of a certain religion. This likewise can be held having been with Mr peter Costello

providing for this Church of a particular religion to gain advantage above other religions and/or ATHIEST who may have their own structure to come together, being it that the room of their building, being it of a gazebo for their BBQ meeting to deliberately abstain from religious indoctrinations or otherwise still would a kind of non-religious practices as like religious practices of a person of a certain religion.

.

The Selective Serv. Draft Law Cases [Arver v. United States], 245 U.S. 366 (1918) "Exemption of clergy, theology students, and pacifist sects from combat service is constitutional." Free Exercise Exemptions-Miscellaneous yet again this was subsequently so to say clarified by the *Welsh v. United States*, 398 U.S. 333 (plurality) (1970) case regarding "Beliefs held with strength of traditional religious convictions are entitled to conscientious objector status." Military Service.

Clay v. United States, 403 U.S. 698 (per curiam) (1971) "Conviction of Black Muslim for refusing induction is reversed when government conceded pacifism and sincerity." Military Service

Diffenderfer v. Central Baptist Church, 404 U.S. 41 (per curiam) (1972) "Challenge to property tax exemption for church parking lot used for commercial purposes is moot due to change in statute." Statutory Exemptions for Religious Persons/Entities Tax Exemptions

Thomas v. Review Bd., 450 U.S. 707 (1981) "Denial of unemployment benefits because religious beliefs forbade production of armaments violated First Amendment." Military Service Unemployment Compensation

.

Jensen v. Quaring, 472 U.S. 478 (aff'd by equally divided Court) (1985) "Struck down requirement that applicant submit to having photograph taken for affixing on driver's license as unconstitutionally burdening free exercise." Free Exercise Exemptions-Miscellaneous

The last mentioned case however is noticeable that the same cannot apply in any State in the Commonwealth of Victoria as the Framers of the Constitution specifically provided that States could legislate as to religion. The question then is if the Commonwealth of Australia could insist upon photo's to be provided on driving licenses/passports, etc, and in my view the Commonwealth of Australia legitimately could legislate as the Framers of the Constitution made clear that religious practices could only be permitted for so far they complied with legal provisions. As such if the Commonwealth were to legislate to target a specific religion then it would be unconstitutional

.

HANSARD *17-2-1898* **Constitution Convention Debates**

QUOTE **Mr. OCONNOR**.-

> We must remember that in any legislation of the Commonwealth we are dealing with the Constitution. Our own Parliaments do as they think fit almost within any limits. **In this case the Constitution will be above Parliament, and Parliament will have to conform to it.**

END QUOTE

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HANSARD *1-3-1898* **Constitution Convention Debates**

QUOTE

> **Mr. GORDON**.- The court may say-"**It is a good law, but as it technically infringes on the Constitution we will have to wipe it out.**"

END QUOTE

HANSARD *8-2-1898* **Constitution Convention Debates**

QUOTE

> **Mr. HIGGINS**.-A number of laws have been held to be unconstitutional in America because of their reasons and because of their motives. There was a funny case in San

Francisco, where a law was passed by the state that every prisoner, within one hour of his coming into the prison, was to have his hair cut within one inch of his head. That looked very harmless, but a Chinaman brought an action to have it declared unconstitutional, **and it turned out that the law was actually passed by the Legislature for the express purpose of persecuting Chinamen.**

Mr. BARTON.-That took place under the next clause in this Bill, which is a similar enactment.

Mr. HIGGINS.-I did not say that it took place under this clause, and the honorable member is quite right in saying that it took place under the next clause; **but I am trying to point out that laws would be valid if they had one motive, while they would be invalid if they had another motive.** All I want is, that there should be no imposition of any observance because of its being religious.

END QUOTE

.

In the Commonwealth of Australia however it is unlikely that this kind of legislation to prosecute Chinamen would be deemed unconstitutional because of the Framers of the Constitution specifically having provided for s.51(xxvi) which was set out to "**DISCRIMINATE**" against any particular race. (CLARIFICATION: Personally I oppose discrimination but my personal views cannot interfere with the true meaning and application of the constitution.)

.

Therefore there is little use for anyone to use all kinds of Authorities and then rely upon this in the courts, and likewise so in the parliament, as if this is applicable because unless one is a **CONSTITUTIONALIST**, as I am and extensively researched matters as such one can easily misconceive the appropriate application of any authorities, even so the Framers of the Constitution so to say borrowed s.116 of the constitution of the first amendment of the U.S.A. constitution. This, because the Framers of the Constitution didn't intend to follow the same kind of application and therefore to merely assume what applies in the U.S.A. as to tax exemption versus that in the Commonwealth of Australia would be a gross miscarriage of what is **JUST** and **PROPER**. As I understand it the judges appointed to the High Court of Australia do not need to have any competence as to be appointed to this court and to determine constitutional matters and as such basically they are appointed with so to say "training wheels" and tough luck for those appearing before the court and end up with an ill conceived judgment that is detriment to their case. As ***Wakim*** HCA 27 of 1999 proved that previously the High Court of Australia had one ruling about the application and standing of the Cross Vesting Act and next they overrule this decision. In my view this kind of conduct is at the very least scandalous and untenable and hence forth a constitutional decision apart of appeal decisions should be erected that have judges sitting at this constitutional bench which are specifically educated in constitutional matters and not as previously occurred a judge declares not to know the constitutional issue and refuse to hand down a judgment and by this the appellant lost the tried 3-3- decision appeal.

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Below are a few (Ok a bit more then a few) statements as to contractual meanings and applications including about a grant, etc. This is so as to try to get a common understanding as many persons are not aware that a grant actually is a contract. As such, as was occurring with the grants regarding insulation it established a certain contract between the Government and the beneficiaries who obtained the contracts (grants) and as such with any contract a "**DUTY OF CARE**" is applicable.

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States.***

QUOTE

A college whose charter declared that its purpose was to spread Christian knowledge among the Indians, and establish the best means of education in a certain province, for the benefit of the province, and whose trustees or governors were originally named by the founder, and invested with the power of perpetuating themselves, is an eleemosynary corporation.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Corporations aggregate consist of those for public government, such as those for government of a town, city or the like, and those for private charity subject to private government of those who erect them.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The fact that a corporation is established for the purpose of general charity, or for education generally, does not per se make it a public corporation.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Where corporation for which charter was granted by crown was expressly created to distribute in perpetuity charitable donations of private benefactors, and trustees by terms of charter were to manage fund contributed, there was an implied contract, as soon as donation was made to corporation, that the crown would not revoke or alter charter or change its administration without consent of corporation, and there was an implied contract between corporation and every benefactor that it would administer contributions for objects stipulated in charter.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A college is a private charity as well as a hospital, and both are eleemosynary.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The mere act of incorporation will not change a charity from a private to a public one.

END QUOTE

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A college or hospital founded by a private benefactor is a "private corporation" although dedicated by its charter to general charity.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***
QUOTE

Where a private eleemosynary corporation is created by charter of the crown, it is subject to no other control on part of the crown than what is expressly or implicitly reserved by charter itself and, in absence of reservation for that purpose, crown cannot, without consent of corporation, alter or amend charter or divest corporation of any of its franchises, add to them, add to or diminish number of trustees remove any of members, change or control administration of charity or compel corporation to receive new charter.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***
QUOTE

An eleemosynary corporation is subject to general law of the land and may forfeit its corporate franchises by misuser or nonuser of them.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***
QUOTE

Where purpose of contributions to chartered college was the propagation of the Christian religion among the savages, fact that college was to be located in New Hampshire and that New Hampshire would benefit from establishment thereof, did not place beneficial interest therein in the people of New Hampshire so as to make it a public corporation subject to control of state legislature.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***
QUOTE

A private charitable corporation is subject to control laws and visitation of its founders and not to general control of government.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***
QUOTE

A college, founded by private benefactors, is not constituted a public corporation, controllable by the government, by receiving a charter from the government, though the funds may have been generally derived from the bounty of the government.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***
QUOTE

Where visitorial power is vested in trustees of charity, they are not beyond reach of the law, but as managers of revenues of corporation, they are subject to general superintending power of court of chancery, not as possessor of a visitorial power, but as possessing a general jurisdiction to redress grievances and suppress fraud in case of abuse of trust.

END QUOTE

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Where a corporation is a mere trustee of a charity, a court of equity, although it cannot appoint or remove a corporator, will in case of gross fraud or abuse of trust take away the trust from the corporation and vest it in other hands.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The trustees of college for which corporate charter had been obtained were amenable, as managers of property and revenues of corporation, to jurisdiction of judicial tribunals of state, but as visitors, their discretion was limited only by charter and was liable to no supervision or control, unless it was fraudulently misapplied.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Where founder of college obtained corporate charter therefor from British crown and assigned the government and control of college to the trustees in their corporate character, the visitorial power rightfully devolved on the trustees.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Where trustees or governors of charity are incorporated to manage the charity, the visitorial power is deemed to belong to them in their corporate character.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The Supreme Court in a doubtful case will not pronounce a legislative act to be contrary to constitution.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The constitutional provision prohibiting states from passing laws impairing contractual obligations does not embrace contracts other than those which respect property or some object of value, and confer rights which may be asserted in a court of justice.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

It was not intended by constitutional provision prohibiting states from passing laws impairing contractual obligations to create any new obligations or give any new efficacy to nude pacts, but it was intended to preserve all obligatory force of contracts which they had by the general principles of law.

END QUOTE

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Religion, charity and education are not of so little estimation that contracts for their benefit must be excluded from protection of constitutional provision prohibiting states from passing laws impairing contractual obligations.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The charter of a corporation created by the state is a contract, and is in all particulars inviolable, unless in the charter itself, or in some general or special law to which it was taken subject, there is a power reserved to the legislature to alter or amend.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Where franchises granted by charter creating college were vested in trustees thereof in their corporate character, and lands and other property subsequently acquired were held by trustees in the same manner, the trustees were vested with a sufficient beneficial interest as to bring charter within purview of constitutional provision prohibiting states from passing laws impairing contractual obligations.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The validity and justice of laws of a civil corporation are examinable by court having jurisdiction over it, and such corporation may be controlled and its constitution altered and amended by government in such manner as public interest may require, and such interference impairs no contract.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The creation of a corporation for educational purposes by charter was such a grant as constituted a "contract" within constitutional provision prohibiting states from passing laws impairing contractual obligations.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

That corporation created by charter granted by the crown was not then in existence did not prevent the charter from being construed as a contract within constitutional provision prohibiting states from passing laws impairing contractual obligations.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

The application to the crown for a charter to incorporate a religious and literary institution for which large contributions had been made, the granting of the charter and the conveyance of property on the faith of the charter constituted a "contract", as respects whether that contract was within constitutional provision prohibiting states from passing laws impairing contractual obligations.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

That original founders of college, which had obtained charter from crown, had no further interest in property contributed by them, that students were fluctuating and without vested interest and that trustees of college had no beneficial interest to be protected, did not prevent contract, to which the donors, trustees and the crown were original parties, from being within constitutional provision prohibiting states from passing laws impairing contractual obligations.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

That a corporation is established for the purpose of education generally, does not per se make it a public corporation liable to the control of the legislature.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

City ordinances made in pursuance of law, and granting to a corporation the right to build and operate street-railway lines in the city, after acceptance by the corporation and the expenditure of large sums of money on the faith thereof, constitute a contract protected by U.S.C.A.Const. art. 1, § 10, forbidding states to make any law impairing the obligation of contracts.

END QUOTE

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Except so far as the constitution may protect them from interference, offices are neither grants, nor contracts, nor obligations which cannot be changed or impaired. The term, duties, and compensation thereof are subject to the legislative will. The office may be abolished, or the duties and compensation incident thereto may be taken away from the incumbent, and given to another.

END QUOTE

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A contract is either "executory" or "executed"; by an "executory contract" a party binds himself to do or not to do a particular thing, and an "executed contract" is one in which the object of the contract is performed.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A "contract" is a transaction between two or more persons in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised by the other.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A "contract executed" is one in which the object of the contract is performed, and differs in nothing from a grant.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

An "executory contract" is one in which a party binds himself to do or not to do a particular thing.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A grant in its own nature amounts to an extinguishment of the right of the grantor and implies a contract not to reassert that right.

END QUOTE

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A grant is a contract.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Mere executory contracts cannot be enforced at law unless there be a valuable consideration to sustain them.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

It is not necessary that consideration for a contract should be a benefit to the grantor, but it is sufficient if it imports damage or loss or forbearance of benefits or any act done or to be done on the part of the grantee.

END QUOTE

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

> **When a contract has once passed bona fide into grant, neither the king nor any private person who may be the grantor can recall the grant of the property, although the conveyance may have been purely voluntary.**

END QUOTE.

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

> **A contract executed, as well as one that is executory, contains obligations binding on the parties.**

END QUOTE.

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

> **A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law.**

END QUOTE.

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

> **A "corporation" is a franchise for a number of persons to be incorporated and exist as a body politic, with a power to maintain perpetual succession and to do corporate acts, and each individual of such a corporation is said to have a franchise or freedom.**

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

> **Corporations are sole or aggregate. An aggregate corporation, at common law, is a collection of individuals united into one collective body, under a special name, and possessing certain immunities, etc., which do not belong to the natural persons composing it.**

END QUOTE.

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

> **An "aggregate corporation" is an artificial person existing in contemplation of law and endowed with powers and franchises which are considered as subsisting in corporation itself, and hence such a corporation may sue and be sued by its own members and may contract with them in same manner as with a stranger.**

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A charter may be granted upon an executory as well as on an executed consideration, and when it is granted to persons who have not made application therefor, there is an implied contract, upon acceptance of grantees, that they will perform duties and exercise authority conferred by charter.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A gift by the crown of incorporeal hereditaments, such as corporate franchises, when executed, is a "grant".

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

When a charter is granted, and the corporation is to be brought into existence by some future acts of the corporators, the franchises or property which the charter grants to the body remain in abeyance until such acts are done; and, when the corporation is brought into life, the franchises instantaneously attach.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

An aggregate corporation at common law possesses capacity of perpetual succession, of acting by the collected vote or will of its component members and of suing and being sued in all things touching its corporate rights and duties.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A corporation has no power except what is given by its incorporating act, either expressly or as incidental to its existence.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A grant of the king, at the suit of the grantee, is to be construed most beneficially for the king and most strictly against the grantee.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

Although a particular case may not in itself be of sufficient magnitude to induce a rule of law, it must be governed by the rule when established, unless some plain and strong reason for excluding it can be given.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

"Public corporations" are generally esteemed such as exist for public political purposes, such as towns, cities, parishes and counties, but strictly speaking they are such only as are founded by government for public purposes, where whole interest belongs to the government.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

A gift completely executed is irrevocable and property conveyed by it becomes as against the donor, the absolute property of the donee, and no subsequent change of donor's intention can change rights of donee.

END QUOTE

.

TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

All contracts and rights respecting property remained unchanged by the revolution by which freedom from the British crown was obtained.

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

Charitable trust cannot validly be established to accomplish purpose contrary to public policy.

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

Generally, trusts for education are considered to be for benefit of community, but this general rule is subject to qualification by rule that charitable trust cannot validly be established to accomplish purpose contrary to public policy.

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

Federal tax exemptions and deductions are generally unavailable for activities contrary to declared federal public policy.

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

. [General right of association is protected no matter how unpopular group's purposes or characteristics may be, and one has constitutionally protected right to belong to political groups embracing both legal and illegal aims so long as one does not intend to engage in acts in furtherance of their unlawful purposes.

END QUOTE

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Then consider the following quotation:

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Hansard 17-4-1897 **Constitution Convention Debates**

QUOTE **Mr. SYMON:**

> **There can be no doubt as to the position taken up by Mr. Carruthers, and that many of the rules of the common law and rules of international comity in other countries cannot be justly applied here.**

END QUOTE

.

The following in the U.S.A is applicable while in the Commonwealth of Australia precisely the reverse is applicable because of s.51(xxvi).

http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

> **Compelling as well as reasonable government interest in interdiction of racial discrimination stands on highest constitutional ground and is dominant over other constitutional interests to extent that there is complete and unavoidable conflict. U.S.C.A.Const. Amends. 1, 5, 14; Civil Rights Act of 1964, §§ 401-605, 401(c), 601, 42 U.S.C.A. §§ 2000c to 2000d-4, 2000c(c), 2000d.**

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

> **Private individual has no constitutional right to demand government support of racially discriminatory policies.**

END QUOTE

.

http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

> **Governmental and constitutional interest of avoiding racial discrimination in educational institutions embraces interest of avoiding even indirect economic benefit of tax exemption.**

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

> **Where there is compelling government interest, even First Amendment freedoms may be limited by appropriately confined lesser measures though such freedoms could not be prohibited directly.**

END QUOTE

.

Again, because I am a **CONSTITUTIONALIST** I understand the complete opposite of reasoning whereas ordinary lawyers may not have a clue about this.

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

> **Federal courts have power to correct improper or inadequate action of federal officials not only, as in case of state officials, for failure to observe constitutional limits, but also for failure to act in consonance with pertinent federal legislation, and where necessary courts have power even to command affirmative action.**

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp
Green v. Connally, D.C., 330 F.Supp. 1150.
QUOTE

Public interest requires court to assure adequate consideration of initial applications to government when that is crucial step not readily correctible at later stage on consideration of permanent application.

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp
Green v. Connally, D.C., 330 F.Supp. 1150.
QUOTE

Where improvident ruling of Internal Revenue Service recognized tax-exempt status and advance assurance of deductibility would guarantee deductibility of contributions later made even if subsequent audit resulted in revocation (prospectively) of exemption ruling, court's decree could extend to matters of administration, such as information requirements, though court had accepted service's current interpretation of statute.

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp
Green v. Connally, D.C., 330 F.Supp. 1150.
QUOTE

Duty of court as court of equity to do complete justice is as applicable to protection of statutory rights as to protection of constitutional rights, and principle is applicable with full vigor when statute relates to fundamental civil rights.

END QUOTE

.
http://www.churchstatelaw.com/cases/Coit.asp
Green v. Connally, D.C., 330 F.Supp. 1150.
QUOTE

The relevant provisions of the Internal Revenue Code are as follows:

Internal Revenue Code § 170, 26 U.S.C. § 170.

(c) Charitable contribution defined.-For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of-

* * *

(2) A corporation, trust, or community chest, fund, or foundation- (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals; (C) **no part of the net earnings of which inures to the benefit of any private shareholder or individual;** and (D) **no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its** *1157 possessions exclusively for purposes specified in subparagraph (B). Internal Revenue Code § 501, 26 U.S.C. § 501: (c) List of exempt organizations.-***

* * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

[2]**The key words are not defined with particularity in the Code or Treasury Regulations. But clearly, the term "charitable" is used "in its generally accepted legal sense,"** Treas.Reg. § 1.501 (c) (3)-1(d) (2), **and not in a street or popular sense** (such as, e. g., benevolence to the poor and suffering). See H. Reiling, **"What is a Charitable Organization?"** 44 A.B.A.J. 525, 527 (1958). **Thus "strong analogy" can be derived from the general common law of charitable trusts, at least for close interpretative questions**. Girard Trust Co. v. Commissioner of Internal Revenue, 122 F.2d 108, 110 (3d Cir. 1941); Pennsylvania Co. for Insurance of Lives and Granting Annuities v. Helvering, 62 App.D.C. 254, 66 F.2d 284 (1933).

B. *Denial of Exemptions and Deductions May Be Required by Underlying Law of*

Charitable Trusts

There is at least a grave doubt whether an educational organization that practices racial discrimination can qualify as a charitable trust under general trust law. We need not decide that question, but brief discussion provides helpful perspective.

1. General Law of Charitable Trusts.

Apart from tax advantages, the law bestows on charitable trusts many privileges not accorded their non-charitable cousins. As Bogert's text notes, these include: permission for the trust to be perpetual in duration; to inure to the benefit of beneficiaries who are not definitely ascertainable at creation of the trust or within the period of the rule against perpetuities; and to escape some of the rules regarding accumulations, as well as those against remoteness in vesting and suspension of the power of alienation. Special rules of construction are applied in an effort to support a charitable trust. And under the cy pres doctrine the courts modify charitable trusts to meet changing conditions in a way not permitted with regard to private trusts. "All these exceptions and exemptions imply more or less disadvantage to the community. **The law must find in the trust which is to receive the name 'charitable' some advantages to the public which more than offset the detriments which arise out of the special privileges accorded to that trust.** [FN5] "

FN5. 4 G. Bogert, The Law of Trusts and Trustees §§ 361, 362 (2d ed. 1964).

It is because society is "the real beneficiary of every charitable trust" that it is enforceable even though there are no ascertainable beneficiaries to bring an issue or controversy to the chancellor. It is the "public benefits arising from the charitable trust" that result in its enforcement by a public official, traditionally the Attorney General whose duties include protection of the people of the state in general. [FN6] **And if the purpose of a trust does not merit classification as beneficial to the community and hence a charitable trust, then however honorable its purpose-say, a trust for the erection of monuments, the care *1158 of graves, the support of animals, and in various states for the saying of masses,-there is only an "honorary trust" which the transferee may decline to fulfill and remit to the settlor or estate. There is no**

community benefit which permits the time and effort of a public official to be devoted to its enforcement. [FN7]

FN6. 4 Bogert, supra note 5 § 411, p. 318; see § 362, p. 5 for the first sentence of this paragraph of opinion.

FN7. Restatement (Second) of Trusts § 124 (1959).

Underlying the law of charitable trusts is the conception, both in definition and requirement, that a "charitable" trust is one formed to serve the general welfare and be "beneficial to the community." Often cited is Ould v. Washington Hospital for Foundlings, 95 U.S. 303, 311, 24 L.Ed. 450 (1877), "A charitable use, where neither law nor public policy forbids, may be applied to almost any thing that tends to promote the well-doing and well-being of social man." The American Law Institute restates the doctrine thus: "A purpose is charitable if its accomplishment is of such social interest to the community as to justify permitting the property to be devoted to the purpose in perpetuity. [FN8] "

FN8. Id. § 368, Comment b.

Calculations of community benefit are often difficult, and as time passes, conceptions of worthy purposes may change. "Because of this constant flux," notes one commentator, [FN9] "attempts to formalize the community benefit into abstract rules inevitably degenerate into a listing of ad hoc responses to particular situations." The list in the preamble to the Statute of Charitable Uses, 43 Eliz. I, c. 4(1601), contained a fair collation of the then common charities. Other classical definitions, employing categories derived from the Statute, are set forth in the footnote. [FN10] But underlying any traditional listing of charitable purposes was the element that "accomplishment of the objects listed foreseeably redounded to community betterment." Annot. 12 A.L.R.2d 849, 855 (1950).

FN9. Clark, Charitable Trusts, the Fourteenth Amendment and the Will of Stephen Girard, 66 Yale L.J. 979, 997 (1957).

FN10. Lord Macnaghten's oft-cited definition in Commissioners for Special Purpose of Income Tax v. Pemsel, [1891] A.C. 531, 583 stated:

"Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly.

Restatement (Second) of Trusts, § 368 (1959), spells out two additional categories:

Charitable purposes include

(a) the relief of poverty;

(b) the advancement of education;

(c) the advancement of religion;

(d) the promotion of health;

(e) governmental or municipal purposes;

(f) other purposes the accomplishment of which is beneficial to the community.

A leading American definition of charitable trusts appears in

Jackson v. Phillips, 14 Allen 539, 556 (Mass.1867).

Trusts coming within Lord Macnaghten's first three categories (supra, note 10)-relief of poverty; advancement of education; advancement of religion-are recognized as beneficial to the community as a whole even though the class of persons benefiting directly is relatively small. When trusts come under the general, residual category ("other purposes beneficial to the community") it must be shown that the class of beneficiaries is large enough to establish the interest of the community in enforcement of the trust. Restatement (Second) of Trusts § 375, Comment a. And so, even several years before the July, 1970, change in tax policy as to educational charities, the IRS took the position that contributions to community recreation facilities would be deductible only if the facilities were open on a racially non-discriminatory basis. [FN11]

FN11. Rev.Rul. 67-325, 1967-2 Cum.Bull. 113.

*1159 Analysis of the contribution of a trust purpose to the benefit of the community must take into account broad principles of the general welfare, as expounded, inter alia, in constitutions, statutes, and court decisions. There may well be changes over time in the application of these principles to particular uses. For example, there was no mention of alleviating the suffering of animals in the Statute of Charitable Uses. Today it is recognized that the community has an interest in the prevention of cruelty to animals and societies formed for the prevention of cruelty to animals have been widely held charitable. [FN12] Changes in the courts' conceptions of what is charitable are wrought by changes in moral and ethical precepts generally held, or by changes in relative values assigned to different and sometimes competing and even conflicting interests of society. [FN13]

FN12. 4 A. Scott, The Law of Trusts § 374.2 at 2905-06 (1967).

FN13. An 1895 English case held that a trust for the prevention of vivisection was a valid charitable trust, In re Foveaux, (1895) 2 Ch. 501, but in 1948 it was overruled by the House of Lords, which held that the purpose of such a trust was to impede medical research and that it therefore could not be beneficial to the community, National Anti- Vivisection Society v. Inland Revenue Commissioners, (1948) A.C. 31.

Scholarly authorities agree that the standards may change over time so that enumerated categories may not be immutably "charitable." Professor Bogert writes: [FN14]

FN14. 4 G. Bogert, supra note 5, § 369 at 63.

The courts should be left free to apply the standards of the time. What is charitable in one generation may be non-charitable in a later age, and vice versa. Ideas regarding social benefit and public good change from century to century, and vary in different communities.

While as a matter of form Professor Scott organized his treatise according to a set of traditional charitable categories, he cautions:

> The interests of the community ** vary with time and place. Purposes which may be regarded as laudable at one time may at other times be regarded as subserving no useful purpose or even as being illegal. So, too, what in one community is regarded as beneficial to the community may in another be regarded as useless if not detrimental. [FN15]

FN15. 4 A. Scott, supra, note 12, § 368 at 2855-56.

Another writer notes that the ultimate test of an attempted charitable trust is not whether it fits into a traditional category but whether the court finds it "beneficial to the community." See Annot. 12 A.L.R.2d 849, 859 (1950).

> This new approach to charities does not mean that courts have abandoned their traditional favor towards charitable trusts. It simply means that the intrinsic merits of a proposed charity are issuable; and trusts are not to be upheld just because they come within a traditional category

. The courts are, of course, vigilant to inquire whether a charitable trust has become unenforceable as written because of lack of benefit to the community even assuming it was valid when executed. The testator or settlor is not given the authority to impose his judgment, however enlightened and reasonable when exercised, on future generations and in perpetuity, with assurance of enforcement by state officials, without authority in the courts to reassess the reasonableness of his purposes in the light of future conditions and public policies.

2. The Common Law Rulings Avoiding Enforcement of Purpose of Racially

Discriminatory Private Education.

[3][4]All charitable trusts, educational or otherwise, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy. This elementary principle, referred to by the Supreme Court in Ould supra, was restated as follows in the Restatement (Second) of Trusts § 377, Comment c (1959): "A trust for a purpose *1160 the accomplishment of which is contrary to public policy, although not forbidden by law, is invalid." This public policy doctrine operates as a necessary exception to or qualifier of the precept that in general trusts for education are considered to be for the benefit of the community. **Otherwise, for example, Fagin's school for pickpockets would qualify for a charitable trust.**

END QUOTE

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The following quotation places really in question the issue of Social Security payments in regard of people living together but not being married as “husband and wife” in accordance to the Family Law Act 1975 provisions!

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

a. Public Policy

[5]Before considering the more particular subject of charities, we refer to the general and well-established principle that the Congressional intent in providing tax deductions and exemptions is not construed to be applicable to activities that are either illegal or contrary to public policy. **For example, the dependency deduction was construed in Leon Turnipseed**, 27 T.C. 758 (1957), **to disallow such a deduction if the relationship**

between the taxpayer and the "dependent" was in violation of local law. This was later codified in Section 152(b) (5) of the Code. See also Fuller v. Commissioner of Internal Revenue, 213 F.2d 102 (10th Cir. 1954) limiting the deduction for individual business losses (now § 165(c)).

END QUOTE

.

Then consider the following:

http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

The Internal Revenue Code does not contemplate the granting of special Federal tax benefits to trusts or organizations, whether or not entitled to the special state rules relating to charitable trusts, whose organization or operation contravene Federal public policy.

END QUOTE

.

It must therefore be clear that any religious entity registered as a **NON PROFIT** (**NOT FOR-PROFIT**) entity cannot conduct itself, such as interfering in family relationships between its members and former members to be denied contact with the former and/or ousted member because this goes against public policy. Likewise any such religious entity that applies a punishment of deprivation of liberty without it being first sanctioned by the courts in each and every incident cannot be regarded to be acting lawfully and indeed rather is acting contrary to "**PUBLIC POLICY**" and hence cannot be legitimately entitled to any registration of being a **NON PROFIT** (**NOT-FOR-PROFIT**) entity for "**PUBLIC PURPOSES**"

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

A number of cases establishing public policy as a limitation on tax benefits have been concerned with the ordinary and necessary business expense deduction under § 162 of the Code. *1162 Commissioner of Internal Revenue v. Tellier, 383 U.S. 687, 694, 86 S.Ct. 1118, 16 L.Ed.2d 185 (1966); Tank Truck Rentals, Inc. v. Commissioner of Internal Revenue, 356 U.S. 30, 33-34, 78 S.Ct. 507, 2 L.Ed.2d 562 (1958); Commissioner of Internal Revenue v. Sullivan, 356 U.S. 27, 78 S.Ct. 512, 2 L.Ed.2d 559 (1958); Lilly v. Commissioner of Internal Revenue, 343 U.S. 90, 96-97, 72 S.Ct. 497, 96 L.Ed. 769 (1952). At issue in Tank Truck Rentals was the deductibility of fines paid for violations of state maximum weight laws. **Disallowing the deduction, the Court held, "A finding of 'necessity' cannot be made, however, if allowance of the deduction would frustrate sharply defined national or state policies proscribing particular types of conduct, evidenced by some governmental declaration thereof."** (356 U.S. at 33-34, 78 S.Ct. at 509). **The state policies of protecting their highways from damage and insuring the safety of persons using them were "evidenced" by the state penal statutes.** Id. at 34, 78 S.Ct. 507. Cautioning that "each case must turn on its own facts," the Court articulated that "the test of nondeductibility always is the severity and immediacy of the frustration resulting from allowance of the deduction. The flexibility of such a standard is necessary if we are to accommodate both the congressional intent to tax only net income, and the presumption against congressional intent to encourage violation of declared public policy." Id. at 35, 78 S.Ct. at 510. [FN24]

FN24. **Where there is no paramount declaration of government policy, the Court has allowed expense deductions pursuant to the Federal policy of taxing net income only.**

Lilly v. Commissioner of Internal Revenue, 343 U.S. 90, 72 S.Ct. 497, 96 L.Ed. 769 (1952);

Commissioner of Internal Revenue v. Tellier, 383 U.S. 687, 86 S.Ct. 1118, 16 L.Ed.2d 185 (1966). In Commissioner of Internal Revenue v. Sullivan, 356 U.S. 27, 78 S.Ct. 512, 2 L.Ed.2d 559 (1958) the Court allowed a deduction for wages and rent paid out illegally under a state law (because made in the operation of bookmaking enterprises) because it could find no federal policy disapproving of such expenses and because the deduction did not lessen the "sting" of the independent state law penalties.

This public policy limitation on tax benefits applies a fortiori to the case before us, involving the charitable deduction whose very purpose is rooted in helping institutions because they serve the public good. **The Internal Revenue Code does not contemplate the granting of special Federal tax benefits to trusts or organizations, whether or not entitled to the special state rules relating to charitable trusts, whose organization or operation contravene Federal public policy.** This principle cannot be applied without taking into account that as to private philanthropy, the promotion of a healthy pluralism is often viewed as a prime social benefit of general significance. In other words, society can be seen as benefiting not only from the application of private wealth to specific purposes in the public interest but also from the variety of choices made by individual philanthropists as to which activities to subsidize. [FN25] This decentralized choice-making is arguably more efficient and responsive to public needs than the cumbersome and less flexible allocation process of government administration. [FN26]

FN25. See, e. g., the sources collected in Rabin, Charitable Trusts and Charitable Deductions, 41 N.Y.U.L.Rev. 912, at 920-925 (1966).

FN26. See Saks, The Roll of Philanthropy: An Institutional View, 46 Va.L.Rev. 516, 524 (1960).

In a recent article, Judge Friendly has stressed the value of this pluralism, noting the incongruity "if the extension of the helping hand of the government, even when the help is monetary, were to turn our lively pluralistic society into a deadly uniformity ruled by constitutional absolutes." Philanthropy is a delicate plant whose fruits are often better than its roots; desire to benefit one's own kind may not be the noblest of motives but it is not ignoble. It is the very possibility of doing something different than government can do, of creating an *1163 institution free to make choices government cannot-even seemingly arbitrary ones-without having to provide a justification that will be examined in a court of law, which stimulates much private giving and interest. [FN27]

FN27. Friendly, the Dartmouth College Case and the Public-Private Penumbra, 12 Texas Quarterly (2d Supp.) 141, 171 (1969).

The indulgence of individual whim or preference has values but like all principles it cannot be pushed beyond sound limits to extremes that cannot be approved. **The individual philanthropist cannot be indulged in his own vagaries as to what is charitable; he must conform to some kind of norm, else he cannot obtain subsidy or tax exemption. Similarly, the general principle of a "desire to benefit one's own kind" is an acceptable incentive to philanthropy as applied to a wide range of causes.**

END QUOTE

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Again the quotation below relating to "**DISCRIMINATION**" as such doesn't apply to the Commonwealth of Australia due to s.51(xxvi) specifically having been inserted to avoid the

application as was in the U.S.A. and as such the quotation must be understood to apply only for so far this is permissible considering s.51(xxvi) with keeping this in mind.

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

C. Avoidance of Constitutional Questions

[10]We are fortified in our view of the correctness of the IRS construction by the consideration that a contrary interpretation of the tax laws would raise serious constitutional questions, such as those we ventilated in our January, 1970, opinion. Clearly the Federal Government could not under the Constitution give direct financial aid to schools practicing racial discrimination. **But tax exemptions and deductions certainly constitute a Federal Government benefit and support.** While that support is indirect, and is in the nature *1165 of a matching grant rather than an unconditional grant, it would be difficult indeed to establish that such support can be provided consistently with the Constitution. The propriety of the interpretation approved by this court is underscored by the fact that it obviates the need to determine such serious constitutional claims. [FN30]

FN30. SeeDandridge v. Williams, 397 U.S. 471, 475-476, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970);

Zschernig v. Miller, 389 U.S. 429, 444, 88 S.Ct. 664, 19 L.Ed.2d 683 (1968) (Harlan, J., concurring);

Hamm v. Rock Hill, 379 U.S. 306, 316, 85 S.Ct. 384, 13 L.Ed.2d 300 (1964);

Spector Motor Service v. McLaughlin, 323 U.S. 101, 105, 65 S.Ct. 152, 89 L.Ed. 101 (1944);

Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 345-348, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring).

That the constitutional inhibitions on government grants also reach tax benefits provided by the government is evident from

Griffin v. County School Board, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964) and the references to Griffin in

Palmer v. Thompson, 401 U.S. ---, 91 S.Ct. 1940, 29 L.Ed.2d 438 (1971), **that the use of property tax credits for citizens contributing to the "private" schools was material as showing that the state was "directly or indirectly involved in the funding"** of the segregated private academies and hence a segregated school system.

D. *There Is No Merit In Contentions of Intervening White Parents that This*

Construction Is Unconstitutional

We must also consider the claim made by the intervenors that defendants' interpretation violates their "right under the First Amendment to the Constitution to associate in private schools of their choice without regard to the educational philosophy thereof," [FN31] and that, under Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958), "what may not be done directly cannot be done indirectly under the guise of a discriminatory interpretation of the tax laws." [FN32]

FN31. Intervenors' Proposed Final Judgment, ¶ 4, submitted January 15, 1971.

FN32. Intervenors' Points and Authorities in Opposition to Plaintiffs' Motion for Supplemental Preliminary Relief, June 26, 1970 at 12.

1. Freedom of Association

[11]We recognize with intervenors that the **Bill of Rights** grants to the citizens of our free society a broad freedom of association. The liberty of a free people includes the right to educate one's child in a school of the parent's choice in public, private, or parochial. Griswold v. Connecticut, 381 U.S. 479, 482, 495, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). **These rights cannot be abridged by legislation which "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control" or "which has no reasonable relation to some purpose within the competency of the State as is the case with legislation that requires attendance at public schools.** Pierce v. Society of the Sisters, and Pierce v. Hill Military Academy, 268 U.S. 510, 534-535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).

We do not minimize the importance of the constitutional precepts established by the Pierce cases in 1925, and their doctrinal predecessor, Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). These decisions put a salutary end to an "effort to regiment the mental life of Americans." [FN33] The vitality and continuing significance of this doctrine is indisputable. Griswold v. Connecticut, supra. As Mr. Justice Brennan said concurring in School District of Abington Tp., Pa. v. Schempp, 374, U.S. 203, 242, 83 S.Ct. 1560, 1583, 10 L.Ed.2d 844 (1963):

FN33. F. Frankfurter, Law and Politics (A. MacLeish and E. Prichard, Jr., eds. 1939) 195.

Attendance at the public schools has never been compulsory; parents remain morally and constitutionally free to chose the academic environment in which they wish their children to be educated. *** It is no proper function of the state or local government *1166 to influence or restrict that election.

END QUOTE

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The following also very much must be considered regarding what the Commonwealth of Australia at times declares to be outlawed terrorist organizations. The truth is that if I desire to be a member of any so called terrorist organization then nothing the Commonwealth of Australia could do to interfere with this as long as my motives were not as to be in breach of Australian laws!

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

[12]**The general right of association is protected no matter how unpopular the group's purposes or characteristics may be. Indeed, one has the constitutionally protected right to belong to political groups embracing both legal and illegal aims so long as one does not intend to engage in acts in furtherance of their unlawful purposes**. Scales v. United States, 367 U.S. 203, 81 S.Ct. 1469, 6 L.Ed.2d 782 (1961), Elfbrandt v. Russell, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321 (1966). "For the Constitution protects expression and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social utility of the ideas and beliefs which are offered." NAACP v. Button, 371 U.S. 415, 444-445, 83 S.Ct. 328, 344, 9 L.Ed.2d 405 (1963).

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

> **The basic precept that undercuts the claim of intervenors is simply this: Freedom from governmental "regimentation" or interference is not to be equated with a right of support. Freedom of association in political parties is of zenith importance in our democracy, but certainly political parties and their sponsors have no constitutional entitlement to government support, whether in the form of tax exemptions or deductions or otherwise.**

END QUOTE

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The same is with the so called bike-gangs, where many honest and hardworking members never get involved in any criminal conduct and as such could not be banned from being a member of such a so called bike-gang merely because of its member may act unlawfully. After all if this were to be applied then police officers could not be members of the police force because there are police officers who are involved in rape, murder, armed robbery, etc, etc.

Likewise, lawyers/judges/politicians have their own record of committing criminal offences and one would then hardly argue that because of that no lawyer/judge/politician can belong to the judiciary, be a lawyer or be a politician because of so to say some rotten apples within the membership acting unlawfully.

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The issue with any so called entity operating for "PUBLIC PURPOSES" is if in fact it has a code of conduct that includes deprivation of freedom by inhumane and/or unlawful punishment and/or deprivation of family contact by conditions placed upon its members.

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And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. DEAKIN**.-

> **What a charter of liberty is embraced within this Bill-of political liberty and religious liberty-the liberty and the means to achieve all to which men in these days can reasonably aspire. A charter of liberty is enshrined in this Constitution, which is also a charter of peace-of peace, order, and good government for the whole of the peoples whom it will embrace and unite.**

END QUOTE

And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE

> **Mr. SYMON** (South Australia).- **We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new Magna Charta for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question upon which we are about to invite the peoples of Australia to vote.** The Great Charter was wrung by the barons of England from a reluctant king. **This new charter is to be given by the people of Australia to themselves.**

END QUOTE

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HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE

Mr. BARTON.- We can have every faith in the constitution of that tribunal. It is appointed as the arbiter of the Constitution. . **It is appointed not to be above the Constitution, for no citizen is above it, but under it; but it is appointed for the purpose of saying that those who are the instruments of the Constitution-the Government and the Parliament of the day-shall not become the masters of those whom, as to the Constitution, they are bound to serve. What I mean is this: That if you, after making a Constitution of this kind, enable any Government or any Parliament to twist or infringe its provisions, then by slow degrees you may have that Constitution-if not altered in terms-so whittled away in operation that the guarantees of freedom which it gives your people will not be maintained;** and so, in the highest sense, the court you are creating here, which is to be the final interpreter of that Constitution, will be such a tribunal as **will preserve the popular liberty in all these regards, and will prevent, under any pretext of constitutional action**, the Commonwealth from dominating the states, or the states from usurping the sphere of the Commonwealth.

END QUOTE

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The Framers of the Constitution were adamant that this ***The Commonwealth of Australia Constitution Act 1900*** (UK) provided the political liberties ordinary people were entitled upon.

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

Intervenors seek to avoid this approach by saying, apparently, that while they have no right to individualized support they have a right to be free of discrimination through the withdrawal of benefits available on general terms. Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958). Speiser involved an affirmative requirement imposed as a condition of obtaining the tax exemptions provided for veterans by the state constitution. A statute made qualification for the exemption dependent on the filing of an oath that the applicant did not advocate the overthrow of the Government by force, violence or other lawful means. **Although the statute was construed by the state court to deny exemptions only to claimants who engage in speech that may constitutionally be punished, it was enforced through procedures, placing the burdens of proof and persuasion on the taxpayers, that denied the procedural safeguards required by the due process clause, and were held to interfere with the veterans' present freedom of speech.**

In the case before us exemptions and deductions would be denied not on account of beliefs and associations but on account of acts and practices constituting discrimination among students on account of race-acts contrary to a national policy that has constitutional ingredients. **If schools sincerely terminate those harmful activities they may obtain the exemption. In Speiser the statutory scheme was offensive because it operated to chill speech that was permissible, because of fears that the veterans might be unable to establish its permissibility.** It is not remotely suggested by intervenors that they fear lest their schools will undertake only *1167 activities that are innocent, i. e., not racially discriminatory, yet be wrongly condemned as discriminatory. **Speiser certainly does not hold that a government acts impermissibly in withholding tax benefits from one who engages in activities that are reasonably and constitutionally deemed contrary to the government's policy**

END QUOTE

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We also have that the Commonwealth of Australia has embedded the **Bill of Rights**, etc, even so not specifically stated in wording in the constitution because as the Framers of the Constitution made clear it was about the **POLITICAL LIBERTIES** that are applicable.

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Hansard *1-3-1898* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE

> **Mr. GORDON**.-Well, I think not. I am sure that if the honorable member applies his mind to the subject he will see it is not abstruse. **If a statute of either the Federal or the states Parliament be taken into court the court is bound to give an interpretation according to the strict hyper-refinements of the law.** It may be a good law passed by "the sovereign will of the people," although that latter phrase is a common one which I do not care much about. The court may say-"**It is a good law, but as it technically infringes on the Constitution we will have to wipe it out.**" As I have said, the proposal I support retains some remnant of parliamentary sovereignty, leaving it to the will of Parliament on either side to attack each other's laws.

END QUOTE

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Hansard *9-3-1898* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE

> **Mr. DEAKIN** (Victoria).-The position of my honorable and learned friend (Mr. [start page 2092] Higgins) may be perfectly correct. It may be that without any special provision the practice of the High Court, when declaring an Act *ultra vires*, **would be that such a declaration applied only to the part which trespassed beyond the limits of the Constitution.** If that were so, it would be a general principle applicable to the interpretation of the whole of the Constitution.

END QUOTE

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HANSARD *17-3-1898* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE **Mr. CLARK**.-

> **for the protection of certain fundamental rights and liberties** which every individual **citizen** is entitled to claim that the federal government shall take under its protection and secure to him.

END QUOTE

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HANSARD*18-2-1898* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE **Mr. ISAACS**.-

> **The right of a citizen of this great country, protected by the implied guarantees of its Constitution,**

END QUOTE

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HANSARD *27-1-1898* Constitution Convention Debates

QUOTE

> **Mr. BARTON**.-**Our civil rights are not in the hands of any Government, but the rights of the Crown in prosecuting criminals are.**

END QUOTE

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Hansard *1-3-1898* **Constitution Convention Debates** (Official Record of the Debates of the National Australasian Convention)

QUOTE

Mr. HIGGINS.-But suppose they go beyond their power?

Mr. GORDON.-It **is still the expression of Parliament. Directly a Ministry seeks to enforce improperly any law the citizen has his right.**

END QUOTE

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Regretfully too often the judges are not competent themselves to understand/comprehend what really is constitutionally applicable and we see this example time and time again with the High Court of Australia where it hand down decision that are in my view ill-conceived and shows an appalling lack of proper consideration of what really is constitutionally applicable.

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QUOTE **Chapter 000D HAVE EVERY BLUE-EYED BABY KILLED**

Chapter 000D HAVE EVERY BLUE-EYED BABY KILLED

* Gary, what is your view about **McHugh**'s statement?

****#** INSPECTOR-RIKATI®**, how can anyone put the Court in disrepute when you have such idiotic statement of a judge. Well, I have put my bit on the Internet about it.
In my view considering that statement the parliament should have moved to have him removed from the bench as soon as he made that statement.
If this is the kind of mentality and intelligence that we can expect from judges of the High Court of Australia then I think we might as well appoint one of my grandchildren to the bench and at least they be rather playing with toys and crayons and say nothing sensible then the utter rubbish that we now had. And this kind of intelligence, or the lack thereof, is used to deal with constitutional matters, no wonder wee are going downhill!

index.php?act=findpost&pid=617635index.php?act=findpost&pid=617635

QUOTE 070520 posting

I am very disturbed to find the following of a quotation to have found this discussion;

QUOTE
McHUGH J: I understand that and persons who have not had full legal training often think of Magna Carta and the Bill of Rights as fundamental documents which control governments, but they do not.
END QUOTE

QUOTE
But Parliament - some people would regard it as regrettable - can, in effect, do what it likes. As it is said, some authorities could legislate to have every blue-eyed baby killed if it wanted to.
END QUOTE

As a "constitutionalist" (not some lawyer who is brainwashed) I condemn any one, in particularly judges, to undermine the constitutional system that exist in the POLITICAL UNION BEING THE Commonwealth of Australia.

The Commonwealth of Australia, as like the European Union, is created by Statue and itself has no common law. Hence, any jury that were to be involved in federal hearings must be drawn from a State.

As author of the **INSPECTOR-RIKATI®** books in regard of constitutional and other

matters I have set out extensively how I succeeded and defeated Federal Government lawyers after a 5-year legal battle on all constitutional issues I raised!

The Commonwealth of Australia Constitution Act 1900 (UK) was an act to create a "APOLITICAL UNION" and the States who partly federated retaining all legislative powers regarding "CIVIL RIGHTS" as it was their constitutions that were based upon the provisions of the Magna Carta, Bill of Rights, Habeas corpus, etc.

In the Commonwealth of Australia, judges are appointed to the High Court of Australia regardless lacking any competence in constitutional matters, in fact they may never have practiced in constitutional matters, and in one incident a judge actually refused to hand down a judgment other then to state he didn't have any knowledge in the constitutional matter before the court and for this would abstain from handing down a judgment.

You find it as a matter of record that where the Governor-General was Defendant in a case before the High Court of Australia then all 7 judges subsequently fraternised with the governor-General, and no one has to be surprised the Court subsequently refused to allow the case to be heard upon its MERITS.

In the Commonwealth of Australia judges are purportedly appointed by the Governor-General but he merely appoints those who the Government provides to be appointed. Hence a political stacking occurs.

The High Court of Australia in 1996 using their powers as a "persona designata" to make decisions for the parliament, approved of the entire constitution to be replaced by the Australia act 1986 (forget about it being constitutionally valid) so that there no longer is a "constitutional Parliament" but the parliament now is above the constitution. As it now legislated the (purported) constitution.

But, I successfully challenged this validity of this De Facto Constitution in Court.

Having myself served in the NATO at the then IRON CURAIN having been trained as a sharpshooter, I personally deplore the usage of weapons, as I am trained to use it to kill. However, I recognise the right of others to bear arms, for defending their rights, and even the Framers of the Constitution (Australia) indicated that militia could be drawn from civilians of a State after the federation was created. This to me implied that the commonwealth of Australia would have been able to enlist armed civilians to serve at that time to protect the shores of the Commonwealth of Australia until it could set up its own defence force.

There are always terrible incidents involving firearms that stand out. Likewise there are also terrible incidents where motor vehicles are standing out in having resulted to mass killings.

Personally, I would prefer not a single person to have a firearm, but then I have to recognise that others may desire that everyone should have a weapon to defend himself/herself.

My wife, opposed me to even fit a knife sharpers on the kitchen wall, but wanted me to hide it in a pantry, as she fears that someone might come in the residence and see the knives and use it wrongly.

Surely, we are not going to ban all knives in the world?

When anyone desires to exercise a right then the person must also accept there are obligations.

Hence regulations as to the storage, handling and usage of a firearm should be deemed to be appropriate where it provides for what is locally required.

Therefore, while a person may have the right to own a firearm, the Parliament rightfully could legislate to have the usage, carrying, etc made subject to conditions.

Where there is a constitutional right, implied or otherwise, that a person may bear arms to defend himself then I view one cannot limit the usage of a weapon to be some small handgun, a tank, or a warplane, as depending what your personal conditions are you may need one or another, without having any intention to use it against other civilians.

The Supreme Court (USA) has extensively decided cases regarding infringements of RELIGION and I for one admire the Courts numerous judgments I read. If the same kind of logic was used regarding the right to bear arms, then I view likewise both parliamentarians and civilians should accept this kind of reasoning.

I for one do not desire to use a weapon, do not like them being used, but that are my personal views, and I recognise others have total opposite views. They have their right on their opinion as much as I have and as such I view that the concentration should not be as to how to make inroads to the rights of others, but rather how can we facilitate the rights of others without that our own rights (including that of personal safety, as not to be held up by some crazy gunman) jeopardised needlessly.

In particular those of the law enforcement who are risking their lives daily to protect innocent citizens of harm they must not unduly be jeopardised in their law enforcement positions because inappropriate regulations allow anyone to obtain a weapon.

While many people argue about the right of freedom of religion, the right to bear arms, few do actually concentrate on the issue of right of freedom of travel, even so this likewise was protected by old English law.

Not to many people argue that their right to travel is denied where they must first have a driving licence to drive a motor vehicle, where as no kind of driving licence existed to drive a cart-and-wagon. As such, somehow we have accepted inroads to our guaranteed freedoms because society allowed for this where as in regard of weapons we may have different positions pending the local society we reside in.

In my view, the right to legislate that a person should not be allowed to bear arms cannot be justified on a court decision, as if the freedom to bear arms is guaranteed then I view not a court in the land could possible make an order contrary to it.

We therefore may have to look at the constitutional framework as to what was existing at the time each constitution was created and if the conditions then existed that a Court could actually have denied a person to bear arms. If in history it can be shown that certain persons were denied by the local authorities to bear arms, then it must be accepted that the Constitution albeit if it provides for the right to bear arms then was created upon the understanding that such implied freedom was at all times deemed to be subject to court

judicial decisions and or legislative powers.

As a "constitutionalist" I find it laughable how judges, despite their extensive legal training, can come up with such utter and sheer nonsense such as McHugh J did with his statement ;

QUOTE

But Parliament - some people would regard it as regrettable - can, in effect, do what it likes. As it is said, some authorities could legislate to have every blue-eyed baby killed if it wanted to.
END QUOTE

As no such constitutional system operates that would allow the parliament to enact such laws.

And there I have to come back upon the other quotation;

QUOTE
McHUGH J: I understand that and persons who have not had full legal training often think of Magna Carta and the Bill of Rights as fundamental documents which control governments, but they do not.
END QUOTE

Lawyers are being trained in legal studies by other lawyers and as such are brainwashed far to often that some LEGAL FICTION is LEGAL REALITY.

As I exposed in my book published on 30 September 2003

INSPECTOR-RIKATI® on CITIZENSHIP

A book on CD about Australians unduly harmed.

ISBN 0-9580569-6-X (prior to 1-1-2007) ISBN 978-0-9580569-6-0

There is no constitutional powers for the Commonwealth of Australia to define/declare "citizenship" as Australians are constitutionally "subjects of the British Crown". Citizenship is a "**POLITICAL POSITION**" of rights, including franchise, and has absolutely nothing to do with "nationality" yet the High Court of Australia goes on as if it is a nationality.

In court, on 19 July 2006, I defeated the Federal Government lawyers also on this matter.

Hence, having has a legal study and having obtained law degrees in itself will not prove you are not brainwashed by **LEGAL FICTION** but more then likely you are.

Hence, the work as a constitutionalist is to expose this.

Only when we are dealing with **LEGAL REALITY** and have appropriately explored the constitutional basis upon which constitutional rights, implied or otherwise, were provided for in the constitution can we commence to address the issues such as the right to bear arms, etc.

And to make clear, no Parliament in the Commonwealth of Australia has any legislative powers to allow the killing of blue-eyed babies or for such kind of nonsense, as none of the State constitutions could allow for such legislative nonsense as they are all bound to make laws for "the peace, order, and good government", even so judges likewise fails to recognise this constitutional limitation.

As the Framers of the Constitution (Australia) made clear the Constitution was the "**new Magna Carta**".
END QUOTE 070520 posting

The danger is that if some fanatical religion were to come to power in Australia it could in fact rely upon these and other stupid and irresponsible statements of the High Court of Australia and turn this Commonwealth of Australia into some murderous regime, to pursue "**ethnic cleansing**" and fund their religious schools at taxpayers expenses. Whatever may suit to today for the so-called Judeo-Christians may tomorrow suit a other fanatical religion to achieve precisely the opposite! This is what we should keep in mind, and why the Framers of the Constitution so much sought to prevent this kind of religious war to exist in the Commonwealth of Australia.
END QUOTE **Chapter 000D HAVE EVERY BLUE-EYED BABY KILLED**
.
QUOTE **Chapter 007A The Great Deception**
Chapter 007A The Great Deception

* Gary, "**The Great Deception**" by whom?

****#** INSPECTOR-RIKATI®**, just read the **Chapter 034T** of the book (published on 17-3-2007);

INSPECTOR-RIKATI® on the battle *SCHOREL-HLAVKA v BLACKSHIRTS*
For the quest of JUSTICE, in different ways. Book on CD.
ISBN 978-0-9580569-4-6 was ISBN 0-9751760-4-3

QUOTE Chapter 034T

Gary, **The Great Deception**?

INSPECTOR-RIKATI®, this document also sets out how the judges of the High Court of Australia are deceiving us as to the application of the ***Constitution***! It is to be read in conjunction with other documents such as "Is our Constitution safe", "The ***Constitution*** is a **PERPETUAL LEASE**", etc.
Anyhow, I quote below the document "**The Great Deception**";

The Great Deception

QUOTE
I cannot find any excuse whatsoever that judges of the High Court of Australia would divert totally from the legal principles that are embedded in the ***Constitution***.
END QUOTE

In my 2-8-2003 correspondence, published previously in my book (30 September 2003);

INSPECTOR-RIKATI® on CITIZENSHIP
A book on CD about Australians unduly harmed.
ISBN 978-0-9580569-6-0 was ISBN 0-9580569-6-X

I included the following, in regard of the issue of the detention of **David Hicks**;

QUOTE

http://store.yahoo.com/4crests/magnacarta.html

When representatives of the young republic of the United States gathered to draft a constitution, they turned to the legal system they knew and admired--English common law as evolved from Magna Carta. The conceptual debt to the great charter is particularly obvious: the American Constitution is "the Supreme Law of the Land," just as the rights granted by Magna Carta were not to be arbitrarily canceled by subsequent English laws.

This heritage is most clearly apparent in our Bill of Rights. The fifth amendment guarantees

No person shall . . . be deprived of life, liberty, or property, without due process of law and the sixth states

. . . the accused shall enjoy the right to a speedy and public trial, by an impartial jury. Written 575 years earlier, Magna Carta declares

No freeman shall be taken, imprisoned, . . . or in any other way destroyed . . . except by the lawful judgment of his peers, or by the law of the land. To no one will we sell, to none will we deny or delay, right or justice. In 1957 the American Bar Association acknowledged the debt American law and constitutionalism had to Magna Carta and English common law by erecting a monument at Runnymede. Yet, as close as Magna Carta and American concepts of liberty are, they remain distinct. Magna Carta is a charter of ancient liberties guaranteed by a king to his subjects; the Constitution of the United States is the establishment of a government by and for "We the People."

Magna Carta

(39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

(40) To no one will we sell, to no one deny **or delay** right or justice.

(45) We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

(49) **We will at once return all hostages** and charters delivered up to us by Englishmen as security for peace or for loyal service.

(51) **As soon as peace is restored**, we will remove from the kingdom **all the foreign knights, bowmen, their attendants**, **and the mercenaries that have come to it**, to its harm, with horses and arms.

(61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, **with lasting strength, for ever,** we give and grant to the barons the following security:

It is clear that the above stated applies "**forever**".
END QUOTE

Since then the US Supreme Court handed down its decision that the **Magna Charta** does apply to the US Constitution.

Lets now consider what the High Court of Australia stated in;
Transcript of High Court Appeal
Essenberg v The Queen B55/1999 (22 June 2000)
IN THE HIGH COURT OF AUSTRALIA

Essenberg v The Queen B55/1999 (22 June 2000)

> **McHUGH J: But is not the problem you face that the Magna Carta and the Bill of Rights of 1688 are not documents binding on Australian legislatures in the way** the Constitution is binding on those legislatures? Any legislature acting within the powers allotted to it by the Constitution is entitled to legislate in total disregard of the Magna Carta and the Bill of Rights, as is the United Kingdom Parliament. Take the situation in Northern Ireland. They abolished trial by jury in Northern Ireland. If you go back to Magna Carta which, I suppose, is really the heart of your argument, it is really more a statement of political ideals. They are not constitutional documents in the sense that the Australian Constitution and the United States Constitution are.

Well, the US Supreme Court has (since the publication of my book on 30-9-2003) clearly ruled that the **Magna Charta** is applicable to the US constitution.
Now, lets see what the Framers of the ***Constitution*** stated during the **Constitution Convention Debates**;

HANSARD *8-2-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

> **Mr. OCONNOR**.-The amendment will insure proper administration of the laws, and afford their protection to every **citizen**.
>
> **Mr. SYMON**.-That is insured already.
>
> **Mr. OCONNOR**.-In what way?
>
> **Mr. SYMON**.-Under the various state Constitutions.
>
> **Mr. OCONNOR**.-Yes. **We are now dealing with the prohibition against the alteration of these Constitutions. We are dealing with a provision which will prevent the alteration of these Constitutions in the direction of depriving any citizen of his life, liberty, or property without due process of law.** Because if this provision in the Constitution is carried it will not be in the power of any state to pass a law to amend its Constitution to do that. It is a declaration of liberty and freedom in our dealing with **citizens** of the Commonwealth. **Not only can there be no harm in placing it in the Constitution, but it is also necessary for the protection of the liberty of everybody who lives within the limits of any State.**
>
> **Mr. SYMON**.-**Have we not that under-Magna Charta.**
>
> **Mr. OCONNOR**.-**There is nothing that would prevent a repeal of Magna Charta by any state if it chose to do so. Let us suppose that there were any particular class of offences, or particular class of persons who, at any time, happened to be the subjects**

of some wild impulse on the part of a majority of the community, and unjust laws were passed-

Mr. SYMON.-Has anything ever happened that would Justify such a proposition?

Mr. OCONNOR.-Yes, they are matters of history in these colonies which it is not necessary to refer to.

Mr. SYMON.-Would it not require an amendment of the Constitution to repeal **Magna Charta**?

Mr. OCONNOR.-What Constitution?

Mr. SYMON.-This Constitution. **Do you think Magna Charta would be repealed by an Act of the Federal Parliament?**

Mr. OCONNOR.-**I do not think so, and I did not say so. But I say that, under the Constitution of the states, as we are dealing with the Constitution, a State might enact any laws which it thought fit, and even if those laws amounted to a repeal of Magna Charta they could be carried. I admit we are only dealing with a possibility, but at the same time it is a possibility which if it eventuated, as it might, would be very disastrous, and there is no reason why we should not prevent it.**

[start page 684]

Mr. FRASER.-We might provide a safe-guard, at any rate.

HANSARD *1-3-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

Mr. GLYNN.-I am now speaking of the English law. It has been somewhat modified in the Straits Settlements, and in one or two other parts of the empire, I believe, by giving a right of action for tort in certain cases, but I do not think that this extended right of action has ever been given in any of the colonies. Conditions justifying actions for damages against the Crown, however, are almost as frequent as actions for breach of contract. In Canada a man sued the Crown for damages received in connexion with a railway accident, but he was debarred of remedy there, although he suffered serious injury, because of some defect in the railway laws not conceding this right. The position has been laid down in regard to the Queen in the case I have already mentioned, that-

Where the land, or goods, or money, of a subject have found their way into the possession of the Crown, and the purpose of the petition is to obtain restitution, or if restitution cannot be obtained, compensation in money; or when a claim arises out of a contract, as for goods supplied to the Crown or to the **public service**-**the Crown is bound to refer a petition of right to the courts for decision, because it is provided by *Magna Charta* that justice cannot be denied, sold, or delayed.** By this action, similar rights of action are given to the subject against the Crown in cases in which the subject can maintain a claim against another subject.

HANSARD *17-3-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

Mr. DEAKIN.-

. **In this Constitution, although much is written much remains unwritten**,

And

Mr. DEAKIN.-

What a charter of liberty is embraced within this Bill-of political liberty and religious liberty-the liberty and the means to achieve all to which men in these days can reasonably aspire. **A charter of liberty is enshrined in this Constitution, which is also a charter of peace-of peace, order, and good government for the whole of the peoples whom it will embrace and unite.**

Mr. SYMON (South Australia).-I wish to say one word or two before we part. I do not intend to enter into any detailed examination of, or any elaborate apology for, the Constitution which we have been engaged in framing. But, sir, no man can remain unmoved upon this momentous occasion. **We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new *Magna Charta* for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question upon which we are about to invite the peoples of Australia to vote. The Great Charter was wrung by the barons of England from a reluctant king. This new charter is to be given by the people of Australia to themselves.**

Again;

the Crown is bound to refer a petition of right to the courts for decision, because it is provided by Magna Charta that justice cannot be denied, sold, or delayed.

Therefore it must be clear that the Framers of the ***Constitution*** held that the **Magna Charta** applied to the ***Constitution*** and it is not for the judges to then seek to amend the ***Constitution*** by their own judgment to deny this to be applicable.

As much as the **Magna Charta** is applicable likewise so the **Bill of Rights**.

There is however another disturbing element to what the judges stated;

Essenberg v The Queen B55/1999 (22 June 2000)
IN THE HIGH COURT OF AUSTRALIA

GUMMOW J: Now these words, "**for peace, order and good government**" are words of expansion, not contraction, you see - they are not words of limitation.

McHUGH J: They do not limit the powers. In fact they arguably have no legal effect whatever, and that is the doctrine of this Court. We do not make a decision as to whether the law is **for the peace, for the order, for the good government**. It is assumed that if Parliament makes it, it is, and the real question is, is it a law with the same respect to trade and commerce in other countries or whatever the relevant law of Parliament relies on, **but this Court has never attempted to say** that a law, on the subject of trade and commerce, for example, is not "**for peace, order and good government**". It is, in effect, a parliamentary expression rather than a legal expression. It does not limit Parliament's power; it is said to expand them.

MR ESSENBERG: I am not really sure I understand that.

Now lets see what the Framers of the ***Constitution*** stated, as set out more extensive in the document "**for the peace order and good government-1-Hansard.doc**" in Chapter **034O**

HANSARD *1-4-1891* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

Sir SAMUEL GRIFFITH: I agree that these words appear rather startling. [start page 559] They are taken from the Federal Council Act of Australasia, **and were inserted by**

the imperial authorities after consideration and in substitution for more limited words that were proposed by the Convention that met here in 1883. Finding those words there, and considering that the powers of the federal parliament **are only to make laws for the peace, order, and good government** of the commonwealth, it was thought perfectly safe to adopt them.

Mr. BAKER: Do I understand that if a ship leaves one of the Australian colonies for a British port, say London, having a British register, until she actually arrives in Great Britain, the laws of the commonwealth are binding upon her, and not the laws of Great Britain?

Sir SAMUEL GRIFFITH: No; but laws of the commonwealth, limited to laws for the peace, order, and good government of the commonwealth, will apply to her on her voyage. For instance, if it was necessary to send a prisoner to England, only such provisions as are essential for the laws of the commonwealth outside the 3-mile limit could possibly apply.

And

Sir SAMUEL GRIFFITH: If the hon. gentleman will look at the bill he will see **that the only laws which can apply are laws for the peace, order, and good government of the commonwealth.**

HANSARD *14-4-1897* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

Mr. BARTON:

That was the Convention which had, I think, to be called in consequence of the New Guinea affair. Sir Samuel went on:

Finding those words there, **and considering that the powers of the Federal Parliament are only to make laws for the peace, order, and good government** of the Commonwealth, it was thought perfectly safe to adopt them.

Sir Samuel Griffith's reply to that interjection was;

No; but laws of the Commonwealth, **limited to laws for the peace, order, and good government** of the Commonwealth, will apply to her on her voyage. For instance, if it was necessary to send a prisoner to England, only such provisions as are essential for the laws of the Commonwealth outside the three-mile limit could possibly apply.

That is to say, that the laws of the Commonwealth in respect of the matter cannot possibly affect any law of the Imperial Parliament with which they may be in conflict, but so far as they are not in conflict they will be applicable to a ship on her voyage for the preservation of those laws of the Commonwealth which it is necessary to have enforced.

HANSARD *22-9-1897* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

Amendment suggested by the House of Assembly of Tasmania:

Omit the words "**for the peace, order, and good government** of the commonwealth, lines 3, 4, and 5."

The Hon. E. BARTON (New South Wales)[10.32]: This is an amendment which was made in the legislature of Tasmania at the instance of the Hon. A.I. Clark. That gentleman has furnished these reasons for the amendment, and, perhaps, in justice to him, I ought to read them:

These words are copied from the several acts of the Imperial Parliament providing for the establishment of legislatures in the various Australian colonies, and are perfectly appropriate when used in reference to the establishment of the legislature which is to possess plenary legislative powers, and have unlimited jurisdiction on all questions relating to the protection of life and property, and the enforcement of contractual rights of every kind; but it is very doubtful if they ought to find a place in connection with the definition and delegation of limited legislative powers which do not include matters relating to the daily protection of life and property, or to enforcement of private rights and obligations in general. It is true that they find a place in the 91st section of the British North America Act, which establishes a federal convention for Canada; but the primary object of that act is to limit the powers and jurisdiction of the provincial legislatures, and to vest the residuum of legislative authority in the Dominion of Canada in the federal parliament. The words in question may, therefore, fitly find a place in that act, and they were relied upon in the case of "The Attorney-General of Canada *versus* the Attorney-General of Ontario, which was decided by the Privy Council last year[L.R.A.C. 1896] to uphold the act of the Dominion Parliament, which had been challenged on the ground that it had encroached upon the domain of the provincial legislatures. That decision, in its effect, appears to me to be, an argument against the insertion of the words in question in connection with the definition and delegation of the legislative powers of the parliament of the commonwealth, because they might, in some unforeseen and unexpected controversy, afford ground for an argument in favour of the jurisdiction of the parliament of the commonwealth in matters which the several states might claim to be wholly within their own legislative powers. It cannot be contended that they are required for the purpose of giving the parliament of the commonwealth full power to legislate with regard to all the subjects mentioned in the sub-sections of section 52; and, if they are not required for that purpose, they must inevitably encourage the contention that they are inserted [start page 1037] for some additional purpose. But, if their insertion in not intended to add in any way to the powers of parliament, in relation to the matters mentioned in the sub-sections of section 52, then they violate the canon of drafting, which requires that no unnecessary words should be used in giving expression to the intention of the legislature. They are very properly inserted in section 53, because that section confers upon the parliament of the commonwealth plenary and exclusive powers in regard to the several matters mentioned in the sub-section of that section. But their presence in section 52 tends to create a resemblance in the scope of the powers conferred by the two sections, whereas it would be much more desirable to make the difference in the purport of each section as apparent and emphatic as possible.

I have read these reasons through very carefully, and I have been unable to discover that any of the evils which my hon. and learned friend, Mr. Clark, fears may be expected from leaving these words as they are. The powers are powers of legislation for the peace, order, and good government of the commonwealth in respect of the matters specified. No construction in the world could confer any powers beyond the ambit of those specified.

The Hon. N.E. LEWIS (Tasmania)[10.35]: I should like to submit for the consideration of the leader of the Convention the question whether the words which the legislature of Tasmania have proposed to omit might not raise the question whether legislation of the federal parliament was in **every instance for the peace, order, and good government** of the commonwealth. Take, for instance, navigation laws. **Might it not be contended that certain navigation laws were not for the peace, order, and good government** of the commonwealth, and might there not be litigation upon the point? We are giving very full powers to the parliament of the commonwealth, **and might we not very well leave it to them to decide whether their legislation was for the peace, order, and good**

government of the commonwealth? **Surely that is sufficient, without our saying definitely that their legislation should be for the peace, order, and good government** of the commonwealth. I hope the leader of the Convention will give the matter full consideration with a view to seeing whether these words are not surplusage, and whether, therefore, they had better not be left out of the bill altogether.

The Hon. E. BARTON: The suggestion of the hon. member will be considered by the Drafting Committee.

Amendment negatived.

Again;

Surely that is sufficient, without our saying definitely that their legislation should be for the peace, order, and good government

HANSARD *13x-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

Mr. ISAACS.-The Parliament has by clause 52 full power and authority to make laws for the peace, order, and good government of the Commonwealth with respect to a large number of matters that are set out. This is a power that is without limitation.

It should be understood that while it was stated

This is a power that is without limitation.

It is within the limits of being for **for the peace, order, and good government**!
As such as long as it is within the scope of "**for the peace, order, and good government**" the legislative powers is unlimited.

HANSARD *17-3-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

Mr. DEAKIN.-

. **In this Constitution, although much is written much remains unwritten**,

And

Mr. DEAKIN.-

What a charter of liberty is embraced within this Bill-of political liberty and religious liberty-the liberty and the means to achieve all to which men in these days can reasonably aspire. A charter of liberty is enshrined in this Constitution, which is also a charter of peace-of peace, order, and good government for the whole of the peoples whom it will embrace and unite.

Mr. SYMON (South Australia).-I wish to say one word or two before we part. I do not intend to enter into any detailed examination of, or any elaborate apology for, the Constitution which we have been engaged in framing. But, sir, no man can remain unmoved upon this momentous occasion. **We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new *Magna Charta* for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question upon which we are about to invite the peoples of Australia to vote. The Great Charter was wrung by the barons of England from a reluctant king. This new charter is to be given by the people of Australia to themselves.**

In my view judges such as Gummow J and McHugh J ought to have a retraining as to what is constitutionally appropriate as I do not believe they have a clue what is applicable. Again, the document "**for the peace order and good government-1-Hansard.doc**" has extensively set out how it was being used, including some opposition and a submission from Tasmania to have it taken out as there should be an unlimited power, but it was made clear, that unlimited power would exist within the confines of laws being for the "**order, peace and good government**" and in the end this was retained in the ***Constitution***! I for one wonder how on earth judges of the High Court of Australia do not comprehend this!

I cannot find any excuse whatsoever that judges of the High Court of Australia would divert totally from the legal principles that are embedded in the ***Constitution***.

END QUOTE Chapter

* Do you view that it is , so to say, no longer the **GUARDIAN OF THE CONSTITUTION**?

In my view it has lost the plot. We are in a really bad situation, as while Section 64 of the Constitution permits the Governor-General to appoint anyone (even not a Member of Parliament, for up to three months) to be a Minister of State the Framers of the Constitution intended that only Members of the House of Representatives would be permanent Ministers of State. There is a clear conflict of interest when a Senator representing State interest instead represents the Government of the Day. And we saw this with what I consider the infamous phone call by Senator Boswell conceding to John Howard control of the Senate saying "Prime Minister you have control of the Senate". I view no one could more be a traitor to the Constitution in that regard as he did. By it destroying the very constitutional set up to have one House representing the states and one representing the Commonwealth as whole. In my view, there is a conflict of interest for any Senator to be a Minister of State. And, I view the government by this using it numbers to deny many Members of parliament a copy of the Bill before the House to be voted upon, and also allowing them sufficient time to consider and debate the issue is no less then **TERRORISM**, and the High Court of Australia despite of this having shown not to have considered this in its judgment completely failed to be a true **GUARDIAN OF THE CONSTITUTION**. In my view it merely **RUBBERSTAMPS** what the Federal Government desires under the pretext of considering the matter before the Court, it became as much part of this crime of **TERRORISM** as any other criminal does where perhaps not pulling the trigger in a hold-up nevertheless is an accomplish by driving the get away car or cause the criminal to elude the police by harbouring the criminal. In my view, we should have specialist judges who only deal with constitutional issues in the High Court of Australia, as in my view the High Court of Australia simply is not up to the task to appropriately deal with constitutional issues in its current set up. For this also the urgent need for the creation of an **OFFICE OF THE GUARDIAN**, as I for one cannot see how the High Court of Australia otherwise will ever be competent to fulfill its task to be a **GUARDIAN OF THE CONSTITUTION**, where it proved already not able to do so!

* Are you aware I asked just one question and you respond with about 7 pages answer! And it wasn't even fully about it all such as **ULTRA VIRES**, as I understood this Chapter was going to be about!

Well it was regarding many issues but there is more, why not then go to the next Chapter, shall we?

END QUOTE **Chapter 007A The Great Deception**

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The problem we have therefore is that the High Court of Australia is not interpreting the Constitution as to the intentions of the Framers of the constitution but whatever tit desires to make out of it pending contemporary views of the judges, and this is a very dangerous practice,

as no citizen then will known what the constitution really stands for because the moment another judge is appointed the constitution can be altered to its meaning and application.

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QUOTE **Chapter 000H Tax legislation-De Facto Appropriation Bills**

Chapter 000H Tax legislation-De Facto Appropriation Bills

* Gary, do you mean that Taxation provisions operate as DE Facto Appropriation Bills but used in a hideous manner?

**INSPECTOR-RIKATI®**, the only way the Federal Government can access Consolidated Revenue is the usage of Appropriation bills to be passed by both Houses of parliament, however we saw Treasurer Peter Costello allowing an 2½ million dollar tax concession to a Catholic Church in Melbourne, which constitute in my view being monies taken from Consolidated Revenue and for this a Appropriation Bill is required.

* Why?

Because all monies due to go into Consolidated Revenue must be accounted for and cannot be spend in any way without an Appropriation bill.

* Surely, they didn't pay the tax and so not due having had to pay into Consolidated Revenue?

That is the wrong way to look at it. The monies were due to be paid was it not for the tax concession and such kind of tax concessions breach the total prohibition of religious funding.
If the Government can manipulate its powers in such manner then why can it not then say give political parties, say $100 million dollars in tax benefits to spend as they like?

* Careful they might hear you and just implement this scheme!

The issue is that no moneys should be taken from Consolidated Revenue in a backdoor manner.

* Surely everyone somehow has a tax concession?

The Framers of the Constitution made clear that all people have to pay the same level of tax earning the same. Hence, to apply tax concessions means that those who can manipulate the system pay less tax and other more, as to make up for the short fall. When the Commissioner for Taxation litigate in Court against a person for back taxes, he is not arguing of tax already paid, but tax he deemed applicable. It is the taxation applicable that can be deemed part of Consolidated Revenue as it is a Debt to Consolidated Revenue. No constitutional authority exist for tax concessions if they are not provided by way of Appropriation bills. What we have is a De Facto spending spree where people can get a tax payments even so they may not have paid any tax.
Now, how on earth can anyone get a tax refund if not having paid any tax, unless the monies comes from consolidated Revenue.

Hansard Constitution Convention Debates

start page 1020] **I think that we ought to be satisfied on these points, and satisfied that if we leave the clause as it now stands there will, at any rate, be some proviso inserted which will safeguard the states in the carrying out of any of their state laws over which the states are to be supreme even under federation.**

* You mean the baby bonus of family tax payments?

Correct, if they are payments in one way or another they must be subjected to Appropriation Bills. Not a single part of the Commonwealth can escape the same taxation level to be applied.

Hansard 3-3-1897 **Constitution Convention Debates** (**Official Record of the Debates of the National Australasian Convention**) (Chapter 33 of the CD)

QUOTE

> **Mr. ISAACS** (Victoria).-What I am going to say may be a little out of order, but I would like to draw the Drafting Committee's attention to the fact that in clause 52, sub-section (2), there has been [start page 1856] a considerable change. Two matters in that sub-section seem to me to deserve attention. **First, it is provided that all taxation shall be uniform throughout the Commonwealth. That means direct as well as indirect taxation, and the object I apprehend is that there shall be no discrimination between the states; that an income tax or land tax shall not be made higher in one state than in another.** I should like the Drafting Committee to consider whether saying the tax shall be uniform would not prevent a graduated tax of any kind? A tax is said to be uniform that falls with the same weight on the same class of property, wherever it is found. It affects all kinds of direct taxation. I am extremely afraid, that if we are not very careful, we shall get into a difficulty. **It might not touch the question of exemption; but any direct tax sought to be imposed might be held to be unconstitutional, or, in other words, illegal, if it were not absolutely uniform.**

END QUOTE

Again;

QUOTE

> **It might not touch the question of exemption; but any direct tax sought to be imposed might be held to be unconstitutional, or, in other words, illegal, if it were not absolutely uniform.**

END QUOTE

And again;

QUOTE

> **It might not touch the question of exemption; but any direct tax sought to be imposed might be held to be unconstitutional, or, in other words, illegal, if it were not absolutely uniform.**

END QUOTE

Well, tell this to the Commissioner for Taxation to go after all those people having tax free incomes, such as the former Minister of Defence Peter Reith, the former chairman of AWA, and others. Somehow their normal constitutional taxable income are excluded unconstitutionally from being taxed.

And there are numerous other unconstitutional incidents occurring.

END QUOTE **Chapter 000H Tax legislation-De Facto Appropriation Bills**

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THE PROBLEM THEREBY IS THAT CITIZENS ARE UNDULY CAUSED TO PAY FOR LIGIATION, WHEN LOOSING A CASE, REGARDING CONSTITUTIONAL MATTERS REGARDLESS THAT THIS IS UNCONSTITUTIONAL!

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Hansard *31-1-1898* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE **Mr. SOLOMON**.-

> **We shall not only look to the Federal Judiciary for the protection of our interests, but also for the just interpretation of the Constitution:**

END QUOTE

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Hansard *31-1-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE **Mr. SOLOMON.-**

Most of us, when we were candidates for election to the Federal Convention, placed great stress upon it as affording a means of bringing justice within easy reach of the poor man.

END QUOTE

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Hansard *20-4-1897* Constitution Convention Debates

QUOTE **Mr. HIGGINS:**

I think it is advisable that private people should not be put to the expense of having important questions of constitutional law decided out of their own pockets.

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

[13]In the last analysis, we observe, even statutory classifications which affect a "fundamental right" are valid when "shown to be necessary to promote a compelling governmental interest." [FN34] The parent cannot assert an absolute freedom to remove his child from all schooling, or to send him to a school where the curriculum includes not only mathematics but also the desirability and techniques of immediate violent overthrow of the government. All states may require that children receive some education and have some power to regulate what they are taught consistently with the public welfare.

END QUOTE

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

2. Differences From the Church Exemption Issue

Intervenors further assert that the right to tax exemption and deduction stands on the same plane for educational and religious institutions. They rely on Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970). And they claim that the logic of the IRS position would compel the disallowance of the exemptions granted to private religious schools.

Walz upheld state tax exemptions for real property owned by churches and used for religious worship. It focused on the special constitutional features inhering in the First Amendment's provision: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." **In America political union was dependent on an express toleration of religious liberty and religious differences.** [FN39] **The free exercise of religion was to be protected not only by condemning its prohibition but by avoiding government support for any involvement with religion tantamount to "establishment."** Walz discussed the issue of "entanglement," and as the Court noted in Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971):

> FN39. The local churches in the American colonies exemplified not only variety but a parity of prestige-with the most prominent families likely to be Anglican in Virginia, Separatist in Plymouth, Quaker in Pennsylvania, Roman Catholic in Maryland, etc.

> **"That [Walz] holding, however, tended to confine rather than enlarge the area of permissible state involvement with religious institutions by calling for close scrutiny of the degree of entanglement involved in the relationship."**

All the opinions in Walz analyzed tax exemptions as providing an economic benefit,- "that exemptions do not differ from subsidies as an economic matter." (Harlan, J., 397 U.S. at 699, 90 S.Ct. at 1427). **What the Chief Justice emphasized was that exemptions provide an "indirect" and "passive" support, and hence avoid the kind of excessive involvement or "entanglement" that bespeaks "establishment" of religion.** It is in this context that Chief Justice Burger speaks (p. 669, 90 S.Ct. p. 1412) of the "benevolent neutrality" necessary to "permit religious exercise to exist without *1169 sponsorship and without interference," and describes tax exemption as a salutary means of preserving "the autonomy and freedom of religious bodies while avoiding any semblance of established religion."

[17]Tax exemption benefit is only a "minimal and remote involvement" (p. 676, 90 S.Ct. 1409) when compared to the kind of identification and support of religion that is prohibited under the Establishment clause. **But governmental and constitutional interest of avoiding racial discrimination in educational institutions embraces the interest of avoiding even the "indirect economic benefit" of a tax exemption.** [FN40]

> FN40. Compare Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947) with
>
> Griffin v. County School Board, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 236 (1964). Everson upheld, as serving a valid public purpose, a state program of providing compensation to parents for the cost of busing children to their schools, even where the schools were religious. Griffin held unconstitutional a state subsidy to children attending segregated private schools.

The special constitutional provisions ensuring freedom of religion also ensure freedom of religious schools, with policies restricted in furtherance of religious purpose. Section 503 of the Model Anti-Discrimination Act, supra note 37, permits religious educational institutions "to limit admission or give preference to applicants of the same religion." We are not now called upon to consider the hypothetical inquiry whether tax-exemption or tax-deduction status may be available to a religious school that practices acts of racial restriction because of the requirements of the religion. **Such a problem may never arise; and if it ever does arise, it will have to be considered in the light of the particular facts and issue presented, and in light of the established rule, see Mormon Church v. United States, 136 U.S. 1, 10 S.Ct. 792, 34 L.Ed. 481 (1890), that the law may prohibit an individual from taking certain actions even though his religion commands or prescribes them.**

* * *

The case at bar involves a deduction given to reduce the tax burden of donors, a meaningful, though passive, matching grant, that would support a segregated school pattern if made available to racially segregated private schools. [FN41] **We think the Government has declined to provide support for, and in all likelihood would be constitutionally prohibited from providing tax- exemption-and-deduction support for, educational institutions promoting racial segregation.**

FN41. "[T]he tax benefits under the Internal Revenue Code mean a substantial and significant support by the Government to the segregated private school pattern.

*****

"The support which is significant in the context of this controversy is not the exemption of the schools from taxes laid on their income, but rather the deductions from income tax available to the individual, and corporations, making contributions supporting the school."

Green v. Kennedy, supra, 309 F.Supp. at 1134.

END QUOTE

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Again;

http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

> **The case at bar involves a deduction given to reduce the tax burden of donors, a meaningful, though passive, matching grant**, that would support a segregated school pattern if made available to racially segregated private schools. [FN41] **We think the Government has declined to provide support for, and in all likelihood would be constitutionally prohibited from providing tax- exemption-and-deduction support for, educational institutions promoting racial segregation.**

END QUOTE

.

What is clear is that any tax concession as referred to "**The case at bar involves a deduction given to reduce the tax burden of donors, a meaningful, though passive, matching grant**" and also "**We think the Government has declined to provide support for, and in all likelihood would be constitutionally prohibited from providing tax- exemption-and-deduction support for, educational institutions promoting**" unlawful conduct underlines that any form of grant must be ensuring that no unlawful acts are perpetrated by those who are benefiting of such direct or indirect grants. Hence, if any **NOT PROFIT** (**NOT-FOR-PROFIT**) registered entity conducts its affairs in an unlawful manner, **such as to procure abortions against the wishes of the pregnant woman**, prevents the socializing or otherwise members contacts with family members, use any kind of punishment which may be regarded as inhumane, inappropriate or simply not within compliance of ordinary **NATURAL JUSTICE** standards, etc, then the entity must be deemed to have forgone the status of being a **NOT PROFIT** (**NOT-FOR-PROFIT**) registered entity and should hence forth lose any special taxation entitlements as it cannot be held to be in the interest for "**PUBLIC PURPOSES**". As such, it doesn't matter of the **NOT PROFIT** (**NOT-FOR-PROFIT**) registered entity is a religious entity or not as in the end the issue is if the standards it operates under are those that conform with societies ordinary standards as well as the **RULE OF LAW** and provide **DUE PROCESS OF LAW** as well as for **NATURAL JUSTICE**.

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Below I have quoted some media articles as to further address this issue.

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It is ironic that despite the existence of the Federation since 1901 by now there still seems to be no proper understanding how actually the constitutional frameworks operate.

While the Framers of the constitution provided for a separation of powers between the States and the **POLITICAL UNION** called the Commonwealth of Australia, no such separation of powers include municipal and shire councils as they are regarded part of the "**Local government**" being

the State governments, whereas the Federal government is deemed to be the "C**entral government**".

States are always so to say screaming blue murder not to have sufficient monies in Consolidated Revenue funds for payments for Appropriation bills but then with the matter of ***Moorabool Shire Council v Mr Francis James Colosimo*** as advertised on the VCAT (Victorian Civil and Administrative Tribunal) there is no letting up in the protracted **VEXATIOUS** litigation against Mr Francis James Colosimo, despite from onset there having been **OBJECTION TO JURISDICTION**'s.

.

I will quote "**Chapter 361 –Local Government**" which will indicate that despite States having amended their constitutions to provide for Municipal and local councils to be "**Local Government**" constitutionally this is not permissible and hence **ULTRA VIRES**. Little help however for a person facing a tirade of litigation no matter how unconstitutional and standing up for his constitutional and other legal rights and a total lack by the Federal government to stand up for this incursion into Federal jurisdiction, where once an **OBJECTION TO JURISDICTION** ids made upon constitutional grounds then a State tribunal has no jurisdiction to even hear and determine this **OBJECTION TO JURISDICTION** because it is not a court within the meaning of Chapter III of the constitution and neither can invoke federal jurisdiction. However, you find it as a matter of record, that despite of this some 15 hearings already were conducted including 6 purported CONTEMPT hearings, despite that Her Honour Harbision J at no time during any of the hearings bothered to formally charge Mr Francis James Colosimo of any offence. After all he had lawfully erected a "shed" and hardly could have been held legally accountable for erecting lawfully a "**shed**"! Despite ongoing advising VCAT Senior member Ms Preuss that the protracted **VEXATIOUS** litigation caused **EMOTIONA**l, **MENTAL** and **FINANCIAL** harm Ms Preuss so to say couldn't give a hood and continued to adjourn matters repeatly, and while Ms Preuss even went as far on 2 September 2009, when Mr Francis James Colosimo verbally explained to her that the litigation was preventing him to earn a normal income, VCAT Senior member Ms Preuss then lashed out as I understood it to be "Well you are the one in breach of legal provisions." Yet, despite this verbal attack she has been unable to produce any evidence that indeed Mr Francis James Colosimo acted in defiance of legislative provisions to erect his "**shed**", which Moorabool Shire Council a mere 5 days before it commenced to litigate against Mr Francis James Colosimo officially declared that it was erected within the legislative provisions. As a matter of fact the penalty Infringement Act 2006 doesn't even provide jurisdiction to VCAT anyhow.

What we now have is that because of what I consider malicious conduct by VCAT Senior Member ms Preuss to act appropriately and follow the DUE PROCESS OF LAW and seemingly seems to be upset that I expose this she even took it upon herself to personally attack my person to represent Mr Francis James Colosimo as if this is going to address the issue for which Her Honour Harbison J on 12 June 2008 requested for the Office of the Public Advocate to investigate if Mr Francis James Colosimo acted WILLFULLY IN CONTEMPT. Well the office of the Public Advocate for so far as I am aware of couldn't bother to deal with this and, so to say, so went his own marry way to pursue administration orders against Mr Francis James Colosimo but only in relation to Moorabool Shire Council. It is like having a woman so to say being half pregnant. Yet, VCAT Senior member Ms Preuss since commencing the hearing on 27 January 2009 not one did deal with the original issue of the investigation and all seems to be doing is to protract the **VEXATIOUS** hearings and having been made well aware time and time again that due to the litigation Mr Francis James Colosimo cannot earn sufficient income to pay his bills. So, about 14 months later the bank now seems to foreclose the property concerned awhile MVCAT Senior member Ms Preuss still after some 5 hearing still has to commence dealing with the **OBJECTION TO JURISDICTION** that was before her on 27 January 2009 and let alone having attended to the core issue as to any investigation as to m Mr Francis James Colosimo conduct where obviously any investigation in any event would be pointless because where Her

Honour Harbison J never had bothered to formally charge Mr Francis James Colosimo then there hardly can be any WILLFUL conduct either of CONTEMPT. Still, Victorian Legal Aid advised for Mr Francis James Colosimo to purge his contempt.
Moment purge CONTEMPT without even having been charged for it?
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What we now have is that Mr Francis James Colosimo will soon or later be depending on Commonwealth of Australia Social Security funds where clearly this could have been avoided if just VCAT from onset had followed the **RULE OF LAW** and **DUE PROCESS OF LAW**.
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QUOTE **In the marriage of Smith v Saywell** (1980) Fam LR 6 245 at 258

> Where a case pending in a federal court other than the HIGH COURT or in a court of a state or territory involves a matter arising under the Constitution involving its interpretation, it is the duty of the court not to proceed in the cause unless and until the court is satisfied that notice of the cause, specifying the nature of the matter has been given to the Attorney General of the commonwealth and (a) if the cause is pending in a court of a state - to the Attorney General of that state; or (b) if the cause is pending in a Federal court and was initiated in a state - to the Attorney General of that state, and for a reasonable time elapsed since the giving of the notice for consideration by that Attorney General or by those Attorney General, of the question of intervention in the proceedings or the removal of the cause to the HIGH COURT.

END QUOTE

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What we find however is a total disregard to this rule by VCAT and hence a burden upon taxpayers to fork out I estimate more then $100,000.00 on litigation cost because of what appears to me to be **arrogant**, **obnoxious** conduct by VCAT rather then to follow the **DUE PROOCESS OF LAW**.
.
For taxation purposes it obviously is an issue that legal aid funds is also squandered on lawyers who can't even bother to deal with the very basics and that is first to deal with the core issue what is the precise charge against Mr Francis James Colosimo! After all, this is what I explored to discover that despite some 6 purported CONTEMPT hearings Her Honour Harbison J simply had not bothered to formally charge Mr Francis James Colosimo.
What we have however is in totality all this litigation is a sheer misuse and abuse of the legal processes in that constitutionally municipal and shire councils have no position of being a "government"! As such it's enforcement of so called by—laws is WITHOUT LEGAL FORCE.
Hence taxation monies is squandered both that of State and Commonwealth Consolidated Revenue funds unabated!
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QUOTE **Chapter 361 –Local Government**

Chapter 361 –Local Government

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* Gerrit, another issue you have addressed, didn't you?
.
**INSPECTOR-RIKATI**®, indeed I did see below.
.

Jeff McMullen, ABC, DIFFERENCE OF OPINION
Ph. 1800 502 404
Fax 02 8333 3344

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Re; levels of Government

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Jeff McMullan

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FEDERAL GOVERNMENT/CENTRALISED GOVERNMENT

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Versus

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STATE GOVERNMENT/LOCAL GOVERNMENT

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Versus

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MUNICIPAL COUNILS/LOCAL GOVERNMENT

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While in today's language when we refer to "**LOCAL GOVERNMENT**" we refer to **"LOCAL COUNCILS**" rather then "**MUNICIPAL COUNCILS**" constitutionally (considering the ***Commonwealth of Australia Constitution Act 1900*** (UK) we have **a "CENTRALISED GOVERNMENT**" with a "**FEDERAL PARLIAMENT**" and a "**LOCAL GOVERNMENT**" with a "**STATE PARLIAMENT**".

When one refers to the Federation and State Governments then "**LOCAL GOVERNMENT**" refers to State Governments. When we refer to internal State matters then "**LOCAL GOVERNMENT**" is "**MUNICIPAL COUNCILS**" being "**LOCAL GOVERNMENTS**".

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When dealing with the **TWO** levels of Governments, being Federal and State Governments, then the de facto third level of Government "**MUNICIPAL COUNCILS**" is not to be taken as a level of Government.

.

It must be clear that the Commonwealth of Australia has no constitutional powers to alter State legislative powers/boundaries, etc at its own will. However, States can alter "**MUNICIPAL COUNCILS**" boundaries as much as it likes. No referendum is needed for this.

Local councils are not true Governments but delegated bodies that act as a Government under the authority of a State Government. However, State Governments do not act under the Authority of the Federal Government, rather that the Federal Government acts under the authority of State Governments.

The Federal Government cannot take anything from the States that the States doesn't want to give on legislative powers, whereas the States (subject to a Section 123 of the Constitution State referendum) can and it desire hand over whatever legislative powers it has, to the Federal Government.

Take for example the issue of "**CITIZENSHIP**". Neither the Commonwealth of Australia or "**MUNICIPAL COUNCILS**" have legislative powers as to declare/define "**CITIZENSHIP**". It is and remains to be a constitutional powers reserved for the State Parliaments. See also **Hansard *2-3-1898* Constitution Convention Debates**. Hence the ***Australian Citizenship Act 1948*** for so far it purports to define/declare "**CITIZENSHIP**" is **ULTRA VIRES**.

To abolish State governments would mean that such powers would have to be handed over to either a Federal Parliament or to "**MUNICIPAL COUNCILS**".

Obviously "**MUNICIPAL COUNCILS**" could not deal appropriately with this and a Federal government would not be able to deal with this appropriately. Why you may ask? Because

"**CITIZENSHIP**" relates to a persons **POLITICAL STANDING**. To hand "**CITIZENSHIP**" over to the Commonwealth of Australia would be basically to vandalise the very protection's build in the ***Commonwealth of Australia Constitution Act 1900*** (UK).
This correspondence cannot set out in an elaborate manner all that is relevant to this, but those interested can always read my various books published in the **INSPECTOR-RIKATI**® series.
The usage of the term "local government**" during the Constitution Convention Debates were in general referring to State Governments, below some examples.**

WE EITHER HAVE A CONSTITUTION OR WE DON'T!

The Federal Government cannot have it both ways, argue it has constitutional rights to implement certain legislation and on the other hand ignore constitutional constrains when it doesn't suit it.

What is badly needed and well overdue is the creation of an **OFFICE OF THE GUARDIAN**, a constitutional council, that advises the Government, the People, the Parliament and the Courts as to constitutional powers and limitations.
Currently there is to much nonsense going on where even judges do not even comprehend constitutional limits and fancy themselves to amend the Constitution by backdoor manner (judgments) while those politicians in the Parliament know next to nothing as to what is constitutionally permissible or not.

Lets get realistic and before anyone comes up with what is wrong with any government level let them first learn what is constitutionally applicable. After all, if they have it wrong from onset and do not comprehend how matters are constitutionally then what are they talking about?

Please note the comments below, including an e-mail to Mr. Kevin Rudd.

DEBATES OF THE CONFERENCES (OFFICIAL RECORD.)

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MONDAY, FEBRUARY 10, 1890.

Mr. DEAKIN.-

I believe, by the Bill which will shortly grant Western Australia the **local government** which all Australasia has long wished her, to confine the new colony to the territory south of the 26th parallel, while the territory north of that is to be governed by Western Australia under the control of Ministers in England.

And

Mr. DEAKIN.-

With regard to work which might be better done by a Federal Government than by the separate Governments of the colonies, it is questioned whether, when the Convention comes to consider all the issues raised (which I do not enter into), it will not be decided that the larger part of the work should be left to the **local Governments**. It is argued that public works, for instance, would be more satisfactorily carried out by the **local Governments** than by a Government more removed.

And

Mr. DEAKIN.-

But what is clearer is, that the great cable and mail lines between this continent and the old world would inevitably pass under the control of the Federal Government. There is one land line already across the continent of Australia, which it might be necessary to hand over to the

Central Government, And there is a cable projected towards North America, which will greatly affect the interests of the inhabitants of Australasia and the Pacific islands and our countrymen across the sea.

And

Mr. DEAKIN

Leaving these details, which I have only ventured to touch upon in a fragmentary way, and sympathizing with the strong stand made by Mr. Playford on the supposition that the powers and privileges of the different **local Governments** were to be assailed, and being as prepared as he is to do my utmost in their defence, I believe that we would act idly unless we admitted from the first that in the creation of a Federal Legislature and a Federal Executive we meant them to be the organs of a Sovereign state-a state which would not be a figment or shadow, nor exist only on the sufferance of the **local Parliaments**, but which would draw its authority straight from the people of the different colonies, obtaining from them the plenary powers to be exercised by it within certain limits. The great lesson taught by Mr. Bryce in his magnificent work is that the strength of the United States Government lies in this, that although it is a Federal Government, under which each State of the Union is theoretically and actually independent in respect to **all concerns of local life and legislation**, it has nevertheless sovereign authority in that it is gifted with powers which act directly and immediately on every citizen of the entire country. It is not dependent on any state for one cent of its revenue, nor upon state officers for any act of administration , nor upon State Courts for any decision in its favour. **Except that the state legislators elect the members of the Senate there is no connexion between the states and their Central Government.** The Union is not concerned to have their support, nor does it seek their aid for the forces it maintains. **It is a Sovereign state acting directly, without any intermediary, upon the citizens from which it springs.** (Hear, hear.) I am glad that view is concurred with. I am glad to think that we shall see a Sovereign state in Australasia which will be able to act directly through its judiciary, and in other ways, on every citizen within its borders, and be in every respect and in all its powers the equal of any state in the world. Were we to aim at crippling, maiming, or enfeebling **the local Legislatures**, we would aim at doing something not only wholly unnecessary for our purpose, but something which would actually injure the Federal Government we are seeking to establish. There should be and must be nothing antagonistic between a Federal Government supreme in its sphere and **local Governments** supreme in their spheres. It is perfectly true that there must be a division of authority, that some of the powers of the local Governments will have to be transferred to the Federal Government, but the judges of the powers to be given to either body must not be either the **local Governments** with their jealousies, or the Central Government with its ambitions. The judgment must come from those whom both exist only to serve-from the people themselves**. So far both the local and central authorities must be regarded as on the same platform, because as it is in the national interest that there should be a differentiation of the powers of Government into central and local Governments so in settling that division only national interests ought to be considered.** What we have to study is how to give the central authority all the powers which can be best exercised by such a body to the distinct advantage of the whole of the people. Those powers it ought to have; but it is not to be [start page 27] entitled to acquire them in such a way as would enfeeble the different **local Governments**, on whose healthy life its successful existence must largely depend. As well might it be attempted to **enfeeble municipal institutions** in order to aggrandize Parliament, the fact being that parliamentary Government depends very much for its smooth and easy working upon the smooth and easy working of the **minor local bodies**. **There are an infinite number of issues which no central Parliament could deal with**, but which necessarily belong to the **local Legislatures**, and which they should be able to deal with in the present manner. For my part, I think we should seek to strengthen the local Legislatures by every possible means. We should, as Mr.

Playford says, leave them every power it is possible for them to exercise in the interests of the whole community. If more power can be given them for that purpose than is conceded elsewhere, let it be granted, but let us give the **Central Government** just as emphatically a full and unfettered power so far as the interests of the whole people demand it.

Hansard *5-3-1891* Constitution Convention Debates

Mr. PLAYFORD: And that it would be given back to the various **local governments** in proportion to the population of their respective colonies. If we consider for a moment that the **federal government** must have an executive, and will have to provide the necessary payment for the federal forces, for the federal executive, and for various other matters, we must see that they will have to derive a revenue in some way or other; and the most difficult question, I think, which the members of the Convention will find, when they come to deal with it, will be the adjustment of that financial part of, if I may so call it, the trouble between **the federal government** on the one hand, and the **local governments** on the other. It may be necessary that, in certain instances, we should be paid back by the **federal government** a proportion of the money that we, as local governments, derive from customs. The

Hansard *17-3-1898* Constitution Convention Debates

Mr. DEAKIN.-

Now, a few words as to the bounties. The Federal Parliament, representing the federal people, will be as sensitive to the appeals of the people for assistance as any local Parliament has been. The great federal industries of Australia-fruit-growing, dairying, agriculture, and horticulture-will be no less an object of concern to representatives in the Federal Parliament than they have been to representatives in the various local Parliaments indeed, the improved circumstances and more independent position of the Federal Government will allow them to deal with the development of these industries with a more liberal hand than the **local Governments** can deal with them.

And

Mr. TRENWITH.-

We find, within the area of our state Legislatures, that we have **local interests** continually presented to Parliament from various parts of the respective states. In Victoria we have a most complete system of **local government**, under which particular localities legislate for their local requirements, and manage very largely their local concerns in regard to roads and bridges, and so forth. They are continually coming to Parliament asking for some special concessions. Very often these special concessions involve the expenditure of large sums from the general revenue, but yet we find that whenever these requests are made they are almost invariably passed with the greatest possible rapidity. Parliament is always inclined to act generously to sections of the community over which it has to govern, and we have a right to assume that when we have created a Federal Parliament**, and local considerations from any of the states are submitted to it, it will treat them in much the same manner as the state Parliament treats matters from municipal councils within the area of their government** now.

Again;

Parliament is always inclined to act generously to sections of the community over which it has to govern, and we have a right to assume that when we have created a Federal Parliament**, and local considerations from any of the states are submitted to it, it will treat them in much the same manner as the state Parliament treats matters from municipal councils within the area of their government** now.

Hansard *4-3-1898* Constitution Convention Debates

Sir GEORGE TURNER (Victoria) presented a petition from the Melbourne and Metropolitan Board of Works praying that the Convention would preserve the right of the Queen's Australian subjects to appeal to the Privy Council, and moved that it be received and read.

The motion was agreed to.

The CLERK read the petition, as follows:-

To the Right Honorable the President and the Members of the Australasian Federal Convention, in session assembled.

The petition of the Melbourne and Metropolitan Board of Works humbly sheweth-That your petitioner is a body corporate created by Act of the Parliament of Victoria**, composed of representatives elected by the councils of the city of Melbourne and the municipal councils of the other 23 cities, towns, boroughs, and shires of the metropolis of the said colony**, which comprises an area of about 160 square miles, with a population of more than 451,000, who will be responsible for rates to be levied by your petitioner.

That the principal duties assigned to your petitioner are to manage and extend the water supply of the said metropolis, and to undertake the sewering and draining thereof.

That in relation to the former of the said **duties your petitioner is charged with liability to the Government of Victoria** for a sum of £2,359,156, the balance of money lent for construction of the waterworks by creditors who are mostly resident in Great Britain. And for extension of the said works, and to sewer and drain the metropolis, your petitioner has borrowed £3,893,580 upon debentures, the holders of a large proportion of which reside in the United Kingdom.

Date: Tue, 28 Aug 2007 01:23:27 +1000 (EST)
From: "Gerrit Schorel-Hlavka" <inspector_rikati@yahoo.com.au>
Yahoo! DomainKeys has confirmed that this message was sent by yahoo.com.au.
Subject: No parliament under a federation can be "sovereign Parliament"
To: Kevin.Rudd.MP@aph.gov.au
CC: inspector_rikati@yahoo.com.au

Kevin.Rudd.MP@aph.gov.au,
Kevin Rudd, Leader of Her Majesty's Opposition
.
AND TO WHOM IT MAY CONCERN
.
Kevin,
In regard of your reported comments about seeking a **REFERENDUM** as to transfer legislative powers from the States to the Commonwealth of Australia (regarding health matters), I do wish

to point out that Section 128 actually requires a state referendum to be held first in regard of any legislative powers to be transferred to the Commonwealth of Australia, and once this has been obtained then it requires another Federal Referendum (involving the same States). As such Section 128 requires actually two referendums. The Commonwealth Parliament cannot propose any amendment of the Constitution unless the proposed amendment has been already accepted by the relevant State themselves by a State referendum.

Section 123 Referendum applies to where a State Parliament desires to have an amendment of its State Constitution, it desires to refer legislative powers to the Commonwealth (such as within Subsection 51(xxxvii) of the Constitution) and/or it desires to transfer part of its State territory to the Commonwealth of Australia or otherwise alter its State boundaries.

It should be understood that State constitutions apply for the whole of the territory of that State and as such when the State refers legislative powers to the Commonwealth of Australia it in effect acts as an alteration of its constitutional powers as it diminish its constitutional powers and as such can only be approved or vetoed by the State electors.

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Hansard *10-3-1891* Constitution Convention Debates

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QUOTE:-

> **No parliament under a federation can be a constituent body; it will cease to have the power of changing its constitution at its own will.**

END QUOTE

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"Subject to this constitution" means it must be interpreted to the intentions of the Framers of the ***Constitution*** allowing for amendments made with approval by referendums.

With other words, the NSW Colonial Constitution Act effectively became amended by the ***Commonwealth of Australia Act 1900*** (UK) by legislatives powers belonging to all Colonies being invested in the Federation (Commonwealth of Australia) which were specifically listed in the Commonwealth of Australia Constitution Act 1900 (UK).

By colonial referendums this was approved by all Colonies electors.

Therefore, since Federation no State Parliament could amend its own State Constitution as it no longer was a "sovereign Parliaments" but a "constitutional Parliament", as like the Federal Parliament. This means that the State Parliament (as like the Federal Parliament) can only propose to the State electors to amend the State constitution and then the State electors must decide to approve or to VETO this proposed amendments(s).

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Hence, ask which State Parliament since Federation actually pursued this way to amend its State constitution?

.

You may find that NSW amended its State Constitution in 1902 but was it with the required approval of the State electors by State referendum?

You find that the State of Victoria purportedly amended its State Constitution without a State referendum in 1975, etc.

Likewise so in regard of any other subsequent purported State Constitution amendments!

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As the Framers of the Constitution refused to give any legislative powers to the Commonwealth of Australia as to define/declare "citizenship" (Hansard 2-3-1898 Constitution Convention Debates) then as I successfully argued in my previous cases, the ***Australian Citizenship Act 1948*** is ULTRA VIRES for so far it purports to define/declare "citizenship.

Hence, not a single police officer/lawyers/judge/politician is validly appointed as they all require "citizenship" for this!

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All court convictions made subsequently to the amended constitutional are all unconstitutional and **ULTRA VIRES**, for so far they rely upon unauthorised amendments of a State Constitution!
It is pleasing to me, as a "**CONSTITUTIONALIST**" that finally we have a person as the Leader of Her Majesty's Opposition who indicates to seek approval from the electors by way of referendum. That is if you were to pursue changes in that regard.
In my books in the **INSPECTOR-RIKATI**® series, I have canvassed that we should have an **OFFICE OF THE GUARDIAN**, a constitutional council, that advises the Government, the People, the Parliament and the Courts as to what is constitutional permissible and the limits of powers.
Basically, anyone convicted of serious crimes, even terrorism, can walk free because of the lack of qualifications by all concerned, including lack of "**CITIZENSHIP**", and that is, so to say, merely the tip of the iceberg.
The fact that I succeeded in the Court that the commonwealth of Australia has no constitutional powers to compel anyone to register and/or to vote may underline how absurd it is that legislation that is **ULTRA VIRES** is being enforced nevertheless.
And, the **J**oint **S**enate **C**ommittee on **E**lectoral **M**atters for years refused to attend to these issues despite having been notified by me about this time and again.
.

> The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid; one must prevail. This is succinctly stated as follows:
>
> > The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.
> >
> > Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. . .
>
> A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.
> **No one is bound to obey an unconstitutional law and no courts are bound to enforce it.**
>
> *Sixteenth American Jurisprudence*
> *Second Edition, 1998 version, Section 203 (formerly Section 256)*

.
PLEASE NOTE THERE IS MORE REGARDING THIS ISSUE OF "CONSTITUTIONAL PARLIAMENTS" BUT I WILL BE NICE TO YOU AND NOT QUOTE ALL RELEVANT STATEMENTS FOR NOW. IN ANY EVENT THEY ARE PUBLISHED IN MY BOOKS!
.
Gerrit

Mr. G. H. Schorel-Hlavka

MAY JUSTICE ALWAYS PREVAIL®

107 Graham Road

Viewbank, 3084, Victoria, Australia

Ph/Fax 03-94577209
International 61394577209

"CONSTITUTIONALIST" and Author of books in the INSPECTOR-RIKATI® series on certain constitutional and other legal issues.

See also website; http://schorel-hlavka.com and

Blog; http://au.360.yahoo.com/profile-ijpxwMQ4dbXm0BMADq1lv8AYHknTV_QH

See also;

Hansard *10-3-1891* Constitution Convention Debates

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QUOTE

> **Dr. COCKBURN:** There have been only four amendments in this century. The hon. member, Mr. Inglis Clark, is a good authority on America, and I am sure he will agree with me that out of sixteen amendments only four have been agreed to in this century. All the other amendments which have been made were really amend- [start page 198] ments which were indicated almost at the very framing of the constitution, and they may be said to be amendments which were embodied in the constitution at the first start. The very element, the very essence, of federation is rigidity, and it is no use expecting that under a rigid and written constitution we can still preserve those advantages which we have reaped under an elastic constitution. All our experience hitherto has been under the condition of parliamentary sovereignty. Parliament has been the supreme body. **But when we embark on federation we throw parliamentary sovereignty overboard. Parliament is no longer supreme. Our parliaments at present are not only legislative, but constituent bodies. They have not only the power of legislation, but the power of amending their constitutions. That must disappear at once on the abolition of parliamentary sovereignty. No parliament under a federation can be a constituent body; it will cease to have the power of changing its constitution at its own will. Again, instead of parliament being supreme, the parliaments of a federation are coordinate bodies-the main power is split up, instead of being vested in one body. More than all that, there is this difference: When parliamentary sovereignty is dispensed with, instead of there being a high court of parliament, you bring into existence a powerful judiciary which towers above all powers, legislative and executive, and which is the sole arbiter and interpreter of the constitution.**

END QUOTE

END QUOTE **Chapter 361 –Local Government**

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And there is more to this as taxation can only be used for public purposes and only for the "whole of the Commonwealth" and not for States having purportedly transferred their legislative powers within s.51(xxxvii) but omitting to first obtain State Referendum approval as required by the constitution (see also further below).

At the end of this document I have reproduced the issue as to "**Chapter 012 Reference of legislative powers**" which underlines that no reference of legislative powers is constitutionally validly referred to the Commonwealth where it was not first approved by the State electors by State referendum.

It is also that where one or more States but not all State refer its legislative powers to the commonwealth then ordinary Consolidation Revenue funds cannot be used for this but the States have to pay a special levy for any cost incurred by the Commonwealth to deal with this reference of legislative powers.

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As such, we seem to have an utter legal mess/mesh and much of taxation is wasted. Below there is more of an outset further to this issue.

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http://www.churchstatelaw.com/cases/Coit.asp

Green v. Connally, D.C., 330 F.Supp. 1150.

QUOTE

B. Pendent Jurisdiction

[20]This three-judge district court was convened because the complaint challenged the constitutionality of provisions of the Internal Revenue Code, 28 U.S.C. §§ 2282, 2284 (1964). This court also has jurisdiction, under 28 U.S.C. § 2282, sometimes called ancillary or pendent jurisdiction, to hear and determine the non-constitutional questions involved, including plaintiffs' two statutory claims, based on the Civil Rights Act of 1964 and on the proper construction of the Internal Revenue Code. Flast v. Cohen, 392 U.S. 83, 90-91, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968); Florida Lime & Avocado Growers v. Jacobsen, 362 U.S. 73, 75-85, 80 S.Ct. 568, 4 L.Ed.2d 568 (1960); United States v. Georgia Pub. Serv. Comm'n, 371 U.S. 285, 287-288, 83 S.Ct. 397, 9 L.Ed.2d 317 (1963).

"The doctrine of dependent or ancillary jurisdiction *** springs from the equitable doctrine that a court with jurisdiction of a case may consider therein subject matter over which it would have no independent jurisdiction whenever such matter must be considered in order to do full justice." Walmac Co. v. Isaacs, 220 F.2d 108, 113-114 (1st Cir. 1955). Pendent jurisdiction has usually been stated to exist when the two questions arise out of the same cause of action, whether they be state and federal claims, Hurn v. Ousler, 289 U.S. 238, 53 S.Ct. 586, 77 L.Ed. 1148 (1933), or two different federal claims, Romero v. International Terminal Operating Co., 358 U.S. 354, 79 S.Ct. 468, 3 L.Ed.2d 368 (1959). The Supreme Court has recently warned that the Federal courts should not be "unnecessarily grudging" in their assumption of pendent jurisdiction. **The test is that the two claims "must derive from a common nucleus of operative fact," and if "a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in Federal courts to hear the whole**." United Mine Workers of America v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966). The ultimate disposition of the claim upon which jurisdiction is based is immaterial, so long as the claim was not plainly wanting in substance, Hurn v. Oursler, supra. Pendent jurisdiction of the other claims has been held to survive even when the jurisdictionally significant claim has become moot. Hazel Bishop, Inc. v. Perfemme, Inc., 314 F.2d 399 (2d Cir. 1963).

ENDQUOTE

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Again, VCAT didn't have any jurisdiction in the first place and as such could not invoke any jurisdiction but that seems to be of no concern to VCAT and they go on so to say destroying the livelihood of a person if just as it appears to me to have some kind of payback for a man to date to stand up for his constitutional rights as Mr Francis James Colosimo is doing. This is also why it is so important to have a **OFFICE-OF-THE-GUARDIAN** so that finally this can be appropriately addressed and much of the monies now wasted can be saved.

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QUOTE **Chapter 002 OFFICE OF THE GUARDIAN**

Chapter 002 OFFICE OF THE GUARDIAN

* Gary, would you mind explained **OFFICE OF THE GUARDIAN**? What you seek to achieve with its creation?

**INSPECTOR-RIKATI®**, the **OFFICE OF THE GUARDIAN**, would be a constitutional council, to advise the Government, the People, the Parliament and the Courts.

* Are you meaning we need to have an amendment of the *Constitution* for this?

Not at all. It is not going to interfere with out current judicial system, rather would aid it. It would not interfere with the legislative powers of the Commonwealth of Australia, rather aid it. It would not interfere with the executive powers of a Government of the Day but rather Aid it!

* If it is to aid it all then why was it not created long ago?

Because no one realized how cancerous the Commonwealth of Australia was, and indeed so also the States. Just consider you counting money 20 cents and twenty cents being totally 50 cents. You make an error in counting but time and again you repeat the same error. Yet, if you were to add a coin of say 10 cent and then start counting with the ten cent then you realize you are ending up with the same amount only an added coin.
People are at times repeating errors without realising they are making the same error time and again. This is in particular so with how the ***Constitution*** applies.

Judges who are sitting in judgment at the High Court of Australia ought to have been appropriately trained in certain constitutional matters before it handed down judgments.
Indeed, I view no judge should be appointed to the High Court of Australia

* How would an **OFFICE OF THE GUARDIAN** address such issues?

Firstly, you need to work out the formation of an **OFFICE OF THE GUARDIAN**.
My proposal would be that from each State one would have three representatives. One of which is to be a lawyer. The two others should be elected by ballot, in the same manner as they do for Jury service.

Why have two non lawyers from each of the States?

What we need is "**common sense**" and the so called "**commoner**" is the best to provide it.
Lawyers can contribute their views, but as I have already made clear they are being brainwashed at legal studies, etc, and so while they are needed on the other hand are a danger.
I used to sit in when lawyers were talking to their clients. For example this man made an agreement with his lawyer when I pulled both up about the agreement and explained they really never had a meeting of the minds, so to say. I explained then to the lawyer what he understood the agreement was about, and he fully agreed to this. I then explained to the client what I understood he had agreed to and he too explained this was so. By this, I was able to show that both were talking about a total different kind of perception of agreement!
This is often why clients and lawyers end up in a tug of war, both claiming to have acted according to the agreement while accusations flies about breach of the agreement.
The lawyer talks in a jargon he understands as such while the client has a different understanding of the jargon used.
Lets try to take an example of minor nature.

The lawyer may state that the client must "guarantee" the cost will be paid. The Client then agrees with this. The lawyer having explained previously that the cost could be $15,000.00 plus then takes it that the client therefore will have guaranteed the cost of whatever the litigation is going to be and so by a formal guarantee, say, the property the client owns. The client however may perceive that his personal agreement to pay the bill of $15,000.00 plus likely means about $15,000.00 and not, say, $30,000.00 or so and knowing that his property is under heavy mortgage that does not allow it to be used as collateral may have the view that his personal agreement is on the basis of his financial position. Later in a dispute each party will claim his/her version of perception!

The client who perhaps lost his job in the meantime and /or his marriage having the house being sold not even covering the mortgage may take the position that it was beyond his powers to do otherwise and so the debt claimed by the lawyer no longer is realistic top be held applicable.
I have come across incidents like that and so know from real life people have this perception.

Another problem arises where people were funded by legal AID, many a woman afterwards sought my assistance that **LEGAL AID COMMISSION** had taken such large slice out of the sale of the property where they understood that they didn't need to have to pay back any monies. As some made clear, they thought it was for free and had they known that they had to pay back the monies they would never have protracted the litigation ongoing.

So, there are clearly misconceptions between clients and their lawyers.
Indeed, lawyers letting a client wait in the waiting room while they are still attending to their client, and then in the end telling their client to come back the next day, but unbeknown to the client the lawyer may still put a charge to LEGAL AID COMMISSION for the hour of consultation with the client, even so nothing occurred. The client may never know about this kind of fraudulent charging, in particularly not where LEGAL AID COMMISSION does not ensure a client must sign for any cost claimed in regard of any consultations/visits, as to time of commencement and time of the client leaving. So, there then is a lot of problems existing already.
What we need therefore is to get some proper regulated system that at least will seek to avoid numerous problems to occur when it comes to errors. Sure, the ***Constitution*** does not deal with LEGAL AID COMMISSIONS kind of payments, but the Federal Executive also abuses its powers greatly and acts unconstitutionally and illegally.

With an **OFFICE OF THE GUARDIAN** having non-lawyers it means that they can contribute their perceptions as to what they perceive they understand of certain meanings of statement made by the framers of the Constitution. A lawyer might be preoccupied with his legal studies knowledge and therefore never perceive what is written as he, like the counting of coins, will continue to make the same error. What we therefore would require to have is a board that is having a diversion of people with different perceptions and together can contribute to come to a conclusion. Then by ballot they elect who will be in charge for a year period as the **GUARDIAN**. It must be clear it does not need to have to be a lawyer. What is essential is that anyone who joins this "**board**" can only do so for a period of three years, and every year one member of each State is replaced. That way, you will have an ongoing rotation and avoid political bias becoming the norm. The task of the Members of the board of the **OFFICE OF THE GUARDIAN** would be to work out what relevant meanings are of constitutional provisions, consulting also the statements made by the Framers of the ***Constitution***. As such, their conclusion would be what they consider to be appropriate to the relevant material available.

So now take it that you approach the **OFFICE OF THE GUARDIAN** and explain to them that you are in the midst of litigation and you like to get in your hands all relevant material relating this constitutional issue. The **OFFICE OF THE GUARDIAN**, without charge, would then provide whatever they have on the subject.

Now you go home and you go through the lot and you hold that the conclusion the **OFFICE OF THE GUARDIAN** gave in the material is either partly or whole incorrect. You then approach the **OFFICE OF THE GUARDIAN** and explain what you dispute, if any, and set out your views.

The board of the **OFFICE OF THE GUARDIAN** then reconsiders what it had and the comments made and then seek to come up with what it deems to be appropriate. It could be they rejects the issues raised as not being correct or otherwise. They can amend their statement with partly or wholly accepting what was commented by the person.

It must be stated that the material provided is for informative purposes only!

Now, say there is a person who contacts the **OFFICE OF THE GUARDIAN** and complaints that the government (or one of its Department) may be acting unconstitutionally in its conduct.

The **OFFICE OF THE GUARDIAN** may agree or disagree with the complainant.

If it takes the view there might be a case, it can then in its own right place the matter before the High Court of Australia seeking its **judicial determination** in the matter.

The High Court of Australia in the first place will be provided by the **OFFICE OF THE GUARDIAN** with all relevant details it has on record on the issue before the Court. Judges can nevertheless do their own investigation/research (by their staff or otherwise) and may or may not agree with the **OFFICE OF THE GUARDIAN** The complainant can join in the litigation in his/her own right as to be able to present his/her own views. If the High Court of Australia in the end agrees with the **OFFICE OF THE GUARDIAN** then it can issue relevant orders to prohibit the Government Department to act contrary to constitutional provisions, etc.

The complainant can in his/her own right litigate and present his/her own case regardless if the **OFFICE OF THE GUARDIAN** does not commence any litigation, because it might rightly or wrongly have the view that there is no issue.

If the Court makes a judgment then the **OFFICE OF THE GUARDIAN** has to update its material to include the judgment as to ensure that any person who were to seek information has the moist updated details. It would not make the details available binding, as anyone can still challenge this and have, so to say, overturned a previous decision, but principle is that anyone can obtain the same information regarding the subject from the **OFFICE OF THE GUARDIAN**.

The benefit would also be that a poor person who cannot litigate because of lack of funds can still pursue legal redress if the **OFFICE OF THE GUARDIAN** happens to get involved in its own right, and the **OFFICE OF THE GUARDIAN** happens to get involved, in its own right as a **GUARDIAN** of the ***Constitution*** and succeed. This, as then the poor person will have an legal precedent upon which he/she can base a case!

A government seeking certain legislation to be put in place could consult the **OFFICE OF THE GUARDIAN** about what it knows about constitutional powers and their limitations, this as to get a general knowledge.

Likewise, Members of the Parliament who lack proper understanding of legal complexity may desire to have a source of information that is without bias provided to see if a certain bill is to be deemed appropriate and permissible within constitutional powers and limitations or not.

The Courts themselves are not bound to accept what the **OFFICE OF THE GUARDIAN** provides on information but will have far more reliable material to use then having some ad hoc researcher doing it in a hurry and by this overlooking real issues related to it.

The aim therefore is to make a most flexible system of a source of information available to whomever in the same updated manner. Judges dealing with constitutional issues, apart of any

personal research may call upon the **OFFICE OF THE GUARDIAN** as to be able to make a fully informed decision on a certain constitutional issue.

* Gary, can I put in a word?

Of course you can!

* Is this meaning that the **OFFICE OF THE GUARDIAN** really is an advisory body?

Correct. But, it also has the right to pursue litigation in its own right to place before the High Court of Australia material and seeking a ruling upon it by the Court.

* Is that meaning I can ask the **OFFICE OF THE GUARDIAN** to sue on my behalf?

No, that is not the function of the **OFFICE OF THE GUARDIAN**. Its concern is only to present updated information and to pursue that breaches against the ***Constitution*** are dealt with appropriately.

Obviously, by this the **OFFICE OF THE GUARDIAN** could also indicate the legal issues, as it deems applicable, such as in my case could have warned the Australian Electoral Commission that the Framers intended that once a person made a constitutional based objection against a proclamation/writs/legislative provision then this would be **ULTRA VIRES** from creation until and unless the High Court of Australia declared it to be **INTRA VIRES**.
I have no doubt that had this kind of information been available to the Australian Electoral Commission it more then likely would not have obstructed my applications to be heard as it would have realized that in its own interest to conduct lawful elections it needed such a declaration. What happened however is that neither the Australian Electoral Commission, its lawyers and the judges or for that matter the politicians realized that by their deliberate railroading my applications they in fact prevented a lawful election to be held.
This is why it is so badly needed that appropriate information is available when needed by anyone regardless of if they are in government, if they are a member of the "general community", if they are Members of Parliament, or if they are judicial officers.

* As I understand it then you do **not** mean that the **OFFICE OF THE GUARDIAN** dictates what is applicable but more is a source of information giving details as to how matters could be applicable pending a decision of the High Court of Australia?

That is a proper manner to state this.

* And, I further understand that the **OFFICE OF THE GUARDIAN** in its own right could take the matter to the High Court of Australia to seek clarification of a matter against the Federal Government or the parliament or even seek leave to intervene in legal proceedings if it believes there is a constitutional issue to be litigated about as to ensure that the constitutional provisions remain appropriately applied with or being followed?

That is excellent. You are really getting the gist of it, so to say..

* How much would it cost to obtain the information?

As I made earlier known it must be provided **FREE OF CHARGE** to anyone. This, so that even the poor people have this information available to them! For example, a copy of the

Constitution should be provided for free to every primary school student and indeed anyone who ask for a copy. This, as it is essential anyone has access to this information!

We have issues such as toxic waste, **Industrial Relations**, and numerous other matters and few people ever even have seen the ***Constitution*** let alone read it to have any understanding what it is about. Yet, for a document that spills out the basic powers and limitations of the **POLITICAL UNION** called Commonwealth of Australia it is sheer and utter nonsense that the ***Constitution*** is not more readily given out. This is also why people are confused about their rights and so likewise what possibly could be applicable. Then again I must admit that even if they had copies of the ***Constitution*** they may still not be able to understand the precise operation unless they also had access to other relevant details. This is where the **OFFICE OF THE GUARDIAN** comes into place. It then could advise anyone seeking information as to the background creating a particular section of the ***Constitution***, what was debated about it, what judicial decisions were made in regard of it, etc. Then, judges of the High Court of Australia do not just need to rely upon their own researches who may or may not be able to locate the correct version of development of certain constitutional provisions and so have a more comprehensive information at hand to make a judgment. The High Court of Australia is not a true **GUARDIAN** of the ***Constitution*** at all, as it has no constitutional power to commence on its own motion to litigate constitutional matters where it deems there is a constitutional issue existing to be litigated. Indeed, it even prevents constitutional issues to be litigated as was discovered in my cases. For example, the High Court of Australia did not and cannot advise Members of Parliament that instead of waiting for a Bill (proposed law) being passed by the Parliament and enacted before they can commence litigation they can in fact as a Member of Parliament challenge the constitutional validity in the House they having a seat (of Parliament) and then the Speaker of the House of Representatives and/or the President of the Senate cannot allow the bill to proceed without first seeking to establish the constitutional validity of the law proposed to be introduced in the Parliament for reading and/or voting. It means that instead waiting for the damages to be done with having unconstitutional legislation invoked, it is stopped in its tracks, so to say, at introduction into the Parliament.

In any event, look at the new purported **IR laws** amendments. They are not laws at all as they are objected against on constitutional grounds and so are **ULTRA VIRES** unless and until the High Court of Australia declares them to be **INTRA VIRES**! Yet ample of employers are using the new legislation in the mean time thinking that they are acting lawfully and not even the Federal Government and so the Opposition are aware that the new legislation is and remains at the moment **ULTRA VIRES**!

AND, BESIDES MYSELF THERE APPEAR TO BE, AS I UNDERSTAND IT, NOT A SINGLE CONSTITUTIONAL ADVISOR WHO ACTUALLY UNDERSTAND THAT MATTER! Yet, if the **OFFICE OF THE GUARDIAN** had already existed then employers would have been Quick smart to realise they could not use the purported legislation once there was a constitutional based challenge on foot as it was all **ULTRA VIRES**.

Galations 4:16. Am I therefore become your enemy, because I tell you the truth?

The error is in the assumption that the General Government is a party to the constitutional compact. The States formed the compact, acting as sovereign and independent communities.
The Constitution has admitted the jurisdiction of the United States within the limits of the several States only so far as the delegated powers authorize; beyond that they are intruders, and may rightfully be expelled.
The government of the uncontrolled numerical majority, is but the absolute and despotic form of popular government...

If we do not defend ourselves none will defend us; if we yield we will be more and more pressed as we recede; and if we submit we will be trampled underfoot.
John C. Calhoun

"In the beginning of a change, the Patriot is a scarce man, brave, hated and scorned. When his cause succeeds however, the timid join him, for then it costs nothing to be a Patriot."
- Mark Twain

END QUOTE **Chapter 002 OFFICE OF THE GUARDIAN**

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Issues such as the commonwealth position in regard of s.85, s.51(xxxi), etc, all then could be mainly resolved by this **OFFICE OF THE GUARDIAN** and as such avoid a lot of litigation in the courts because finally there will be IMPARTIAL constitutional set out available without any political bias, which Members of parliament in particularly are currently also denied off and so mainly vote upon whatever the leader of the relevant political party may indicate to be done. The "**FEE SIMPLE**" issue is very much also relevant in this all and has been further addressed below also.

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I get often people commenting that my sentences are long, too long and I should cut them down a bit and so let's have a look at a sentence length, also considering the reference to "**FEE SIMPLE**" and then the above stated.

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819* *17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

> And we do further, of our special grace, certain knowledge and mere motion, for us, our heirs and successors, will, give, grant and appoint, that the said trustees and their successors shall for ever hereafter be, in deed, act and name, a body corporate and politic, and that they, the said body corporate and politic, shall be known and distinguished, in all deeds, grants, bargains, sales, writings, evidences or otherwise howsoever, and in all courts for ever hereafter, plea and be impleaded by the name of the Trustees of Dartmouth College; and that the said corporation, ***526** by the name aforesaid, shall be able, and in law capable, for the use of said Dartmouth College, **to have, get, acquire, purchase, receive, hold, possess and enjoy, tenements, hereditaments, jurisdictions and franchises, for themselves and their successors, in fee-simple, or otherwise howsoever, and to purchase, receive or build any house or houses, or any other buildings, as they shall think needful and convenient,** for the use of said Dartmouth College, and in such town in the western part of our said province of New Hampshire, as shall, by said trustees, or the major part of them, he agreed on; their said agreement to be evidenced by an instrument in writing, under their hands, ascertaining the same: And also to receive and dispose of any lands, goods, chattels and other things, of what nature soever, for the use aforesaid: And also to have, accept and receive any rents, profits, annuities, gifts, legacies, donations or bequests of any kind whatsoever, for the use aforesaid; so, nevertheless, that the yearly value of the premises do not exceed the sum of 6000£. sterling; and therewith, or otherwise, to support and pay, as the said trustees, or the major part of such of them as are regularly convened for the purpose, shall agree, the president, tutors and other officers and ministers of said Dartmouth College; and also to pay all such missionaries and school-masters as shall be authorized, appointed and employed by them, for civilizing and christianizing, and instructing the Indian natives of this land, their several allowances; and also their respective annual salaries or allowances, and all such necessary and ***527** contingent charges, as from time to time shall arise and accrue, relating to the said Dartmouth College: And also, to bargain, sell, let or assign, lands, tenements or hereditaments, goods or chattels, and all other things whatsoever, by the name aforesaid in as full and ample a manner, to all intents

and purposes, as a natural person, or other body politic or corporate, is able to do, by the laws or our realm of Great Britain, or of said province of New Hampshire.

END QUOTE

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TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD. *February 2, 1819 17 U.S. 518, 4 L.Ed. 629, 4 Wheat. 518, (Cite as: 17 U.S. 518)* ***Supreme Court of the United States,***

QUOTE

to have, get, acquire, purchase, receive, hold, possess and enjoy, tenements, hereditaments, jurisdictions and franchises, for themselves and their successors, in fee-simple, or otherwise howsoever, and to purchase, receive or build any house or houses, or any other buildings, as they shall think needful and convenient,

END QUOTE

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The question then is if despite all the above stated that a "grant" is a "contract" then can nevertheless the government take away the **FEE SIMPLE** properties from a religious entity as it does with a private person? Or is it now that s.51(xxxi) somehow might be perceived not to apply to a religious entity and so s.51(xxxi) somehow was to be perceived to have a **DOUBLE STANDARD** application in regard of this? Indeed what "**eminent domain**" powers were to exist where a religious entity's property having been part of a State "sovereign" powers end's up in a Commonwealth "sovereign" powers by the State transferring its "sovereign" powers to the Commonwealth? What taxable powers then could exist if the State granted the religious entity tax exemptions and now under the Commonwealth those kinds of pay roll exemptions no longer can be applied? After all the States having an obstacle with basically large corporations setting themselves up under the umbrella of being a religious entity can by this exclude themselves of all kinds of taxes no matter how much a scam/sham this might be. This, whereas under commonwealth law not just providing the same funding to all religions can be an excuse but rather any funding is a religious funding prohibited by the Constitution.

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For taxation powers, as has been comprehensively set out below, while the States cannot apply taxes to Commonwealth property and so visa versa s.114 of the Constitution however doesn't prevent a State to levy taxes on Commonwealth property that is being used for non Commonwealth purposes and so visa versa. As such airport that has tenants operating on it then unless the airport is not just held by the Commonwealth as "**PROPRIETOR**" but as "**SOVEREIGN**" then all tenants will be subject to ordinary State taxes. Any High Court of Australia ill conceived decision that indicates otherwise we do better not to bother about, as it will be and remain without legal force!

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Re Wakim; Ex parte McNally; Re Wakim; Ex parte Darvall; Re Brown; Ex parte Amann; Spi [1999] HCA 27 (17 June 1999)

QUOTE

For constitutional purposes, they are a nullity. ***No doctrine of res judicata or issue estoppel can prevail against the Constitution. Mr Gould*** *is entitled to disregard the orders made in Gould v Brown.* ***No doubt, as Latham CJ said of invalid legislation, "he will feel safer if he has a decision of a court in his favour". That is because those relying on the earlier decision may seek to enforce it against Mr Gould.***

END QUOTE

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Uniform Tax \case, 1942 (65CLR 373 at 408)

QUOTE

"Common expressions such as: 'The Courts have declared a statute invalid'," says Chief Justice Latham, "sometimes lead to misunderstanding. A pretended law made in excess of power *is not* ***and*** *never has been* ***a law at all. Anybody in the country is entitled to***

disregard it. Naturally, he will feel safer if he has a decision of a court in his favor, but such a decision is not an element, which produces invalidity in any law. The law is not valid until a court pronounces against it - and thereafter invalid. If it is beyond power it is invalid ab initio."

END QUOTE

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What should be understood is that the parliamentarians are "**agents**" of the people and must conduct themselves and so their inquiries to always keep[this in mind regardless if this may be resented by those wanting to wield power in disregard of what is constitutionally permissible.

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HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE

Mr. BARTON.- **Having provided in that way for a free Constitution, we have provided for an Executive which is charged with the duty of maintaining the provisions of that Constitution; and, therefore, it can only act as the agents of the people.**

END QUOTE

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HANSARD *17-3-1898* Constitution Convention Debates

QUOTE

Mr. DEAKIN.- **In this Constitution, although much is written much remains unwritten,**

END QUOTE

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HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE

Mr. SYMON (South Australia).- **We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new Magna Charta for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question upon which we are about to invite the peoples of Australia to vote.** The Great Charter was wrung by the barons of England from a reluctant king. **This new charter is to be given by the people of Australia to themselves.**

END QUOTE

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I view it is better to first provide some quotations of the Framers of the Constitution that will make it beyond any shred of doubt very clear that any so called "**congestion tax**" to deal with cities traffic is beyond the constitutional powers of the Commonwealth of Australia other then where it as a "sovereign" for the territories were to implement this. As a "**sovereign**" for the Territories the Commonwealth of Australia is as like a State, and as such has the powers as like a "sovereign" of a State and not bound by the limitations of s.51 of the Constitution whereas when it acts as the **POLITICAL UNION** (A terminology that will also below attended to.) in regard of Federal powers transferred at federation from the Colonies (now States) then all legislation must be "**throughout the Commonwealth** in a "**uniform**" manner.

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http://au.news.yahoo.com/a/-/latest/6920207/scientology-inquiry-blocked-in-senate/

QUOTE

Scientology inquiry blocked in Senate

Labor and the coalition have been accused of walking away from claims of abuse in the Church of Scientology, by blocking a Senate investigation into the tax-free status of religious groups.

Independent senator Nick Xenophon on Thursday failed to win sufficient support for an inquiry into whether church groups should be subjected to a public benefit test, like that in the UK.

His move was prompted by complaints from former members of the Church of Scientology, and "hundreds" more allegations since first raising the issue.

Claims of forced abortions, imprisonment in boot camps and separation of families were also aired this week on the ABC's Four Corners program.

Both Labor and the coalition voted against Senator Xenophon's move.

Labor frontbencher Joe Ludwig said a Senate inquiry was unwarranted, as there were already two other inquiries looking into taxation matters, including the tax-free status of religious groups.

Liberal senator Eric Abetz said the inquiry would turn the Senate into a "de facto criminal investigations bureau" and worried it would allow disaffected people from all types of groups to air their grievances.

Senator Xenophon said he had broadened the scope of the proposed inquiry to look at the tax-free status of all religious groups on "good faith" after talks with both parties.

He will next week introduce another motion for an inquiry into specific allegations against Scientology.

Labor and the coalition must explain why they had chosen to "look away" from the issue, Senator Xenophon said after the vote.

"(Prime Minister) Kevin Rudd and (Opposition Leader) Tony Abbott need to explain to the Australian people why they have looked away, why they have walked away from an issue of public importance," he told reporters.

Mr Rudd told reporters he would release a statement explaining the government's position, but it was instead issued through the office of Assistant Treasurer Nick Sherry.

A spokesman for Senator Sherry said it was not the role of the Senate to investigate the tax status of any organisation, or criminal allegations.

"The Rudd government's view is that a Senate inquiry into the Church of Scientology is not justified on the basis of our view of the parliament's function," the spokesman said.

Church of Scientology spokesman Cyrus Brooks said the result was a "victory for religious freedom".

"Many of the incidents Senator Xenophon has referred to have previously been investigated by police, coroners and other agencies and no adverse finding has been made," Mr Brooks said in a statement.

Debate on the motion turned nasty when Liberal backbencher Cory Bernardi accused the Greens of conducting religious witch-hunts.

"This is the organisation, remember, that wanted the members of the Exclusive Brethren Christian organisation to mark their businesses so people would know who they were," he said.

"The Star of David ... that the Greens wanted to impose."

The symbol was used by the Nazis during the Holocaust as a way of identifying Jews.
Senator Bernardi later withdrew the inference.

END QUOTE

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In my view any inquiry specifically into religion may be deemed to be in conflict of s.116 of the constitution however any inquiry into **NON PROFIT** (**NOT-FOR-PROFIT**) registration entities for "**PUBLIC PURPOSES**" can legitimately address issues as such as I am doing below extensively.

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This document will also deal with religious taxation exemptions and why this is unconstitutional where this is based on religion! For taxation purposes it should not make any difference if a body is deemed to be a cult, a faith, or whatever because as set out below no taxation funds can be used for religious purposes. Hence the issue is, as has been addressed below to some extend, if organizations being it called cults, religion or whatever such as **HILL SIDE CHURCH**, **SCIENTOLOGY**, **EXCLUSIVE BRETHERN**, etc, are in fact at all entitled to tax exemption. It is important to understand that dealing with matters upon a constitutional manner rather then a so called religious persecution, or something of that kind, might be the best manner to address certain issues.

Also, that taxation cannot be used for matters that are not for "**PUBLIC PURPOSES**". Because of the problems with having High Court of Australia Authorities (judgments, etc.) on record which I view are in conflict with the true meaning and application of the constitution I have set this out below also as to seek to avoid those misconceptions to continue.

For purpose as to present a more evenhanded presentation I have quoted below also material which are judgments and submission of others with a counter argument.

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The following should be applied to any religion, including **TAXATION**, **TAXATION EXEMPTIONS**, **TAX DEDUCTIONS**, etc.

.

http://www.answers.com/topic/lemon-v-kurtzman

QUOTE

Lemon test

The Court's decision in this case established the "**Lemon test**", which details the requirements for legislation concerning religion. It consists of three prongs:

1. ***The government's action must have a secular legislative purpose;***
2. ***The government's action must not have the primary effect of either advancing or inhibiting religion;***
3. ***The government's action must not result in an "excessive government entanglement" with religion.***

END QUOTE

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http://supreme.justia.com/us/83/678/case.html

U.S. Supreme Court Olcott v. The Supervisors, 83 U.S. 16 Wall. 678 678 (1872)

QUOTE

In 1870, that is to say, subsequent to the issue of these orders, though prior to the trial of this case in the court below, the Supreme Court of the State of Wisconsin, in the

Page 83 U. S. 680

case of *Whiting v. Fond du Lac County,* [Footnote 1] held this act to be void, upon the ground that the building of a railroad, to be owned and worked by a corporation in the usual way, was not an object in which the public were interested, and therefore that the act in question was void, for the reason that it authorized the levy of a tax for a private and not a public purpose.

END QUOTE

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http://supreme.justia.com/us/83/678/case.html

U.S. Supreme Court Olcott v. The Supervisors, 83 U.S. 16 Wall. 678 678 (1872)

QUOTE

The question considered by the court was not one of interpretation or construction. The meaning of no provision of the state constitution was considered or declared. **What was considered was the uses for which taxation generally, taxation by any government, might be authorized, and particularly whether the construction and maintenance of a railroad, owned by a corporation, is a matter of public concern. It was asserted (what nobody doubts), that the taxing power of a state extends no farther than to raise money for a public use, as distinguished from private, or to accomplish some end public in its nature, and it was decided that building a railroad, if it be constructed and owned by a corporation, though built by authority of the state, is not a matter in which the public has any interest, of such a nature as to warrant taxation in its aid.**

Page 83 U. S. 690

For this reason it was held that the state had no power to authorize the imposition of taxes to aid in the construction of such a railroad, and therefore that the statute giving Fond du Lac County power to extend such aid was invalid. This was a determination of no local question or question of statutory or constitutional construction.

END QUOTE

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http://supreme.justia.com/us/83/678/case.html

QUOTE *U.S. Supreme Court Olcott v. The Supervisors, 83 U.S. 16 Wall. 678 678 (1872)*

"The legislature cannot create a public debt, or levy a tax, or authorize a municipal corporation to do so, in order to raise funds for a mere private purpose. It cannot, in the form of a tax, take the money of the citizen and give it to an individual, *the public interest or welfare being in no way connected with the transaction.* The objects for which the money is raised by taxation must be public, and such as subserve the common interest and wellbeing of the community required to contribute. . . . To justify the court in arresting the proceedings and declaring the tax void, the absence of *all possible* public interest in the purposes for which the funds are raised must be clear and palpable; *so clear and palpable as to be perceptible by every mind* AT THE FIRST BLUSH."

END QUOTE

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This document therefore will address some of the issues about "**PUBLIC PURPOSE**" and if taxation can be used to provide **TAX DEDUCTIONS**, **TAX EXEMPTIONS**, **TAX BENEFITS**, etc for what essentially are not at all "**PUBLIC PURPOSES**".

For Commonwealth purposes because of s.116 religion cannot be used for "**PUBLIC PURPOSES**" to provide **TAX DEDUCTIONS**, **TAX EXEMPTIONS**, **TAX BENEFITS**, etc.

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HANSARD *1-3-1898* **Constitution Convention Debates**

QUOTE

> **Mr. BARTON**.- **The position with regard to this Constitution is that it has no legislative power, except that which is actually given to it in express terms or which is necessary or incidental to a power given.**

END QUOTE

Therefore any inquiry into the misuse of taxation would mean that legitimately taxation deductions, tax concessions, and tax exclusions all can be addressed albeit not just in regard of Scientology but in regard of all and any religion! Where the commonwealth of Australia is specifically denied any legislative powers as to religion then it neither can permit any tax exemptions in regard of religions! Any religious provision by the Commonwealth would have to include secular entitlements also.

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Hansard ***10-2-1898*** **Constitution Convention Debates**

QUOTE

> Clause 81 (Chapter IV., Finance and Trade).-All revenues raised or received by the Executive Government of the Commonwealth, under the authority of this Constitution, shall form one Consolidated Revenue Fund, to be appropriated for the **public service** of the Commonwealth in the manner and subject to the charges provided by this Constitution.

END QUOTE

.

These kinds of expressions were on various occasions referred to as to indicate that all revenue of all sources should become one Consolidated Revenue funds. While, as shown below, all s.51 listed legislative powers become exclusive the moment the Commonwealth of Australia commences to legislate upon this, there are however exceptions to these matters and that is that in regard of taxation the States retain taxation powers but only for those matters in regard the commonwealth doesn't legislate for. As such, the moment the Commonwealth were to legislate as to land tax then the States must retire from this. It also should be understood that colonial laws that were legislated before federation but not amended since federation maintained the full force of law! This too is often misconceived that somehow colonial laws (provided they were not amended since federation) are no longer applicable merely because the Commonwealth has legislated upon the subject matter. To include all statements of the Framers of the constitution would be that this document would be running into thousands of pages and so has not be contemplated to do so, however as an example to show that contrary to the High Court of Australia assertion about "**British subject**" it has been canvassed below to show that this is a term embedded as a legal concept in the constitution to be applicable to natural born or naturalized Australians and hence cannot be denied to anyone and not even an amendment of the constitution can achieve this because s.128 referendum powers of the constitution cannot go beyond the constitution itself to be amended. Not even the preamble can be amended by s.128 referendum!

As such, while this document may be of some length it will provide also what the Framers of the Constitution really intended, and so the considering the legal principles embedded in the constitution, and therefore what is applicable and only when one understand this can one deal with issues such as taxation and how it can be applied in a constitutional valid manner.

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HANSARD *8-2-1898* **Constitution Convention Debates**

QUOTE

Mr. HIGGINS.-I did not say that it took place under this clause, and the honorable member is quite right in saying that it took place under the next clause; **but I am trying to point out that laws would be valid if they had one motive, while they would be invalid if they had another motive.**

END QUOTE

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HANSARD *17-2-1898* **Constitution Convention Debates**

QUOTE **Mr. OCONNOR**.-

We must remember that in any legislation of the Commonwealth we are dealing with the Constitution. Our own Parliaments do as they think fit almost within any limits. **In this case the Constitution will be above Parliament, and Parliament will have to conform to it.**

END QUOTE

.

HANSARD *1-3-1898* **Constitution Convention Debates**

QUOTE

Mr. GORDON.- The court may say-"**It is a good law, but as it technically infringes on the Constitution we will have to wipe it out.**"

END QUOTE

.

As referred to below also while Section 114 of the constitution does not permit the Commonwealth to raise taxes upon State properties and visa versa, but it should be understood that this doesn't prohibit raising taxes on properties that are leased out as they are not used for "**PUBLIC PURPOSES**"

.

Commonwealth v New South Wales [1923] HCA 34; (1923) 33 CLR 1 (9 August 1923)

QUOTE

As to the lands which vested in the Commonwealth under sec. 85 of the *Constitution* (numbered 5 and 6 in the writ, referred to in pars. 13 and 15 of the case stated), they vested in the Commonwealth by the operation of the Constitution—an Imperial Act—without any deed of grant or other document. The Constitution does not say for what estate they vest; but having regard to the words used in sec. 85 and the difficulties of treating the Crown as tenant of itself, even in another capacity, **I think that the Crown in right of the Commonwealth took just the same full property and rights as to the land, that the Crown in right of the State had before the transfer of the Department**. The Crown remains the owner, but deals with the land under Commonwealth law instead of under State law. Under sec. 64 of the *Lands Acquisition Act* any land that by virtue of sec. 85 of the *Constitution* become vested in the Commonwealth, shall for the purposes of the said Act be deemed to have been acquired thereunder, and to be vested in the Commonwealth as if acquired thereunder.

END QUOTE

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This too is a misconceived statement in that the Framers of the Constitution made clear that any property acquired within s.85 of the constitution would remain to be under State laws, for so far they were not transferred in right of "**sovereign**" to the Commonwealth, and hence any property of which the Commonwealth is the "proprietor" and not the "sovereign" can be taxed where they are leased out. Likewise State property leased out also can be subjected to taxation as the exclusion of s.114 goes to "**PUBLIC PURPOSES**" held properties and not those held for commercial gain.

Hence, any State Crown land that is leased out or otherwise is permitted to be used by a person (this includes a corporation) for **non** "**PUBLIC PURPOSES**" can be subjected to taxation.

While it may be held that any kind of cult/religion is for "**PUBLIC PURPOSES**" the truth is that, as set out below, many are not at all and hence the status as **NON PROFIT** (**NOT-FOR-PROFIT**) is misused by this also.

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In my view the system of **NON PROFIT** (**NOT FOR PROFIT**) registration is rorted far too much.

to give an example:

Some ten years ago one of my sons had completed his apprenticeship to become a butcher and so joined a company to complete his work experiences. He commenced to work for a butcher, with whom the company had placed him with, but after about three weeks was advised there no more work. My son then approached Centrelink for dole payments but was refused because he was still employed with the company (that is the **NOT-FOR-PROFIT** company, at least this was so claimed. This even so the company itself issued a written statement that there was no work for my son. In October 2000 my son then found himself a job with a butcher and while he was still working there the Industrial Relation Commission was dealing with my son's complaint, and I provided all relevant details, including the written statement that they had no work and that likewise to my understanding about another 40 or so apprentices all were left in similar circumstances as my son. As such, as I understood it to be it was an elaborate con-job where the Commonwealth was paying this **NOT-FOR-PROFIT** company special bonuses of about $4,000.00 each apprentice even so none of the apprentices were being provided with any further employment and were locked out from claiming and Centrelink benefits. The States Industrial Relations Commission held that my son was still employed by this company (now January 2001) but as from the date of the hearing no longer was. Now, excuse me my son had been working since October 2000 full time with a butcher so how on earth was this possible that he was still working till January the following year for a company where he had not been paid since august 2000 a cent.

I understand that this kind of rot is going on and as such teenagers are so to say "**sucked in**" to sign up for an apprenticeship but the n after a few weeks told there is no work and then this so called **NOT-FOR-PROFIT** company collects in excess of $4,000.00 for this!

When one consider this to be about 40 times $4,000.00 = 160,000.00 then one may wonder if this **NOT-FOR-PROFIT** company really is operating as such as per registration!

.

Likewise we have all kinds of **NOT-FOR-PROFIT** companies operating that is to collect monies for the sick, the age, the invalid, etc, and often less then 5% of the monies collected is then actually channeled to those for which the monies were collected and at time not a cent at all. There simply seems to be no financial accountability for being a **NOT-FOR-PROFIT** company!.

In my view, the Commonwealth of Australia should in the first place never rely upon State based registrations as the Framers of the Constitution made clear that any corporation should be dealt with by the Commonwealth within s.51(xx) as to ensure that all companies were subject to the same legal provisions.

Further, none of the States therefore can validly register any company because it offend the purpose of s.51(xx).

.

In my view, the Commissioner of Taxation should have all access to how **NOT-FOR-PROFIT** companies operate financially and how monies were disposed off and the commonwealth must set guidelines that a certain minimum percentage of monies raised must be provided to those for whom the monies was collected and not that 95% or more is deducted from the collection as overhead cost for the so called **NOT-FOR-PROFIT** companies

.

We have people donating money and then writing it off as **TAX DEDUCTIONS** where in fact none may actually find it's way to any charitable institutions because it is all claimed as overhead cost by the **NOT-FOR-PROFIT** companies.

.

Generally the ordinary citizen who works hard to earn an income is paying a lot of taxes and some of the riches people around Australia pay next to nothing because the way they can deduct their income. Then the system is not for "**PUBLIC PURPOSES**" to provide **NOT-FOR-PROFIT** companies with **TAX EXEMPTIONS** to the contrary is undermines the entire meaning and intention to use it for "**PUBLIC PURPOSES**".

.

Let's us use an example:

> Jo Blow I a fictitious identity) runs a **NOT-FOR-PROFIT** company and makes a fortune on income. He obviously has to pay tax so he donates money to his own **NOT-FOR-PROFIT** company by this he reduces his taxable income by TAX DEDUCTION and still keeps the money!

.

In my view the term **NOT-FOR-PROFIT** is grossly abused and misused and too much money is so to say milked out of it. By this pay-as-your earn taxpayers are the ones having to make up the shortfall in taxation revenue collected that could have been collected had this rorting been stopped.

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The following quotation perhaps may assist to consider what really is a **NON PROFIT** (**NOT FOR PROFIT**) organization about.

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The **OBLIGATIONS** to maintain registration for **NON PROFIT** (**NOT-FOR-PROFIT**)

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Any organization , club, association, etc, that is registered as **NON PROFIT** (**NOT-FOR-PROFIT**) shall be obligated for the duration of such registration t:

- not engage in any unlawful conduct of any kind
- shall not have any person working more then maximum 10 hours in total during any week as volunteer work
- Shall keep a record of each and every person who works as a volunteer and have each volunteer signing at commencement of volunteer work and at conclusion of such volunteer work and for the total hours worked at completion of the volunteer work. With such records to be in triplicate with one for the volunteer, one to be kept in a numbered page book and one to be forwarded within 24 hours to the Taxation Commissioner.
- That all and any property held in possession and or under its authority is open for inspection by Authorities (State and/or Federal) as to inspect the conditions of any workplace and compliance with any relevant legislative provisions.
- That no one shall be deprived of his/her liberty of entering and/or leaving the premises
- That no involvement or otherwise any conduct will be engaged into which may be deemed to be against the ordinary standards of society.
- Where there is any dispute between a volunteer and management then such dispute must be reported to the relevant authorities for an independent arbitration.
- No child under the age of 14-years shall be permitted to be engaged in any form of volunteer work of more then 2-hours a week.
- Volunteers shall be provided with appropriate work facilities ordinary available to paid employees.
- No volunteer shall be subjected to any harsh and/or undue punishment and all and any punishment must be in a reasonable manner as is ordinary applicable to a paid employee.

- Any non-voluntary employee must be paid a minimum wage as provided for by law.
- For the duration of the registration no conduct of stalking or perceived stalking, following, or other conduct that might be detrimental to a person will be engaged in.
- No personal records, other then those ordinary relevant for record keeping of an employee or a volunteer will be recorded and/or kept regarding any person.
- No conduct will be engaged into that to a **FAIR MINDED PERSON** may be perceived to be conduct unbecoming to a **NON PROFIT** (**NOT-FOR-PROFIT**) organization, club, organization, etc.
- Any property and cost incurred in relation to it, being it maintenance or otherwise shall not be subject to any entitlement of **NON PROFIT** (**NOT-FOR-PROFIT**) registration unless such properties are reasonable accessible to Authorities for inspection and do not contain any area's that may not be deemed to be for "**PUBLIC PURPOSES**".
- No financial contributions of any kind shall be made directly or indirectly to any other **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity, etc.
- All and any transfer of monies from a **NON PROFIT** (**NOT-FOR-PROFIT**) entity, etc, shall be recorded with precise details as to whom it was transferred to and for what purpose, etc, and to have been within the provisions for **NON PROFIT** (**NOT-FOR-PROFIT**) purposes, other then ordinary payments to employees, etc.
- All and any payments (directly and/or indirectly), including any gifts, provided to management, directly and or indirectly shall be kept on record setting out in what relevance such payments were made and shall not be including any payments that might be deemed by a **FAIR MINDED PERSON** and/or the relevant Authorities to be excessive.
- All and any overhead cost shall not exceed 5% of the total monies collected/obtained and any cost in excess to the 5% shall be subject to the relevant Authorities to authorize this.
- All and any legal obligations such as superannuation payments and other ordinary payments in regard of any employee, regardless working voluntarily or not, shall be paid within 7 days of the date this became due.
- No involvement by staff (including volunteers) or others at any premises owned or otherwise held under authority of the **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity shall be entered into, including the collection, storing and transmission, that involves peadophilia, or other material of images and/or sound recordings that may be deemed by a **FAIR MINDED PERSON** and/or the Authorities to be unbecoming to the conduct of a **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity. Nor shall any direct and/or indirect financial contribution be made in any way in regard of such material and or equipment.
- No person shall be held at any premises owned and/or under control of a direct or registered entity in excess of 24-hours unless any duration longer then 24-hours have been approved by the relevant Authorities for specific purposes, subject to review by any authority.
- Such further and other conditions that the relevant State and/or Federal Authorities may stipulate at any time prior and/or during the registration being in place.

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Any and all breach(es) of these conditions may entitle the Authorities to declare the registration to be null and void and any taxes that otherwise would have been applicable if the **NON PROFIT** (**NOT-FOR-PROFIT**) registration had never been in place then can be applied as the Authorities may deem fit and proper, including any back taxes and/or penalties/fines, etc.

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Clarification:

My 90-year old brother-in-law has his saying that he used to put monies in the collection basket so the priest could use it to play cards.

There days one can often say that one can put monies in the collection basket so the churches can pay off the victims of sexual abuse, etc. (see also below quotation regarding this involving religious bodies).

This kind of conduct should never be permitted as monies used by **NON PROFIT** (**NOT-FOR-PROFIT**) registered entities. It goes against the principle of for "**PUBLIC PURPOSE**".

Why indeed should **ATHEIST** taxpayers have to make up for the monies forgone in taxes for any **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity where it is being used for paying off (including the silence off) victims?

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There are all kind of claims made against various direct or registered entities that I view require to make any direct or registration conditional upon a proper conduct by such direct or registered entity and where such direct or registered entity fails to comply then it is open to the relevant authorities to declare the registration being invalid entirely and/or from a particular period.

This then places the onus upon any **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity to so to say make sure to avoid any conflicts that could jeopardize its entitlement of a **NON PROFIT** (**NOT-FOR-PROFIT**) registration, in particular that if the authorities conclude that the r **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity registration was a scam/sham then the registration can be nullified from onset and all and any taxes that otherwise would have been due and payable then are to be applied and so including any penalties, etc.

.

The issue is that a **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity must show to be worthy the registration as where it fails to conduct matters as ought to be done for "**PUBLIC PURPOSES**" then an appropriate system should be in place to deal with such entities, while those who are acting in the best interest of the general community are not suffering because of, so to say, some rotten apple's. For far too long this rot has gone on and it needs to be stopped and the Commonwealth of Australia as well as the States should clamp down upon this ongoing abuse and each within its own taxation sphere provide the appropriate conditions to seek to ensure that **NON PROFIT** (**NOT-FOR-PROFIT**) registered entities do earn their rights to be registered as a **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity.

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COMMISSIONER OF TAXATION v WORD INVESTMENTS [2008] HCA 55 (3 December 2008)

QUOTE

> 28. In the Court of Appeal, Walsh JA and Asprey JA (Wallace P dissenting) agreed on the first point, but disagreed on the second. Contrary to the Commissioner's submissions in the present appeal, Walsh JA (like Nagle J) did not construe the phrase "charitable institution" as a single composite expression, but saw it as having two integers – one to do with objects which were charitable, the second to do with "institutional" characteristics. Thus he said **[34]**:
>
> > "the religious objects of the company must be regarded as charitable objects.
> > But I do not think it was an 'institution'".
>
> Walsh JA went on to deny that every company with charitable objects was a charitable institution. The Commissioner submitted in this appeal that the "authorities and dictionary references discussed by Nagle J and Walsh JA suggest that for an entity to be a 'charitable institution' it must possess a public character, purpose or object". The authorities and dictionary references do not in fact suggest this. Walsh JA summarised an argument of counsel which assumed that the word "institution" included "a notion of

something which has a public character or serves a **public purpose**", but he rejected the argument which made that assumption**[35]**. If Walsh JA, despite that rejection, was intending to adopt counsel's assumption, the Commissioner did not explain why Word's purpose of advancing religion – a charitable purpose having, ex hypothesi, benefit to the public, and carried out on a substantial basis financially speaking – caused it to lack a public character or not to serve a **public purpose**.

END QUOTE

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COMMISSIONER OF TAXATION v WORD INVESTMENTS [2008] HCA 55 (3 December 2008)

QUOTE

29. For these reasons, *Christian Enterprises Ltd v Commissioner of Land Tax* does not support the Commissioner's position in this appeal.

30. *Glebe Administration Board v Commissioner of Pay-roll Tax.* The Commissioner also relied on *Glebe Administration Board v Commissioner of Pay-roll Tax***[40]**. It was there held that the wages paid by the Board, a body corporate constituted under the *Church of England (Bodies Corporate) Act* 1938 (NSW), were not exempt from pay-roll tax on the ground that the exemption given by the *Pay-roll Tax Act* 1971 (NSW), s 10(b), for wages paid by "a religious ... institution" was not applicable. A majority of the Court of Appeal of the Supreme Court of New South Wales (Priestley JA, McHugh JA concurring) viewed the Board as "a statutory corporation doing commercial work within limitations fixed by reference to religious principles"**[41]** and construed s 10(b) as not being aimed at "exempting from liability to pay-roll tax wages paid to persons substantially engaged in commercial activity."**[42]**

31. That case, then, is a decision about a particular statute different from the one under consideration in this appeal, and a decision about a different entity. In contrast to the view which the Court of Appeal took of the Board in that case, the correct view in this case is that Word was using its powers to employ commercial methods to raise money for its purposes: it was not doing commercial work within limitations fixed by reference to religious principles.

32. *A final argument.* The Commissioner sought leave to rely on an argument not put before the Full Court that the conduct by Word of its investment arm alone prevented it from being a charitable institution. That leave should be granted, but the argument should be rejected for the reasons stated above.

33. *Conclusion.* Nothing in the authorities or arguments relied on by the Commissioner suggests that Word is not an "institution" in the senses approved in *Stratton v Simpson***[43]**:

> "'an establishment, organization, or association, instituted for the promotion of some object, especially one of public utility, **religious**, charitable, educational etc.'[**[44]**] ... 'an undertaking formed to promote some defined purpose ...' or 'the body (so to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle'.[**[45]**]"

Accordingly, subject to the Commissioner's other arguments, it is to be concluded that Word is a charitable institution.

END QUOTE

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Again, while s.116 doesn't prevent the States as to legislate in regard of religion, it cannot however use State legislation as to undermine either directly or indirectly the Commonwealth of Australia constitutional provided legislative powers to collect taxes in a uniform manner

through the commonwealth irrespective of it being a religious organization or otherwise. As such, for Commonwealth purposes any registration that relates to "religion" must be disregarded. **It means that any NON PROFIT (NOT-FOR-PROFIT) State registration must be re-assessed for Commonwealth purposes and any consideration must disregard any religious purposes.**

.

The following is a quotation about how "**PUBLIC PURPOSES**" is being misused and to avoid to mention any particular State in the commonwealth of Australia a foreign example has been used;

.

http://www.downtoearth.org.in/full6.asp?foldername=20081015&filename=led&sec_id=3&sid=1

QUOTE

Travesty of public purpose

State governments offer incredulous incentives to lure Tata

IN THE last few days Maharashtra and West Bengal witnessed two diametrically opposite developments. In Maharashtra, for the first time in the history of this country, affected farmers voted in a referendum on the upcoming Reliance special economic zone (SEZ). Initial results suggest that the majority voted against the SEZ. In Singur, Tata's plans kept slipping into a deeper imbroglio by the day. Several state governments lined up to lure the company as Tata seriously considered moving out—each one trying to outdo each other in terms of offering incentives and freebies. Soon as West Bengal made some parts of the 'secret' deal between the state and the company public, Tata Motors moved the High Court obtaining a restraining order.

Tata's lawyers argued that basically the agreement between them and the state government was a trade secret. This means that the Nano project is private commercial venture. Ironically the state government had acquired land for the project invoking the "public purpose" law. The state government and company will have to come clean about what exactly is the Nano project. If it is a commercial venture the company must directly need deal with the farmers. And if it is indeed a project meant to serve the public purpose, details of the agreement must be immediately made public.

What is clear from the deal between the West Bengal government and Tata motors is that state government are trying to outdo each other to attract investments. This is a race right to the bottom. The moment Tata Motors threatened to walk away from Singur, several state governments came forward. The lure of big-ticket project is such that governments are willing to forgo taxes, forcibly acquire land, give subsidized water and electricity, give capital subsidies and put thousands of security personnel to man the project. In all this, industries are having free ride on public money. This is cheap industrialization. Where not only states are giving fiscal subsidies, they are subsidizing the natural resources—land, water, and energy. In a single economic entity that India is, competition between states, by the way of subsidizing industrialization, is neither good for economy nor is it good for environment. And it surely is not for 'public purpose'.

END QUOTE

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Federation came about because the Framers of the constitution desired to make interstate trade and commerce free from any restrictions. (See s.51.(i) of the constitution for this also. We find however that State government design all kind of tax exclusions (even so on State basis) and other benefits which really is undermining the concept of federation. It is all done in the name to

poach a potential investor and often "**eminent domain**" powers are used and misuse/abused to achieve this. This kind of conduct is not for "**PUBLIC PURPOSES**".

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Version No. 001, **Anglican Trusts Corporations Act 1884, Act No. 797/1884**
Version incorporating amendments as at 9 November 2000
QUOTE

12B. Joint use or ownership of church trust property

(1) If an Act of the Synod of a diocese provides for a scheme of co-operation to be entered into—

(a) with or involving a church of another denomination or any congregation or activity of such a church; and

(b) for the use of specified real or personal property vested in the trusts corporation of the diocese—

the trusts corporation may permit that property to be used, managed and administered under and in connection with that scheme during its continuance in such a manner and on such conditions as are specified in the scheme.

END QUOTE

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The danger, as I view it is that the property could be used for purposes other then "**PUBLIC PURPOSES**" and as such the lack of limitations set by the state allows technically the property to be used for any public venture, such as a car parking facility to be conducted by a private company say with the assurance that church goers can have free parking while for the rest of people attending they will pay commercial parking fees. In my view this would essential amount to a "**PRIVATE PURPOSE**" and not to a "**PUBLIC PURPOSE**" usage and should not be exempted from ordinary taxation laws merely because it happened to be on a church property. Further, because the act was a 1884 colonial Act but was updated since federation the Commonwealth is not bound either to consider the Act as such because the Framers of the Constitution made clear that any colonial Act amended since federation would be as like any ordinary State Act, whereas an un-amended colonial Act, that is since federation, remains applicable.

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Version No. 001, **Anglican Church of Australia Constitution Act 1960**
Act No. 6626/1960, Version incorporating amendments as at 17 August 2001
QUOTE

1. Short title

This Act may be cited as the **Anglican Church of Australia Constitution Act 1960**.

2.Constitution to have force and effect

The provisions of this Act and of the Constitution and of any canon or rule made under the Constitution shall have full force and effect notwithstanding anything in the **Church of England Act 1854**:

Provided that this section shall not prejudice or affect the previous operation of the said Act or any proceeding matter or thing lawfully done or suffered under the said Act before this Act comes into operation.

END QUOTE

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The 1-4-2008 correspondence (reproduced below) to Federal Education Minister and Deputy PM Julia Gillard as well as the 8 July 2008 correspondence (reproduced below) to Mr Kevin Rudd PM should be considered also.

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U.S. Supreme Court, Kohl v. United States, 91 U.S. 367 (1875)

QUOTE

Neither of these cases denies the right of the federal government to have lands in the states condemned for its uses under its own power and by its own action. The question was whether the state could take lands for any other public use than that of the state. In *Trombley v. Humphrey*, 23 Mich. 471, a different doctrine was asserted, founded, we think, upon better reason. **The proper view of the right of eminent domain seems to be that it is a right belonging to a**

Page 91 U. S. 374

sovereignty to take private property for its own public uses, and not for those of another. Beyond that, there exists no necessity, which alone is the foundation of the right. If the United States have the power, it must be complete in itself. It can neither be enlarged nor diminished by a state. **Nor can any state prescribe the manner in which it must be exercised. The consent of a state can never be a condition precedent to its enjoyment. Such consent is needed only, if at all, for the transfer of jurisdiction and of the right of exclusive legislation after the land shall have been acquired.**

It may therefore fairly be concluded that the proceeding in the case we have in hand was a proceeding by the United States government in its own right, and by virtue of its own eminent domain.

END QUOTE

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Hansard *28-1-1898* Constitution Convention Debates

QUOTE

Mr. KINGSTON.-**Is not the supremacy of the United States Government a little different from the supremacy of our proposed Federal Government?**

Mr. ISAACS.-Not in this respect. The supremacy, as far as the powers committed to it are concerned, would, in this respect, I apprehend, be exactly the same as the Supremacy of our Commonwealth Government in relation to its powers. In the case of *Kohl v. United States*, which was decided in 1875, on this very question of the right of the United States Government to compulsorily take property within the state for its public purposes, the court said this:-

It has not been seriously contended during the argument that the United States Government is without power to appropriate lands or other property within the states for its own uses, and to enable it to perform its proper functions. Such an authority is essential to its independent existence and perpetuity. These cannot be preserved if the obstinacy of a private person, or if any other authority, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed. The powers vested by the Constitution in the General Government demand for their exercise the acquisition of lands in all the states. These are needed for forts, armories, and arsenals, for navy yards and light-houses, for custom-houses, post-offices, and court-houses, and for other public uses; If the right to acquire property for such uses may be made a barren right by the unwillingness of property holders to sell, or by the action of a state prohibiting a sale to the Federal Government, the constitutional grants of power may he rendered nugatory, and the Government is dependent for its practical existence upon the will of a state, or even upon that of a private citizen. This cannot be. No one doubts the existence in the state Governments of the right of

eminent domain-a right distinct from and paramount [start page 261] to the right of ultimate ownership. It grows out of the necessities of their being, not out of the tenure by which lands are held. It may be exercised, though the lands are not held by grant from the Government, either mediate'y or immediately, and independent of the consideration whether they would escheat to the Government in case of a failure of heirs. The right is the offspring of political necessity; and it is inseparable from sovereignty. unless denied to it by its fundamental law. Put it is no more necessary for the exercise of the powers of a state Government than it is for the exercise of the conceded powers of the Federal Government. That Government is as sovereign within its sphere as the states are within theirs. True, its sphere is limited. Certain subjects only are committed to it; but its power over those subjects is as fall and complete as is the power of the states over the subjects to which their sovereignty extends. The power is not changed by its transfer to another holder.

Then the court went on to say-

But, if the right of eminent domain exists in the Federal Government, it is a right which may be exercised within the states, so far as is necessary to the enjoyment of the powers conferred upon it by the Constitution.

The whole judgment proceeds in that way. It has been followed in several cases, and I think it has been laid down more than once in express terms that, for the purpose of carrying out the powers expressly given to the federal authority in the Constitution, the right of eminent domain is an essential attribute, and therefore I do not entertain the slightest doubt that, as in that case, and as in several other cases, the United States Government has, even without the consent of the state, taken land so far as it was necessary for the exercise of its public duties, we should have the same right here. I will now proceed to show the meaning of this sub-section. This sub-section does not say that the Federal Government is to have the power to take that land. **It assumes that the Federal Government has that power, but when the Government does take land, compulsorily or by purchase, in a state as its possession, it takes that land certainly by virtue of its sovereign power of eminent domain, that is, the highest dominion. But it does not hold that land as sovereign, it holds the land as proprietor. Now, where it holds the land merely as proprietor, without the consent of the state being given to it, it is quite plain that the jurisdiction of the state should run, except, of course, so as not to interfere with the performance of the governmental functions of the Federal Government. But, as far as punishing crime is concerned, as far as any other ordinary state supervision relates, not inconsistent with the performance of the supreme functions of the Commonwealth, the ordinary state law will run. But the United States have provided, and we, I understand, propose to provide here, that, where the state consents to the Federal Government acquiring any land, either by purchase or compulsorily, it thereby consents, and that consent is equivalent to the admission of the right of the Federal Government to exercise exclusive jurisdiction in respect to that particular portion of territory. And if the state does not choose to give its consent, it says, in effect-"You may take this land, it is true, by virtue of your sovereign right, for your sovereign powers, but you hold it as proprietor; you can carry on your post-office, your court-house, or anything you please, but as regards ordinary state laws outside those functions our state laws prevail. Where the state, however, is asked by the Federal Government to consent to the excision of a piece of land from its own territory for governmental purposes, and does consent, then the exclusive right of the Federal Government to govern that portion of land attaches to it, and this is what the sub-section we are now considering intends to enact.** Therefore, I think that the leader of the Convention is right in not pressing this amendment, and that we should be doing well to

keep in the words "with the consent," because it does not relate to the acquisition of property, but to the exercise of jurisdiction over the property when it is acquired.

The amendment was withdrawn.

END QUOTE

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When considering American decisions one has to keep in mind that it originates out of a total different legal structure and so it cannot be used as such in the Commonwealth of Australia but it is clear that the U.S.A. nullifies any **FEE SIMPLE** title holing rights where the U.S. Supreme Court held in ***Wayne County v. Hathcock*** (2004) as to PROHIBIT the transfer of privately owned property to another private person in this case a company) for "**public purposes**" overriding the ***Poletown*** decision, as subsequently to the ***Kelo v City of London*** decision the private company ones having obtained the property abandoned the project all together and it now lies as private wasteland As such this also underlines that there is a danger to use acquisition for "**public purposes**" as in the end it may work counter productive as was discovered in the ***Kelo v City of London*** case subsequent aftermath. And the ***Wayne County v. Hathcock*** (2004) clearly rectified the gross miscarriage of justice that had been inflicted upon many since the ***Poletown*** decision, at least for those who are affected since the ***Wayne County v. Hathcock*** (2004) decision. The State having used its position of "**eminent domain**" to be able to achieve employment and to have an increase of taxes and other benefits in the end in real life ended up loosing residents from the area, not getting any increase of employment, as the company scaled down its existing production already held there, and the State therefore ended up with a reduced income. What this underlines is that what might be perceived as being in the "**public interest**" may not at all eventuate as such but might in fact become an injury to the "**public interest**"

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http://www.glossary.com/reference.php?q=Fee

QUOTE

Fee simple is an estateAt common law, an estate is the totality of the legal rights, interests, entitlements and obligations attaching to property. In the context of wills and probate, it refers to the totality of the property which the deceased owned or in which some interest was held. It may also refer to an estate in land.estate in land in common lawCommon law is a type of legal system in which the law is created and/or refined by courts on a case-by-case basis. In resolving a legal dispute, an "ideal" common law court looks to precedent of other courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as stare decisis). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases, it will resolve the matter itself, with reference ...common law.

END QUOTE

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http://www.ij.org/index.php?option=com_content&task=view&id=1360&Itemid=165

QUOTE

County of Wayne v. Hathcock

Michigan Supreme Court Halts Eminent Domain For "Economic Development": Court States Poletown Was "Erroneous" (IJ amicus)

Anyone who owns a home, a small business or a piece of property became a whole lot more secure in those possessions on July 30, 2004. That was when the Michigan Supreme Court released a unanimous decision ruling unequivocally that the government may not use eminent domain to take private property because someone else's use of the property might be more profitable. Although many observers were hoping for a good decision, the unanimous ruling in County of Wayne v. Hathcock crossed political lines and surpassed all

expectations.

The Court unanimously overruled the infamous Poletown decision and caused a seismic shift in the legal battle between home and business owners, on the one side, and an unholy alliance of tax-hungry bureaucrats and land-hungry developers on the other.

Decided in 1981 by the Michigan Supreme Court, Poletown was the first major decision in the United States upholding the use of eminent domain for “economic development”—increasing tax revenues, jobs and the local economy generally.

END QUOTE

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http://www.news.harvard.edu/gazette/2004/11.18/11-domain.html

QUOTE

Jerold Kayden, the Frank Backus Williams Professor of Urban Planning and Design at the HGSD, talks about the 'very tricky issue' of eminent domain. (Staff photo Rose Lincoln/Harvard News Office)

Right of 'eminent domain' challenged

Weighing the benefits of economic development

By Ken Gewertz
Harvard News Office

Susette Kelo is about to get her day in court.

This past September, the U.S. Supreme Court agreed to hear a case brought by Kelo and her fellow homeowners in the Fort Trumbull neighborhood of New London, Conn., challenging the right of municipal authorities to take their houses by eminent domain. The case has attracted much attention because it is the first time such a case has come before the U.S. Supreme Court in 50 years and because it represents an opportunity to re-examine what some regard as a growing trend by state and municipal authorities to abuse the right of eminent domain.

Jerold Kayden, the Frank Backus Williams Professor of Urban Planning and Design at the Graduate School of Design, has been watching this case carefully for what it may presage about the future of property rights in the United States. On Nov. 16, he gave a talk on the subject sponsored by the Kennedy School of Government's Taubman Center for State and Local Government.

"Can a single-family house and land be taken through eminent domain and turned over to a private developer to generate increased jobs and tax revenue? That is in essence the case that is now coming before the Supreme Court," Kayden said.

Kayden explained that the right of eminent domain is sanctioned through implication by a phrase in the Fifth Amendment to the U.S. Constitution. The phrase rounds out a list of protections against unfair government interference, stating, "nor shall private property be taken for public use, without just compensation." The nature of just compensation is always at issue in such cases, Kayden said, with property owners asking for more and government authorities offering less. What is more significant for Kelo v. New London, however, is the interpretation of the words, "public use."

The issue first came before the Supreme Court in 1954 in the case Berman v. Parker when a department store owner in Washington, D.C., sued to prevent the government from demolishing his store to make way for an urban renewal project. Berman contended that it was unconstitutional to take his property under those circumstances, but the court ruled against him, saying that eminent domain was justified because the project was in the interest of the community.

That case set the stage for other cases in which governments took the property of private individuals not only for traditional public uses like highways, schools, or reservoirs, but

also to replace "blighted" areas with new construction expected to create new jobs and bring in higher tax revenues.

For example, in the late 1970s, General Motors approached Coleman Young, then mayor of Detroit, with a request to build a Cadillac plant in a residential neighborhood known as Poletown. On the one hand, the plant would bring jobs and generate tax revenues, but, on the other, a settled neighborhood would be destroyed. "It was a terrible choice. How do you even begin to decide a case like this? In the end, Young went along with General Motors, and the Michigan Supreme Court sided with the government."

In deciding this case in 1981, the court ruled that the government's decision to take the land was acceptable. **But such cases are open to interpretation, a fact that was illustrated earlier this year when the Michigan Supreme Court reversed its 1981 decision by its ruling on a similar case, Wayne County v. Hathcock. The court ruled that the county could not use eminent domain to take the property of people living near an airport to clear the way for an economic development scheme known as the Pinnacle Project. The court ruled that the land could be taken if, for example, it could be shown to be blighted, but this was not the case.**

Susette Kelo and the other residents of Fort Trumbull also firmly deny that their property is blighted, but what is at issue here is whether property can be taken simply because an alternative use of that property would produce greater economic benefits. In the Fort Trumbull example, the city of New London, Conn., wants to replace the residential area with offices and parking, among other things.

"It could be argued that a neighborhood of single-family houses is simply underperforming property," Kayden said in answer to a question. "It doesn't generate very much revenue compared with other uses. Consequently, one might label it as blight."

Kayden would not predict how the U.S. Supreme Court would rule on this case, although he did speculate about the many different aspects of the case that the court might weigh in making its decision. The court might reconsider the purpose of the Constitution's "just compensation" clause, perhaps taking into account the value of the individual's identity and history or the "demoralization costs" incurred when people are forced to give up their homes to make way for a hotel or a block of high-priced condos. Or the court may shift the burden of decision back on the state courts.

"It's a tricky issue," Kayden said.

END QUOTE

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As a **CONSTITUTIONALIST** I am currently also researching other matters in that I discovered that in the State of Victoria VCAT (Victorian Civil and Administrative Tribunal) is misusing and abusing its legal processes in regard of Mr Francis James Colosimo and as result I was requested by Mr Francis James Colosimo to assist him and I am representing him in these matters.

From the material researched by me there can be no doubt that historically over more then two thousand years States "**the right of eminent domain**" existed for "**public interest**" however as a **CONSTITUTIONALIST** I am concerned as to if this is applicable to the Commonwealth of Australia and indeed so to the States,. Too often lawyers (including judges) assume a certain legal position regardless if this actually is so constitutionally valid. A clear example is the issue of "Australian citizenship" where since 1948 this is held to be an Australian nationality as such even so constitutionally this is utter and sheer nonsense, and for the record this was extensively litigated by me during a 5 year epic legal battle before the courts and in which I comprehensively defeated the Commonwealth of Australia and details have been published by me in various books pin the **INSPECTOR-RIKATI**® series on certain constitutional and other legal issues.

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You may be aware that the **EUROPEAN UNION** is a **POLITICAL UNION** amongst most states in EUROPE It has a president and a constitution which is signed by all Members of the **EUROPEAN UNION**. Yet, every country that has a membership nevertheless retained its own constitutional format and many still have their own **MONARCHY** in place. Now, try to imagine that the **EUROPEAN UNION** were to invoke "**the right of eminent domain**" upon basis that it has "sovereign" powers by it's constitution and as such could deal with properties (including **FEE SIMPLE** title holdings) as it pleased. One would likely get an outburst of protest because it would be held that while they are members of the **EUROPEAN UNION** it doesn't mean that the territories within each member country is then up for grabs for other countries.

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Lets Look then at the Commonwealth of Australia. It is not a country and cannot be turned into some country as Australia is the mainland continent and was so before the federation but it cannot be deemed to be the commonwealth of Australia as the Commonwealth of Australia includes territories that never were part of the mainland Australia. Indeed, as the Framers of the Constitution made clear that if Queensland were not to join in with the federation then it still would be in Australia, just not be part of the Commonwealth of Australia. Therefore we must be very careful to understand that the Commonwealth of Australia is nothing more but a **POLITICAL UNION** and cannot be a country and neither is or was a domain, colony, etc.
If you do not believe me then let the Framers of the Constitution explain what it is about!

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Hansard *2-3-1898* Constitution Convention Debates

QUOTE

Mr. SYMON (South Australia).-

In the preamble honorable members will find that what we desire to do is to unite in one indissoluble Federal Commonwealth -that is the political Union-"**under the Crown of the United Kingdom of Great Britain and Ireland** , and under the Constitution hereby established." Honorable members will therefore see that the application of the word Commonwealth is to the political Union which is sought to be established. It is not intended there to have any relation whatever to the name of the country or nation which we are going to create under that Union . The second part of the preamble goes on to say that it is expedient to make provision for the admission of other colonies into the Commonwealth. **That is, for admission into this political Union, which is not a republic, which is not to be called a dominion, kingdom, or empire, but is to be a Union by the name of "Commonwealth," and I do not propose to interfere with that in the slightest degree.**

END QUOTE

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Unless you can point out any s.128 referendum that somehow changed this, it seems to me that you have to accept that the Commonwealth of Australia is and remains to be a **POLITICAL UNION**.

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HANSARD *2-3-1898* Constitution Convention Debates

QUOTE

Mr. BARTON.-**I did not say that. I say that our real status is as subjects, and that we are all alike subjects of the British Crown.**

END QUOTE

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Hansard *1-3-1898* Constitution Convention Debates

QUOTE **Sir JOHN DOWNER**.-

I venture to say that these are not necessary or incidental to the execution of any powers. **The Commonwealth will come into existence under this Constitution plus English law,**

one of whose principles is that the Queen can do no wrong. That is the foundation on which the Constitution is established.

END QUOTE

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HANSARD *10-3-1898* **Constitution Convention Debates**

QUOTE **Mr. BARTON** (New South Wales).-

Then, again, there is the prerogative right to declare war and peace, an adjunct of which it is that the Queen herself, or her representative, where Her Majesty is not present, holds that prerogative. No one would ever dream of saying that the Queen would declare war or peace without the advice of a responsible Minister.

END QUOTE

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HANSARD *6-3-1891* **Constitution Convention Debates**

QUOTE

Sir SAMUEL GRIFFITH: At all events, I would ask hon. members to pause before they determine upon asking the Queen to surrender all her prerogatives in Australia. **For my part, I believe that all the prerogatives of the Crown exist in the governor-general as far as they relate to Australia.** I never entertained any doubt upon the subject at all-that is so far as they can be exercised in the commonwealth.

END QUOTE

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Unlike the Queen the governor-General cannot trot off to foreign countries and represent the Commonwealth of Australia, as the Governor-General power's to represent the Queen is limited to the boundaries of the Commonwealth of Australia and as the Framers of the Constitution made clear the moment the governor-General leave the Commonwealth of Australia then the Governor-General must pay from his/her own pocket the salary of the acting Governor-General.

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While the Governor-General exercises the prerogative powers for the queen in Her Majesties absenteeism it doesn't make the Governor-General the Head of State. The governor is an appointed "agent" for the Queen as is any other "Governor-General" or "Governor"! As such neither can the Governor-General run up a reported $4000,000.00 travelling bill on overseas trips at cost of taxpayers because any trip outside the Commonwealth of Australia is to be regarded of a personal nature, beyond the Governor-General prerogative representative powers.

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http://www.theaustralian.com.au/news/nation/queen-takes-on-bryce-in-right-royal-title-fight/story-e6frg6nf-1225829443148

QUOTE

Queen takes on Bryce in right royal title fight

Tom Dusevic, National chief reporter

From: *The Australian*

February 12, 2010 12:00AM

FOLLOWING the triumphant tour of Australia by its potential future king, Prince William, the Queen has reasserted her claim on the title "head of state" of Australia by using it in the announcement of her address to the UN in July.

Despite the Governor-General, Quentin Bryce, being dispatched to Africa by the Rudd government last year under the description "Australia's head of state", yesterday a spokesman for Kevin Rudd avowed that the Queen held that position.

The title fight -- pitting the two female leaders, the sovereign and her representative, head to head -- revives a debate that raged around the republic referendum more than a decade ago.

The trigger for the confusion is the announcement by Buckingham Palace that Her Majesty Queen Elizabeth II will be addressing the UN General Assembly in July as Australia's "head of state", a statement that has taken Canberra's diplomats, officials and constitutional combatants by surprise.

In recent years, particularly after the debate and referendum on a republic in 1999, the local convention has been to recognise that the Governor-General is Australia's head of state and that Elizabeth II is our sovereign.

Now, the Governor-General, who began her term at Yarralumla in September 2008, is confronted by a mix of interpretations and contradictory statements by political leaders and Buckingham Palace regarding her official status.

Last March, in announcing Ms Bryce's series of state and official visits to nine African countries, the Prime Minister said:

"A visit to Africa of this scale by Australia's head of state will express the seriousness of Australia's commitment to heightened political and diplomatic engagement, and to building our bilateral relationships with African countries and the continent as a whole."

That designation has been a curious bulwark for supporters of the monarchy, including Opposition Leader Tony Abbott.

He is an advocate for retaining the present arrangements by arguing, as do other prominent constitutional monarchists, that the role of governor-general has evolved, that Australia has a native-born head of state, and therefore does not need to become a republic.

Deputy Opposition Leader Julie Bishop, who has been a strong supporter of a republic and therefore at odds with her leader, has also described Ms Bryce as Australia's head of state.

But Mr Rudd, who identifies himself as a republican and addressed the UN in 2008 and last year, now says the Queen is Australia's head of state.

Asked by The Australian yesterday to answer questions about her forthcoming UN address and Australia's input, a spokesman for Mr Rudd said: "Australia's head of state is HM Queen Elizabeth II, represented by the Governor-General HE Ms Quentin Bryce AC. The government is aware of the plan for the Queen to address the United Nations.

"The Queen's speech is a matter for the Queen, but Australia will ensure the Queen is aware of Australia's views in advance of the speech."

Canberra's bureaucratic and political officials were jolted out of the capital's summer haze on Australia Day by a cable from New York headed: "United Nations: General Assembly -- Address by Australian Head of State."

The unclassified cable, for wide distribution, was written by Gary Quinlan, Australia's ambassador and permanent representative to the UN, and before his appointment last year, the senior adviser on foreign affairs, defence and national security in the Prime Minister's office.

The cable outlined the Queen's schedule and the response of key UN figures to the news of what will be her first address to the multilateral forum since 1957.

The title of Mr Quinlan's cable immediately caught the attention of Department of Foreign Affairs and Trade officials and vice-regal watchers. "When I saw Quinlan's cable and realised he was talking about the Queen and not the Governor-General, I immediately thought, `That's muddying the waters'," a DFAT source said.

Some in Canberra believe the January 22 statement from Buckingham Palace was overreach on the part of the Queen's officials, perhaps even a mistake.

Observers here have noticed a more activist and assertive role by the royal family and its champions in recent times.

A source cites the reintroduction of imperial honours in New Zealand by Prime Minister John Key, the recent successful visit to Australasia by Prince William, and the bitter row between Canadian Prime Minister Stephen Harper and the country's Governor-General Michaelle Jean about who is head of state, as evidence of the bid for resurgence by the House of Windsor.

A spokesman for Buckingham Palace told The Australian yesterday that the reference to the Queen as Australia's head of state "was used in a collective sense to refer to the Queen's position in relation to the UN member states which are also realms".

"It was not intended to refer to the constitutional definition of the role of the Queen in Australia in particular," the spokesman said. "The press release of January 22 is not a policy statement but an information bulletin to describe the forthcoming event."

He added: "The Queen's position would of course take account of the various positions of the realms."

A spokeswoman for Ms Bryce said yesterday: "This is not an issue the Governor-General would comment upon."

END QUOTE

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Taxpayers are entitled to know why the governor-General bills the taxpayers for her overseas trips, etc, not being within her prerogative functions that are limited to the boundaries of the Commonwealth of Australia!

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Likewise taxpayers are also entitled to know why the unconstitutional, yes unconstitutional, **GOLD CARD** and/or other perks being allowed to be used in breach of constitutional provisions because a Member of parliament can only be receiving an "**ALLOWANCE**" **FOR THE DURATION OF HOLDING A SEAT** and not prior to or after doing so.

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Hansard *19-4-1897* Constitution Convention Debates

QUOTE

Mr. ISAACS: I do not know. I am not prepared at the present moment to abandon all claim to it. I am determined to go as far as necessary to have intercolonial freetrade **in coal as well as in every other commodity,** if that can be done with fairness to the miners of Victoria, and no undue abandonment takes place with regard to local development. I certainly hold with my friends from New South Wales that we must have intercolonial freetrade. I do not intend to support any proposal to interfere with that great principle. But I am not satisfied that that principle would be departed from altogether if we still maintained some power to develop an industry which is to a great extent local and of very great importance. **but with regard to mining for gold or silver or other metals, no question whatever can arise. The colonies should have the fullest power to deal as they please with those industries.**

END QUOTE

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Yet, if you consider the judgments of the High Court of Australia (such as in *Commonwealth v New South Wales [1923] HCA 34; (1923) 33 CLR 1 (9 August 1923)*)then somehow the Commonwealth gained "sovereign" powers by virtue of s.85 or s.51(xxxi) even so this is not at all as such applicable unless such properties were acquired for purpose of s.122 "sovereign" powers application! N.S.W., albeit unconstitutionally, purportedly amended in 1902 its constitution and likewise did other States, this despite of the following;

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HANSARD *10-03-1891* Constitution Convention Debates

QUOTE

Dr. COCKBURN: All our experience hitherto has been under the condition of parliamentary sovereignty. Parliament has been the supreme body. But when we embark on federation we throw parliamentary sovereignty overboard. Parliament is no longer supreme. Our parliaments at present are not only legislative, but constituent bodies. They have not only the power of legislation, but the power of amending their constitutions. That must disappear at once on the abolition of parliamentary sovereignty. No parliament under a federation can be a constituent body; it will cease to have the power of changing its constitution at its own will. Again, instead of parliament being supreme, the parliaments of a federation are coordinate bodies-the main power is split up, instead of being vested in one body. More than all that, there is this difference: When parliamentary sovereignty is dispensed with, instead of there being a high court of parliament, you bring into existence a powerful judiciary which towers above all powers, legislative and executive, and which is the sole arbiter and interpreter of the constitution.

END QUOTE

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Again

HANSARD *10-03-1891* Constitution Convention Debates

QUOTE Dr. COCKBURN:

No parliament under a federation can be a constituent body; it will cease to have the power of changing its constitution at its own will.

END QUOTE

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Unless there was a State referendum approving an amendment to a State constitution the amendment as such are without legal force.

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Likewise, Queensland purportedly got rid of its upper house albeit in constitutional terms it still exists as the purported amendment never was constitutionally permissible. Hence all Bills (that purportedly became legislation) enacted but failing to have been passed by the upper house technically is no legislation at all.

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Without going into too many further details, as I view you already should have ample of details so far to realise that while you may have grown up in the United States of America regarding "**eminent domain**" powers and how it was applied, I urge you to realise that not only was this changed in the U.S.A. with the ***Wayne County v. Hathcock*** (2004) case but because the Commonwealth of Australia is not a confederation but a federation of dominions where the true Parliament ids and remains to be the British Parliament

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http://www.answers.com/topic/eminent-domain &
http://legal-dictionary.thefreedictionary.com/Right+of+eminent+domain

QUOTE

> **Inverse Condemnation**
> **An increase in environmental problems has resulted in a new type of eminent domain proceeding called inverse condemnation. In this proceeding, the property owner, rather than the condemnor, initiates the action. The owner alleges that the government has acquired an interest in his or her property without giving compensation, such as when the government floods a farmer's field or pollutes a stream crossing private land. An inverse condemnation proceeding is often brought by a property owner when it appears that the taker of the property does not intend to bring eminent domain proceedings.**

END QUOTE

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We have the current conduct by Mr Kevin Rudd PM about the hospitals and seemingly taking a third of **GST** revenue to pay for it all and as I understand it foolish enough some Premiers are falling for this rot. Premiers cannot agree to something that is unconstitutional;

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Hansard *1-3-1898* Constitution Convention Debates

QUOTE

> **Mr. WISE**.-If the Federal Parliament chose to legislate upon, say, **the education question**-and the Constitution gives it no power to legislate in regard to that question-the Ministers for the time being in each state might say-"We are favorable to this law, because we shall get £100,000 a year, or so much a year, from the Federal Government as a subsidy for our schools," **and thus they might wink at a violation of the Constitution**, while no one could complain. **If this is to be allowed, why should we have these elaborate provisions for the amendment of the Constitution? Why should we not say that the Constitution may be amended in any way that the Ministries of the several colonies may unanimously agree? Why have this provision for a referendum? Why consult the people at all? Why not leave this matter to the Ministers of the day? But the proposal has a more serious aspect, and for that reason only I will ask permission to occupy a few minutes in discussing it.**

END QUOTE

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It must be clear that **CoAG** (Council of Australian Governments) therefore have no constitutional powers to interfere with constitutional limitations.

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http://supreme.justia.com/us/83/678/case.html

U.S. Supreme Court Olcott v. The Supervisors, 83 U.S. 16 Wall. 678 678 (1872)

QUOTE

> **U.S. Supreme Court**
> **Olcott v. The Supervisors, 83 U.S. 16 Wall. 678 678 (1872)**
> **Olcott v. The Supervisors**
> **83 U.S. (16 Wall.) 678**
> *ERROR TO THE CIRCUIT COURT FOR*

THE EASTERN DISTRICT OF WISCONSIN

Syllabus

1. This Court will follow, as of obligation, the decisions of the state courts only on local questions peculiar to themselves, or on questions respecting the construction of their own constitution and laws.

2. Whether or not the construction and maintenance of a railroad owned by a corporation and constructed and maintained under a statute of a state authorizing such construction and maintenance is a matter in which the public has any interest of such a nature its to warrant taxation by a municipal division of the state in aid of it is not such a question. It is one of general law.

3. If a contract when made was valid under the constitution and laws of a state as they had been previously expounded by its judicial tribunals and as they were understood at the time, no subsequent action by the legislature or the judiciary will be regarded by this Court as establishing its invalidity.

4. A railroad is it public highway. Being so, and thus a road for public use, a state may impose a tax in furtherance of that use even though the road itself be built and owned by a private corporation.

5. An act of the Legislature of Illinois, authorizing a vote of the people of a particular county upon the question whether they would aid the building of a certain railroad, and if they voted in favor of aiding authorizing the issue of county orders for money to aid in the building, *held,* on an application of the principles just above stated to have been a proper exercise of legislative authority, and the county charged on such orders issued by it, and given to the road by way of donation.

Error to the Circuit Court for the Eastern District of Wisconsin, in which court Olcott sued the supervisors of the County of Fond du Lac, Michigan, upon certain county orders issued by the county February the 15, 1869, in pursuance of an Act of Assembly of the state approved on the 10th of April, 1867, and entitled

"An act to authorize the

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County of Fond du Lac to aid the completion of the Sheboygan & Fond du Lac Railroad, and to aid the building of a railroad from the City of Fond du Lac to the City of Ripon."

This act authorized the people of the county to vote upon the question whether they would aid the building of the railroads named; and provided, in case the vote should be in favor of granting aid, that "county orders" should be issued as the roads should be completed. The sixth section of the act was thus:

"If, under the provisions of this act, the said County of Fond du Lac shall furnish the aid contemplated in this act, then the railroad companies, or their successors and assigns, shall transport wheat upon the said roads upon the following terms for ten years: wheat by the carload from the City of Fond du Lac, and from stations east thereof within the County of Fond du Lac, to the City of Sheboygan, at a price not exceeding five cents per bushel; and from the City of Ripon to the City of Sheboygan, at a price not exceeding seven cents per bushel; and from all stations between the Cities of Fond du Lac and Ripon to Sheboygan, at a rate *pro rata* with the freight from Fond du Lac to Sheboygan; and the companies or corporations owning and building the said roads, their successors and assigns, shall make such arrangements between themselves as shall give full effect to the provisions of this section, and the rates of freight above limited shall also apply to the companies owning or operating the said roads over and upon all other railroads where said companies respectively run their cars for the transportation of freight."

A vote was taken under the act, and was in favor of granting the aid. The county orders were accordingly issued in conformity with the act. They were all made payable to the Sheboygan & Fond du Lac Railroad Company, or bearer, and those now sued on had passed, *bona fide,* into the hands of Olcott.

In 1870, that is to say, subsequent to the issue of these orders, though prior to the trial of this case in the court below, the Supreme Court of the State of Wisconsin, in the

Page 83 U. S. 680

case of *Whiting v. Fond du Lac County,* [Footnote 1] **held this act to be void, upon the ground that the building of a railroad, to be owned and worked by a corporation in the usual way, was not an object in which the public were interested, and therefore that the act in question was void, for the reason that it authorized the levy of a tax for a private and not a public purpose**. The court there said:

"The question is as to the power of the legislature to raise money or to authorize it to be raised, by taxation, for the purpose of donating it to a private corporation. We held, in *Curtis v. Whipple,* [Footnote 2] that the legislature possessed no such power, and the conclusion in that case we think follows inevitably in this, from the principles stated in the opinion. The cases are not distinguishable, except in the single circumstance that the corporation here, to which it is proposed to give the money, is a railroad company in behalf of which the power of eminent domain has been exercised by the state for the purpose of enabling it to secure the land over which to build its road. . . . But though a railroad company may be, as to its capacity to assume and exercise in the name of the state the power of eminent domain delegated to it, so far a public or *quasi*-public corporation, yet in all its other powers, functions, and capacities it is essentially a private corporation, not distinguishable from any other of that name or character. . . . The road, with all its rolling stock, buildings, fixtures, and other property pertaining to it, is private property, owned, operated, and used by the company for the exclusive benefit and advantage of the stockholders. This constitutes a private corporation in the fullest sense of the term. . . . And if we examine any book of authority on the subject, [Footnote 3] we shall find that such is and always has been the rule of the law as to the corporate character of such companies, notwithstanding the delegation of power of eminent domain, and their consequent subjection in a certain degree to public use and convenience. They are always classed among private corporations, such as banking, insurance, and manufacturing corporations, and corporations for the building of bridges, turnpikes, canals &c. . . . Our conclusion, therefore, is that though a railroad

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company may possess this single exceptional corporate characteristic, it is nevertheless essentially a private corporation, coming fully within the operation of the principles laid down in *Curtis v. Whipple,* and that the taxation complained of cannot be sustained."

The court below, in this case, held that decision to be binding upon the federal courts, and charged that the act under which the orders were issued was void. Judgment having gone accordingly it was now here for review.

It may here be mentioned that by the Constitution of Wisconsin, the legislature of the state has power to alter or repeal charters granted by it.

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MR. JUSTICE STRONG delivered the opinion of the Court.

Whether the Act of Assembly of the State of Wisconsin, approved April 10, 1867, under which the county orders or promissory notes sued upon, in this case, were issued, was a lawful exercise of constitutional power, is the only question in the case. In the court below, the jury was instructed in substance that the issue of the orders was unauthorized and void and that the act of assembly above referred to was an unconstitutional exercise of legislative

Page 83 U. S. 689

power. No other question was made at the trial, and no other is now presented to us for our determination.

At the outset we are met by the fact that the supreme court of the state has decided the act was unauthorized by the constitution. It was thus ruled in *Whiting v. Fond du Lac County*. [Footnote 4] If that decision is binding upon the federal courts, if it has established a rule which we are under obligations to follow, the matter is settled.

It is undoubtedly true in general, that this Court does follow the decisions of the highest courts of the states respecting local questions peculiar to themselves, or respecting the construction of their own constitutions and laws. But it must be kept in mind that it is only decisions upon local questions, those which are peculiar to the several states, or adjudications upon the meaning of the constitution or statutes of a state, which the federal courts adopt as rules for their own judgments. That *Whiting v. Fond du Lac County* was not a determination of any question of local law, is manifest. It is not claimed to have been that. But it is relied upon as having given a construction to the constitution of the state. Very plainly, however, such was not its character or effect. The question considered by the court was not one of interpretation or construction. The meaning of no provision of the state constitution was considered or declared. **What was considered was the uses for which taxation generally, taxation by any government, might be authorized, and particularly whether the construction and maintenance of a railroad, owned by a corporation, is a matter of public concern. It was asserted (what nobody doubts), that the taxing power of a state extends no farther than to raise money for a public use, as distinguished from private, or to accomplish some end public in its nature, and it was decided that building a railroad, if it be constructed and owned by a corporation, though built by authority of the state, is not a matter in which the public has any interest, of such a nature as to warrant taxation in its aid.**

Page 83 U. S. 690

For this reason it was held that the state had no power to authorize the imposition of taxes to aid in the construction of such a railroad, and therefore that the statute giving Fond du Lac County power to extend such aid was invalid. This was a determination of no local question or question of statutory or constitutional construction. It was not decided that the legislature had not general legislative power; or that it might not impose or authorize the imposition of taxes for any public use. Now, whether a use is public or private is not a question of constitutional construction. It is a question of general law. It has as much reference to the constitution of any other state as it has to the State of Wisconsin. Its solution must be sought not in the decisions of any single state tribunal, but in general principles common to all courts. The nature of taxation, what uses are public and what are private, and the extent of unrestricted legislative power, are matters which, like questions of commercial law, no state court can conclusively determine for us. This consideration alone satisfies our minds that *Whiting v. Fond du Lac County* furnishes no rule which should control our judgment, though the case is undoubtedly entitled to great respect.

There is another consideration that leads directly to the same conclusion. This Court has always ruled that if a contract when made was valid under the constitution and laws of a state, as they had been previously expounded by its judicial tribunals, and as they were understood at the time, no subsequent action by the legislature or the judiciary will be regarded by this Court as establishing its invalidity. [Footnote 5] Such a rule is based upon the highest principles of justice. Parties have a right to contract, and they do contract in view of the law as declared to them when their engagements are formed. Nothing can justify us in holding them to any other rule. If, then, the doctrine asserted in *Whiting v. Fond du Lac County* is inconsistent with what was the recognized

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law of the state when the county orders were issued, we are under no obligation to accept it and apply it to this case. The orders were issued in February, 1869, and it was not until 1870 that the supreme court of the state decided that the uses for which taxation was

authorized by the statute of April 10, 1867, were not public uses, and therefore that the statute was invalid. Prior to 1870 it seems to have been as well settled in Wisconsin as elsewhere that the construction of a railway was a matter of public concern, and not the less so because done by a private corporation. That the state might itself make such an improvement, and impose taxes to defray the cost, or exercise its right of eminent domain therefor, was beyond question. Yet confessedly it could neither take property or tax for such a purpose, unless the use for which the property was taken or the tax collected was a public one. And it was also the undoubted law of the state that building a railroad or a canal by an incorporated company was an act done for a public use, and thus the power of the legislature to delegate to such a company the state right of eminent domain was justified. In *Pratt v. Brown*, [Footnote 6] it was said by the supreme court of the state that the incorporation of companies for the purpose of constructing railroads or canals affords the best illustration of the delegation of power to exercise the right of eminent domain, by the condemnation and seizure of private property for public use upon making just compensation therefore. It is admitted that the only principle upon which such delegation of power can be justified is that the property taken by these companies is taken for the public use. Similar language was used and a decision to the same effect was made in *Robbins v. Railroad Company*. [Footnote 7] In *Hasbrouck v. Milwaukee*, [Footnote 8] a case where the right to tax for the improvement of a harbor was under consideration, the court used this significant language:

"The power of municipal corporations, when authorized by the legislature to engage in works of internal improvement,

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SUCH AS THE BUILDING OF RAILROADS, canals, harbors, and the like, or to loan their credit in aid thereof, and to defray the expenses of such improvements, MAKE GOOD THEIR PLEDGES *by an exercise of the power of taxing the persons and property of their citizens, has always been sustained on the ground that such works, although they are in general operated and controlled by private corporations, are nevertheless, by reason of the facilities which they offered for trade, commerce, and intercommunication between different and distant portions of the country, indispensable to the public interests and public functions.* It was originally supposed that they would add, *and subsequent experience demonstrated that they have added vastly, and almost immeasurably, to the general business, the commercial prosperity, and the pecuniary resources of the inhabitants of cities, towns, villages, and rural districts through which they pass, and with which they are connected.* It is, in view of these results, *the public good thus produced, and the benefits thus conferred* upon the persons and property of all the individuals composing the community, that courts have been able to pronounce them *matters of public concern,* for the accomplishment of which *the taxing power might lawfully be called into action.* It is in this sense that they are said to fall so far within the purposes for which municipal corporations are created, that such corporations may engage in, or pledge their credit for their construction."

So also in *Soens v. Racine*, [Footnote 9] where the validity of a law authorizing a local tax to secure the lake shore was in question, the court discussed at length the nature of a public use for which taxation was lawful, and ruled that the use was a public one though only the property of some inhabitants of the city was saved, remarking that to determine whether a matter is a public or merely private concern we have not to determine whether or not the interests of some individuals will be directly promoted, but whether those of the whole or the greater part of the community will be. And again, in *Brodhead v. Milwaukee*, [Footnote 10] the court said:

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"The legislature cannot create a public debt, or levy a tax, or authorize a municipal corporation to do so, in order to raise funds for a mere private purpose. It cannot,

in the form of a tax, take the money of the citizen and give it to an individual, *the public interest or welfare being in no way connected with the transaction.* The objects for which the money is raised by taxation must be public, and such as subserve the common interest and wellbeing of the community required to contribute. . . . To justify the court in arresting the proceedings and declaring the tax void, the absence of *all possible* public interest in the purposes for which the funds are raised must be clear and palpable; *so clear and palpable as to be perceptible by every mind* AT THE FIRST BLUSH."

All these expositions of the law of the state were made by its highest court before the county orders now in suit were issued. They certainly did assert that building a railroad, whether built by the state or by a corporation created by the state for the purpose, was a matter of public concern, and that because it was a public use, the right of eminent domain might be exerted or delegated for it, and taxation might be authorized for its aid. It was the declared law of the state, therefore, when the bonds now in suit were issued, that the uses of railroads, though built by private corporations, were public uses, such as warranted the exercise of the public right of eminent domain in their aid, and also the power of taxation.

We are not, then, concluded by a decision, made in 1870, that such public uses are not of a nature to justify the imposition of taxes. We are at liberty to inquire what are public uses, and what restrictions, if any, are imposed upon the state's taxing power.

It is not claimed that the Constitution of Wisconsin contains any *express* denial of power in the legislature to authorize municipal corporations to aid in the construction of railroads, or to impose taxes for that purpose. The entire legislative power of the state is confessedly vested in the General Assembly. An implied inhibition only is asserted.

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It is insisted that, as the state cannot itself impose taxes for any other than a public use, so the legislature cannot empower a municipal division of the state to levy and collect taxes for any other than such a use, and it is denied that taxation to enable the County of Fond du Lac to aid in the completion of the Sheboygan & Fond du Lac Railroad is taxation for a public use. No one contends that the power of a state to tax, or to authorize taxation, is not limited by the uses to which the proceeds may be devoted. Undoubtedly taxes may not be laid for a private use. But is the construction of a railroad by a company incorporated by a state for the purpose of building it, and endowed with the state's right of eminent domain, a thing in which the state has, as such, no interest? That the Legislature of Wisconsin may alter or repeal the charter granted to the Sheboygan & Fond du Lac Railroad Company is certain. This is a power reserved by the constitution. The railroad can, therefore, be controlled and regulated by the state. Its use can be defined; its tolls and rates for transportation may be limited. Is a work made by authority of the state, subject thus to its regulation, and having for its object an increase of public convenience, to be regarded as ordinary private property?

That railroads, though constructed by private corporations and owned by them, are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence. Very early the question arose whether a state's right of eminent domain could be exercised by a private corporation created for the purpose of constructing a railroad. Clearly it could not, unless taking land for such a purpose by such an agency is taking land for public use. The right of eminent domain nowhere justifies taking property for a private use. Yet it is a doctrine universally accepted that a state legislature may authorize a private corporation to take land for the construction of such a road, making compensation to the owner. What else does this doctrine mean if not that building a railroad, though it be

Page 83 U. S. 695

built by a private corporation, is an act done for a public use? And the reason why the use has always been held a public one is that such a road is a highway, whether made by the government itself or by the agency of corporate bodies, or even by individuals when they obtain their power to construct it from legislative grant. It would be useless to cite the numerous decisions to this effect which have been made in the state courts. We may, however, refer to two or three which exhibit fully not only the doctrine itself, but the reasons upon which it rests. [Footnote 11]

Whether the use of a railroad is a public or a private one depends in no measure upon the question who constructed it or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the state. Though the ownership is private the use is public. So turnpikes, bridges, ferries, and canals, although made by individuals under public grants, or by companies, are regarded as *publici juris.* The right to exact tolls or charge freights is granted for a service to the public. The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used. [Footnote 12] That all persons may not put their own cars upon the road, and use their own motive power, has no bearing upon the question whether the road is a public highway. It bears only upon the mode of use, of which the legislature is the exclusive judge. [Footnote 13]

It is unnecessary, however, to pursue this branch of the inquiry further, for it is not seriously denied that a railroad, though constructed and owned by a private corporation, is a matter of public concern, and that its uses are so far public that the right of eminent domain of the state may be exerted

Page 83 U. S. 696

to facilitate its construction. But it is contended that though the purpose and the use may be public, sufficiently to justify taking private property, they are not public when the right to impose taxes is asserted. It is argued that there are differences between the power of taxation and the power of taking private property for a public use, and that because of these differences it does not follow that wherever the one power may be exerted the other can. We do not care to inquire whether this is so or not. The question now is whether if a railroad, built and owned by a private corporation, is for a public use, because it is a highway, taxes may not be imposed in furtherance of that use. If there be any purpose for which taxation would seem to be legitimate it is the making and maintenance of highways. They have always been governmental affairs, and it has ever been recognized as one of the most important duties of the state to provide and care for them. Taxation for such uses has been immemorially imposed. When, therefore, it is settled that a railroad is a highway for public uses, there can be no substantial reason why the power of the state to tax may not be exerted in its behalf. It is said that railroads are not public highways *per se;* that they are only declared such by the decisions of the courts, and that they have been declared public only with respect to the power of eminent domain. This is a mistake. In their very nature they are public highways. It needed no decision of courts to make them such. True they must be used in a peculiar manner, and under certain restrictions, but they are facilities for passage and transportation afforded to the public, of which the public has a right to avail itself. As well might it be said a turnpike is a highway, only because declared such by judicial decision. A railroad built by a state no one claims would be anything else than a public highway, justifying taxation for its construction and maintenance, though it could be no more open to public use than is a road built and owned by a corporation. Yet it is the purpose and the uses of a work which determine its character. And if the purpose is one for which the state may properly levy a tax

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upon its citizens at large, its legislature has the power to apportion and impose the duty, or confer the power of assuming it upon the municipal divisions of the state. [Footnote

14] And surely it cannot be maintained that ownership by the public, or by the state, of the thing in behalf of which taxation is imposed, is necessary to justify the imposition. There are many acknowledged public uses that have no relation to ownership. Indeed, most public expenditures are for purposes apart from any proprietorship of the state. A public use may, indeed, consist in the possession, occupation, and enjoyment of property by the public, or agents of the public, but it is not necessarily so. Even in regard to common roads, generally, the public has no ownership of the soil, no right of possession, or occupation. It has a mere right of passage. While, then, it may be true that ownership of property may sometimes bear upon the question whether the uses of the property are public, it is not the test.

The argument most earnestly urged against the constitutionality of the act is that it attempted to authorize Fond du Lac County to assist the railroad company by a donation. It is stoutly contended that the legislature could not authorize the county to impose taxes to enable it to make a donation in aid of the construction of the railroad, even if its ultimate uses are public. But why not? If the county can be empowered to aid the work because it is a public use, what difference can it make in what mode the aid be extended? It is conceded that in Wisconsin municipal corporations may be authorized to become subscribers to the stock of private railroad companies, and to raise money by taxation to meet bonds given in payment of the subscriptions. This has been decided by the highest court of the state. [Footnote 15] And the reasons given for the decision are, not that the municipal bodies acquired property rights by their subscriptions, or that they thereby obtained partial control of the railroad companies, but that subscriptions to the stock were

Page 83 U. S. 698

a mode of aiding a work in which the public had an interest, a work of such a nature that it might properly be aided by taxation. Never was the right to tax supposed to rest in any degree upon anything else. Whether the stock had value or not was not even considered. Equally with the taxation, the municipal subscription could be justified only because it was for a public use. If taxation is invalid because laid for a private use, the nature of the use cannot be changed by receiving stock for the money raised. There is no substantial difference in principle between aid given to a railroad company by subscription to its stock and aid given by donations of money or land. The burden upon the county may be the same in whichever mode the aid is given, and the uses promoted are precisely the same. And the courts have never attempted to make any distinction in the cases; certainly not until the case of *Whiting v. Fond du Lac County*, and even then no real difference is shown. On the other hand, the power to tax for the purpose of making donations in aid of railroads built by private corporations has been affirmed. [Footnote 16] We have, however, considered this subject in the case of the *Railroad Co. v. County of Otoe*, [Footnote 17] and nothing more need now be said. What we have already remarked is sufficient to show that in our opinion the Act of the Legislature of Wisconsin approved April 10th, 1867, was a constitutional exercise of legislative power, and consequently that the circuit court erred in instructing the jury that it was unconstitutional and void and in directing a verdict for the defendants.

Judgment reversed and the record remitted with instructions to award a venire de novo.

THE CHIEF JUSTICE, MR. JUSTICE MILLER, and MR. JUSTICE DAVIS dissented from the preceding opinion.

[Footnote 1]
25 Wis. 188.

[Footnote 2]
24 Wis. 350.

[Footnote 3]
See Angell & Ames on Corporations, § 40.

[Footnote 4]

25 Wis. 188.
[Footnote 5]
Havemeyer v. Iowa City, 3 Wall. 294; *Gelpcke v. City of Dubuque,* 1 Wall. 175; *Ohio Life & Trust Company v. Debolt,* 16 How. 432.
[Footnote 6]
3 Wis. 612.
[Footnote 7]
6 *id.* 641.
[Footnote 8]
13 *id.* 37.
[Footnote 9]
10 Wis. 280.
[Footnote 10]
19 *id.* 652; *see also Clark v. Janesville,* 10 *id.* 136; and *Bushnell v. Beloit, ib.,* 195.
[Footnote 11]
Beekman v. Saratoga & Schenectady Railroad Co., 3 Paige 45; *Bloodgood v. Mohawk & Hudson Railroad Co.,* 18 Wendell 1; *Worcester v. Railroad Co.,* 4 Metcalf 564.
[Footnote 12]
Charles River Bridge Co. v. Warren, 7 Pickering 495.
[Footnote 13]
Cooley's Constitutional Limitations.
[Footnote 14]
Cooley's Constitutional Limitations 262.
[Footnote 15]
Clark v. Janesville, 10 Wis. 136; *Bushnell v. Beloit, ib.,* 195.
[Footnote 16]
Gibbons v. Mobile and Great Northern Railroad Co., 36 Ala. 410; *Davidson v. Commissioners of Ramsay County, Minnesota.*
[Footnote 17]
Supra, p. 83 U. S. 675.
END QUOTE

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Therefore this ongoing misuse and abuse by State and Federal government to raise taxes and then provide it to private companies is not at all for "**PUBLIC PURPOSES**" and therefore is a misappropriation of Consolidated Revenue funds. Also by the States using and misusing/abusing "**eminent domain**" powers the very purpose of federation is undermined.

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The usage of **TAX EXEMPTIONS**, **TAX DEDUCTIONS**, **TAX CONCESSIONS**, **etc,** being taxation powers therefore must conform to the purpose of fitting in for "**PUBLIC PURPOSES**" and not for the benefit of some private company that may have so to say hoodwinked the government in accepting a **NON PROFIT** (**NOT-FOR-PROFIT**) registration. Hence, all and any **NON PROFIT** (**NOT-FOR-PROFIT**) registration in regard of religion for Commonwealth taxation purposes must be held to be unconstitutional and so **NULL AND VOID**!(***ULTRA VIRES***)

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QUOTE

CHAPTER 17

THE PUBLIC PURPOSE SPHERE: GOVERNMENTS AND NONPROFITS

Microeconomics in Context (Goodwin, et al.), 1st Edition (Study Guide 2008)

Chapter Summary

Having looked in detail at the private sector in the previous chapter, the text now turns to the role of governments and nonprofit organizations in this chapter. For example, the coordination and regulation functions of government, without which markets could not function in the way they do is included. The chapter explores the ways in which organizations within the public purpose sphere address both short- and long-term aspects of people's needs. This chapter will be particularly important for those of you who are interested in public policy, international economics, business, finance, health, education, the nonprofit sector, and environmental studies.

Objectives

After reading and reviewing this chapter, you should be able to:

1. Define the two primary functions of public purpose organizations.
2. Describe the three basic types of public purpose organizations.
3. Discuss the historical development of public purpose organizations regarding social welfare.
4. Discuss the historical development of public purpose organizations regarding the regulation of monopolies and trade practices.
5. Discuss the historical development of public purpose organizations regarding the regulation of financial markets.
6. Discuss the historical development of public purpose organizations regarding environmental protection.
7. Define the three major theories of organizational behavior: the theory of pure public service, the theory of "capture," and the theory of civic responsibility.

Key Term Review

regulation open access resources
Progressive Era social insurance programs
means-tested programs Interstate Commerce Act
World Trade Organization Securities Act of 1933
Pigovian taxes self-regulation
public service (pure theory of) "capture" (theory of pure
civic responsibility (theory of) special interest)

END QUOTE

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No doubt anyone reading this Chapter will learn from it.

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Hansard *22-9-1897* Constitution Convention Debates

QUOTE

The Hon. R.E. O'CONNOR (New South Wales)[3.18]: The moment the commonwealth exercises the power, the states must retire from that field of legislation.

END QUOTE

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Hansard *30-3-1897* Constitution Convention Debates

QUOTE **Mr. REID:**

We must make it clear that the moment the Federal Parliament legislates on one of those points enumerated in clause 52, that instant the whole State law on the subject is dead. There cannot be two laws, one Federal and one State, on the same subject. But that I merely mention as almost a verbal criticism, because there is no doubt, whatever that the intention of the framers was not to propose any complication of the kind.

END QUOTE

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Hansard *2-3-1898* Constitution Convention Debates

QUOTE

Mr. OCONNOR.-**Directly it is exercised it becomes an exclusive power**, and there is no doubt that it will be exercised.

END QUOTE

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Hansard *8-2-1898* Constitution Convention Debates

QUOTE **Mr. BARTON.-**

Under a Constitution like this, the withholding of a power from the Commonwealth is a prohibition against the exercise of such a power.

END QUOTE

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Hansard *2-3-1898* Constitution Convention Debates

QUOTE

Mr. HIGGINS.-The particular danger is this: That we do not want to give to the Commonwealth powers which ought to be left to the states. The point is that we are not going to make the Commonwealth a kind of social and religious power over us.

END QUOTE

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HANSARD *1-3-1898* Constitution Convention Debates

QUOTE **Mr. GORDON.-**

The court may say-"It is a good law, but as it technically infringes on the Constitution we will have to wipe it out."

END QUOTE

.

HANSARD *1-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON.-**

The position with regard to this Constitution is that it has no legislative power, except that which is actually given to it in express terms or which is necessary or incidental to a power given.

END QUOTE

.

Hansard *16-2-1898* Constitution Convention Debates

QUOTE

start page 1020] **I think that we ought to be satisfied on these points, and satisfied that if we leave the clause as it now stands there will, at any rate, be some proviso inserted which will safeguard the states in the carrying out of any of their state laws over which the states are to be supreme even under federation.**

END QUOTE

.

Hansard *16-2-1898* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE **Mr. ISAACS** (Victoria).-

In the next sub-section it is provided that all taxation shall be uniform throughout the Commonwealth. An income tax or a property tax raised under any federal law must be uniform "throughout the Commonwealth." That is, in every part of the Commonwealth.

END QUOTE

.

Hansard *19-4-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE

Mr. MCMILLAN: I think the reading of the sub-section is clear.

The reductions may be on a sliding scale, but they must always be uniform.

END QUOTE

.

Hansard *19-4-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE

> **Sir GEORGE TURNER:** No. In imposing uniform duties of Customs it should not be necessary for the Federal Parliament to make them commence at a certain amount at once. We have pretty heavy duties in Victoria, and if the uniform tariff largely reduces them at once it may do serious injury to the colony. **The Federal Parliament will have power to fix the uniform tariff, and if any reductions made are on a sliding scale great injury will be avoided.**

END QUOTE

.

Hansard *17-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON**.-

> But it is a fair corollary to the provision for dealing with the revenue for the first five years after **the imposition of uniform duties of customs**, and further reflection has led me to the conclusion that, on the whole, it will be a useful and beneficial provision.

END QUOTE

.

Hansard *17-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON**.-

> On the other hand, the power of the Commonwealth to impose duties of customs and of excise such as it may determine, which insures that these duties of customs and excise would represent something like the average opinion of the Commonwealth-that power, and the provision that bounties **are to be uniform throughout the Commonwealth**, might, I am willing to concede, be found to work with some hardship upon the states for some years, unless their own rights to give bounties were to some extent preserved.

END QUOTE

.

Hansard *31-3-1891* Constitution Convention Debates

QUOTE **Sir SAMUEL GRIFFITH:**

> 2. Customs and excise and bounties, but so that duties of customs and excise and bounties **shall be uniform** throughout the commonwealth, and that no tax or duty shall be imposed on any goods exported from one state to another;

END QUOTE

.

Hansard *11-3-1898* Constitution Convention Debates

QUOTE **The CHAIRMAN**.-

> Taxation; but so that all taxation **shall he uniform throughout the Commonwealth**, and that no tax or duty shall be imposed on any goods passing from one state to another.

END QUOTE

.

Hansard *11-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON** (New South Wales).-

> That all the words after the word "taxation" where it is first used be struck out, and that the following words be substituted:-"but not so as to discriminate between states or parts of states, or between goods passing from one state to another."

END QUOTE

.

Hansard *11-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON** (New South Wales).-

That all the words after the first word "taxation" in the second sub-section be omitted, with a view to inserting the following words-"but not so as to discriminate between states or parts of states, or between persons or things passing from one state to another."

The amendment was agreed to.

The clause, as amended, was agreed to.

Then, on 16-3-1898 is appears to have been amended, without further discussion but approved off by voting, from;

Taxation; but not so as to discriminate between states or parts of states, or between persons or things passing from one state to another.

To;

Taxation; but not so as to discriminate between states or parts of states

It was claimed that in substance there was no change. Hence, both versions ought to be taken as having the same meaning.
This is a critical issue as the wording;

"**or between persons or things from one state or another**"

then clearly entails that there can be no difference in taxation between persons, and as such neither one person having a tax free income, partly or wholly while another having the same income is required to pay more tax.

.

Hansard ***22-2-1898*** **Constitution Convention Debates** (**Official Record of the Debates of the National Australasian Convention**)

Mr. BARTON.-I am saying now that I do not think there is any necessity for clause 95 in its present form. What I am saying however, is that it should be made certain that in **the same way as you provide that the Tariff or any taxation imposed shall be uniform throughout the Commonwealth**, so it should be provided with reference to trade and commerce that it shall be uniform and equal**, so that the Commonwealth shall not give preference to any state or part of a state. Inasmuch as we provide that all taxation, whether it be customs or excise duties, or direct taxation, must be uniform,** and inasmuch as we follow the United States Constitution in that particular-in the very same way I argue that we should protect the trade and commerce sub-section by not doing anything which will limit its effect. That is the real logical position.

.

Hansard *11-3-1898* **Constitution Convention Debates** (Official Record of the Debates of the National Australasian Convention)
QUOTE

Clause 52, sub-section (2).-Taxation; but so that all taxation shall he uniform throughout the Commonwealth, and that no tax or duty shall be imposed on any goods passing from one state to another.

Mr. BARTON (New South Wales).-I have prepared an amendment with regard to this sub-section, which puts the matter into a form which would express the intention of the Convention, whilst avoiding a difficulty. Honorable members will recollect the difficulty that arose over the construction of words equivalent to "uniform throughout the Commonwealth" in the United States of America. Although no actual decision has been given, a doubt has been raised as to the meaning of the word "uniform." The celebrated income tax case went off as to the direct apportionment of taxation amongst the people according to numbers, and this point was not decided, but a great deal of doubt has been

thrown on the meaning of the word in the judgment of **Mr. Justice Field.** I think that although the word "uniform" has the meaning it was intended to have-"one in form" throughout the Commonwealth-still there might be a difficulty, and litigation might arise about it, and prolonged trouble might be occasioned with regard to the provision in case, for instance, an income tax or a land tax was imposed. **What is really wanted is to prevent a discrimination between citizens of the Commonwealth in the same circumstances.** I beg to move-

That all the words after the word "taxation" where it is first used be struck out, and that the following words be substituted:-"but not so as to discriminate between states or parts of states, or between goods passing from one state to another."

I conceive it to be quite unnecessary to retain these words in view of clause 89, prescribing free-trade among the several states, under which any duty or tax on goods passing from one state to another would be clearly invalid, and could not possibly be allowed by the operation of the preference clauses. I propose not to say anything about goods in this connexion passing from one state to another, as that is sufficiently provided for, **and I put in this provision, which prevents discrimination or any form of tax which would make a difference between the citizen of one state and the citizen of another state, and to prevent anything which would place a tax upon a person going from one state to another.** I beg to move-

That all the words after the first word "taxation" in the second sub-section be omitted, with a view to inserting the following words-"**but not so as to discriminate between states or parts of states, or between persons or things passing from one state to another.**"

The amendment was agreed to.

END QUOTE

.

Hansard *11-3-1897* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE

Dr. QUICK.-Certainly, with regard to constitutional questions. I am prepared, if necessary, to give up the subject's right of appeal; but I emphatically assert that there should be a right of appeal from the decision of the High Court in regard to this Constitution, a Constitution embodying novel provisions and giving important powers, including the power of the Federal Court to review the procedure of Parliament. **The Federal High Court is empowered to-declare a law passed by both Houses and assented to by the Crown *ultra vires*, not because the Legislature has exceeded its jurisdiction, but because of some fault of procedure.** Appeals would be made only when there was a reasonable doubt in the minds of the responsible advisers of the Commonwealth that the decisions of the High Court were open to question. The knowledge of this right of appeal would be an incentive to the High Court to be most careful in its decisions, and especially in its early decisions. I need not enumerate the cases in which, if the amendment is carried, there will be no right of appeal. There will be no right of appeal in regard to the letter of the Constitution itself. There will be no opportunity to review a decision, for instance, in regard to legislation under clause 52, sub-section (1)-"The regulation of trade and commerce." **Then, again, it is provided that all taxation is to be uniform**, and all legislation under this provision will be taken out of the purview of the Privy Council.

END QUOTE

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Hansard *12-4-1897* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE

Mr. GLYNN **Does that put a maximum on military expenditure?**

Mr. PEACOCK: A maximum on all expenditure!

Mr. BARTON: It seems to me to put a maximum on all expenditure, **because the whole of the expenditure cannot exceed the total yearly expenditure in the performance of the services and powers given by the Constitution**, and any powers subsequently transferred from the States to the Commonwealth.

Mr. SYMON: Does that prevent any increase in case of war?

Mr. BARTON: Yes.

END QUOTE

.

Hansard *12-3-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE

Sir GEORGE TURNER (Victoria).-It seems to me that the question of direct taxation is again being drawn across the trail to catch votes. Under ordinary circumstances, a million or two million pounds could not be taken from the Customs revenue; but, suppose that an expenditure were undertaken, the Commonwealth would have to raise the money by direct-taxation. If the money were taken out of Customs revenue, and the clause were not in the Bill, there would be so much less surplus to return to the states, **and the states would have to make up the deficiency themselves by direct taxation.** These little words, "direct taxation," were used in the Finance Committee, and have been used since to try and frighten honorable members. If money cannot be raised by customs duties, it must be raised by direct taxation.

The amendment was negatived.

END QUOTE

Again;

QUOTE

and the states would have to make up the deficiency themselves by direct taxation.

END QUOTE

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Therefore, it must be clear that the States remained to have legislative powers to raise taxation, albeit, it appears that the High Court of Australia has ruled otherwise.

What is a ***Constitution*** for, if the true application of powers and limitations are incorrectly applied?

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I noticed from a 20-12-2009 Sunday Herald Sun report that the Ken Henry, Treasury may be proposing a “congestion tax” fro clogged cities. Only a few days earlier did I actually write to Kevin Rudd PM that while the Commonwealth of Australia has taxation powers it can however not use them as to micro manage internal State affairs as the Dutch are already implementing.

.

Hansard 17-4-1897 **Constitution Convention Debates**

QUOTE **Mr. SYMON:**

There can be no doubt as to the position taken up by Mr. Carruthers, and that many of the rules of the common law and rules of international comity in other countries cannot be justly applied here.

END QUOTE

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Hansard *2-3-1898* Constitution Convention Debates

QUOTE

Mr. REID.-**I suppose that money could not be paid to any church under this Constitution?**

Mr. BARTON.-**No; you have only two powers of spending money, and a church could not receive the funds of the Commonwealth under either of them.**

[start page 1773]

END QUOTE

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We will come back to this later also. In particular when we consider what **Quick & Garran** stated in regard of their references to U.S.A Authorities relied upon in regard of s.51(xxxi). But lets us consider also that some U.S.A. authorities can be applied to the commonwealth of Australia while others cannot because if the difference of constitutional provisions.

WELSH v. UNITED STATES, 398 U.S. 333 (1970), 398 U.S. 333**, *WELSH v. UNITED STATES*, CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 76., Argued January 20, 1970, Decided June 15, 1970**

QUOTE

1. The language of 6 (j) cannot be construed (as it was in United States v. Seeger, supra, and as it is in the prevailing opinion) to exempt from military service all individuals who in good faith oppose all war, it being clear from both the legislative history and textual analysis of that provision that Congress used the words "by reason of religious training and belief" to limit religion to its theistic sense and to confine it to formal, organized worship or shared beliefs by a recognizable and cohesive group. Pp. 348-354.

2. The question of the constitutionality of 6 (j) cannot be avoided by a construction of that provision that is contrary to its intended meaning. Pp. 354-356.

3. Section 6 (j) contravenes the Establishment Clause of the First Amendment by exempting those whose conscientious objection claims are founded on a theistic belief while not exempting those whose claims are based on a secular belief. To comport with that clause an exemption must be "neutral" and include those whose belief emanates from a purely moral, ethical, or philosophical source. Pp. 356-361.

4. In view of the broad discretion conferred by the Act's severability clause and the longstanding policy of exempting religious conscientious objectors, the Court, rather than nullifying the exemption entirely, should extend its coverage to those like petitioner who have been unconstitutionally excluded from its coverage. Pp. 361-367.

END QUOTE

QUOTE Chapter 12 “INSPECTOR-RIKATI® & How lawfully to avoid voting-CD”

QUOTE 4-6-2006 CORRESPONDENCE FAXED 10.36 pm 4-6-2006

WITHOUT PREJUDICE

Commonwealth Director of Public Prosecutions 4-6-2006
C/o **Judy McGillivray**, lawyer
Melbourne Office, 22nd Floor, 2000 Queen Street, Melbourne VIC 3000
GPO Box 21 A, Melbourne Vic 3001
Tel 03 9605 4333, Fax 03 9670 4295 ref; 02101199, etc
T01567737 & **Q01897630**

AND WHOM IT MAY CONCERN

Re; "**religious objection**" (Subsection 245(14) of the ***Commonwealth Electoral Act 1918***) offend Section 116 if the ***Constitution*** if it excludes **secular belief** based objections.

Madam,

As you are aware I continue to refer to my religious objection albeit do wish to indicate that while using the "**religious objection**" referred to in subsection 245(14) of the Commonwealth Electoral Act 1918 I do not consider that this subsection 14 limits an objection only to an "theistic belief" based "**religious objection**" but in fact it also includes any secular belief based "**religious objection**", as it must be neutral to whatever a person uses as grounds for an "**objection**". This, as Section 116 of the ***Constitution*** prohibit the Commonwealth of Australia to limit the scope of subsection 245(14) to only "**theistic belief**" based "**religious objections**". Therefore, any person having a purely moral, ethical, or philosophical source of "**religious objection**" have a valid objection.

Neither do I accept that a person making an "**religious objection**" requires to state his/her religion, and neither which part of his/her religion provides for a "**religious objection**" as the mere claim itself is sufficient to constitute what is referred to in subsection 245(14) as being a "religious objection". Therefore, the wording "**religious objection**" is to be taken as "**objection**" without the word "**religion**" having any special meaning in that regard.

If you do not accept this as such, then there is clearly another constitutional issue on foot!

I request you to respond as soon as possible and set out your position in this regard.

Awaiting your response, **G. H. SCHOREL-HLAVKA**

END QUOTE 4-6-2006 CORRESPONDENCE FAXED 10.36 pm 4-6-2006

END QUOTE Chapter 12 "INSPECTOR-RIKATI® & How lawfully to avoid voting-CD"

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This (***WELSH v. UNITED STATES, 398 U.S. 333 (1970)***) is an Authority that I also used successfully in court as to the issue of where the Commonwealth provides for religious exclusions then this must include also secular exclusions. Such as if a person is excused from voting on religious grounds then likewise an excuse is on a secular ground. You cannot differentiate on being a religious person or being an atheist, etc.

On 19 July 2006 The County Court of Victoria upheld both my cases against the Commonwealth of Australia and by this a 5 year epic legal battle came to an end in which I comprehensively defeated the Commonwealth of Australia on all constitutional issues I submitted , including the issue about "**citizenship**". (SEE ALSO BELOW)

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If therefore any religious body can obtain tax exemption for being a "religious body" then any "non-religious" body likewise must be provided with tax-exemption!

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Constitutionally, if a religious body can have tax exemption then likewise it must be provided to any religious body as failing to do so would be in clear breach of s.116 of the constitution!

.

Of any "religious body" can obtain tax-exemption then any "non-religious" body likewise must be provided with tax exemption.

.

As a "**person**" includes a "**corporation**" then

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HANSARD *16-3-1898* **Constitution Convention Debates** (**Official Record of the Debates of the National Australasian Convention**)

QUOTE

Mr. BARTON (New South Wales).-No, there would be no prohibition in that respect. **The offices of Speaker and Chairman of Committees are not offices of profit under**

the Crown. They are parliamentary offices, and Parliament has always retained a power over its own Estimates to the extent that really the Speaker and President of the local Chambers have always exercised a right to submit their own Estimates, and those Estimates, as a rule, as far as I know in practice in my own colony, are altogether untouched by the Government of the day. Now, these are political offices, but not offices of profit under the Crown. I think that that is the principle that Parliament has always asserted in England and elsewhere. As to the word "**person**," the British Interpretation Act of 1889, which will be largely applied to the construction of this statute by the Imperial authorities, provides that where the word "**person**" is used, unless the Act otherwise provides, the word "**corporation**" shall be included.

Mr. HIGGINS (Victoria).-If a man agrees to get paid for services done in Parliament, or for the Commonwealth, and if he does the work, and, having done the work, he resigns, is there no penalty? Is there no punishment in such a case for a man who guarantees that he will use his position in Parliament in order to make money, and, having made it, resigns!

Mr. BARTON (New South Wales).-No; and there is a reason for that. If I recollect correctly there was some provision in the Bill in Adelaide in that respect, but that provision was omitted in the sitting of the Convention at Sydney as a matter [start page 2449] of policy. Mr. O'Connor suggests that it is quite probable that in such a case an action would lie at **common law**. However that may be, the policy of inserting such a provision was reversed in Sydney, and therefore the Drafting Committee could not frame any proposal to that effect.

END QUOTE

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QUOTE

An 1886 Supreme Court decision ruled corporations are persons

FALSE

The Definition Was Only Found in the Headnotes

In 1886, John Chandler Bancroft Davis (1822-1907), added commentary in the headnotes to the case of Santa Clara County v. Southern Pacific Railroad Company that defined a corporation as a legal person. Davis was the former president of the Newburgh & New York Railroad, and Reporter of the U.S. Supreme Court (in which capacity he authored the headnotes.) It could be said he had a conflict of interest. Contrary to popular belief, the court did *not* rule that corporations are persons: Davis simply added it in the headnotes (commentary) on his own, and subsequent courts have incorrectly based decisions since 1886 on the headnotes and not the case.

The Case Avoided Constitutional Judicial Review

Supreme Court Correspondence Uncovered:

Michael Kinder recently uncovered a letter from Supreme Court Chief Justice Morrison Remick Waite to court reporter J.C. Bancroft Davis informing Davis that it didn't really matter whether or not he included a comment about the arguments before the court that corporations were persons "as we avoided meeting the constitutional questions in the decision."

(Michael Kinder found this letter in the J.C. Bancroft Davis collection of personal papers in the National Archives in Washington, DC, where they had been sitting, unnoticed, for over a century.)

Davis writes, after quoting language stating that corporations are persons, "please let me know whether I correctly caught your comments and oblige [reply]."")

(In his reply to Davis, Waite writes: "I think your mem. in the California Rail Road tax cases expresses with sufficient accuracy what was said before the arguments began. I leave it with you to determine whether anything need be said about it in the report inasmuch as we avoided meeting the Constitutional question in the decision.")

(Above: Delphin M. Delmas, the attorney who in 1882 successfully, single handedly, and *pro bono* argued before the California legislature to save the last remaining redwood trees in that state, and in 1886 made an eloquent and successful defense of "human rights for humans only" before the U.S. Supreme Court in 1885/1886 in the *Santa Clara* case.)

The Case Is Often Cited Incorrectly

This case is often incorrectly cited as holding that corporations, as juristic persons, are protected by the Fourteenth Amendment.[2] Although the question of whether corporations were persons within the meaning of the Fourteenth Amendment had been argued in the lower courts and briefed for the Supreme Court, the Court did not base its decision on this issue. However, before oral argument took place, Chief Justice Morrison R. Waite announced: "The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does."[3] This quotation was printed by the court reporter in the syllabus and case history above the opinion, but was not in the opinion itself. As such, it did not have any legal precedential value.[4] Nonetheless, the persuasive value of Waite's statement did influence later courts.[5] For these reasons, it is considered a turning point in the extension of constitutional rights to juristic persons.[6]

Book Quotations:

Quoting from David Korten's *The Post-Corporate World, Life After Capitalism* (pp.185-6):

In 1886, . . . in the case of *Santa Clara County v. Southern Pacific Railroad Company*, the U.S. Supreme Court decided that a private corporation is a person and entitled to the legal rights and protections the Constitutions affords to any person. Because the Constitution makes no mention of corporations, it is a fairly clear case of the Court's taking it upon itself to rewrite the Constitution.

Far more remarkable, however, is that the doctrine of corporate personhood, which subsequently became a cornerstone of corporate law, was introduced into this 1886 decision without argument. According to the official case record, Supreme Court Justice Morrison Remick **Waite** simply pronounced before the beginning of arguement in the case of *Santa Clara County v. Southern Pacific Railroad Company* that:

The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to **any** person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of **opinion** that it does.

The court reporter duly entered into the summary record of the Court's findings that

The defendant Corporations are persons within the intent of the clause in section 1 of the Fourteen Amendment to the Constitution of the United States, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws.

Thus it was that a two-sentence assertion by a single judge elevated corporations to the status of persons under the law, prepared the way for the rise of global corporate rule, and thereby changed the course of history.

The doctrine of corporate personhood creates an interesting legal contradiction. The corporation is owned by its shareholders and is therefore their property. If it is also a legal person, then it is a person owned by others and thus exists in a condition of slavery -- a status explicitly forbidden by the Thirteenth Amendment to the Constitution. So is a corporation a person illegally held in servitude by its shareholders? Or is it a person who enjoys the rights of personhood that take precedence over the presumed ownership rights of its shareholders? So far as I have been able to determine, this contradiction has not been directly addressed by the courts.

Sources:

1. Santa Clara County v. Southern P. R. Co., 118 U.S. 394 (U.S. 1886) (Lexis-Nexis summary)
2. [1]
3. 118 U.S. 394 (1886) - According to the official court Syllabus in the United States Reports
4. Thomas Van Flein. "Headnotes and the Course of History." The Alaska Bar Rag. May/June, 2003 (27 AK Bar Rag 2)
5. Shepard's summary for 118 U.S. 394
6. [2]
7. Hartmann, Thom *Unequal Protection (2002)*

Santa Clara County v. Southern Pacific Railroad. (2007, December 10). In *Wikipedia, The Free Encyclopedia*. Retrieved 03:20, February 8, 2008, from http://en.wikipedia.org/w/index.php?title=Santa_Clara_County_v._Southern_Pacific_Railroad&oldid=177083252

External links

- Full text of the decision & case resources from Justia & Northwestern-Oyez
- Barry Yeoman, When Is a Corporation Like a Freed Slave?, Mother Jones
- "Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights" by Thom Hartmann

END QUOTE

Essentially if the Commonwealth of Australia unconstitutionally exempts any religious body from taxation then any other person is legitimately entitled not to pay taxation either! Consider the *WELSH v. UNITED STATES, 398 U.S. 333 (1970* Authority!

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QUOTE 26-11-2009 correspondence to Kevin Rudd PM

Kevin Rudd PM

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Kevin,

I understand that the Commonwealth of Australia is providing funding, being it through tax concessions, special funding, etc to RELIGIOUS organizations but refuse to do the same for ATHEIST FOUNDATION OF AUSTRALIA INC.

I do not belong to either any religious group or to ATHEIST FOUNDATION OF AUSTRALIA INC, and as such has no financial interest in this. As a CONSTITUTIONALIST, I do view however that any funding for one but not equally to the

other would be a breach of constitutional prohibitions. Any funding or indirect funding, such as tax concessions, must if provided to a religious body likewise must be provided to a non-religious body as failing to do so would breach the provisions of 116 of the federal constitution.

Consider the quotations also below;

QUOTE, The Age, KATE LAHEY *November 26, 2009 - 11:16AM*

> The Parliament of the World's Religions begins on December 3 at the new Melbourne Convention and Exhibition Centre and has also received $2 million from the Federal Government and $500,000 from the Melbourne City Council.

END QUOTE

And

QUOTE regarding non-funding of ATHEIST FOUNDATION OF AUSTRALIA INC

> Government spokesman Luke Enright said: "The decision not to fund this event has nothing to do with religious ideology – the convention just doesn't meet the criteria required to receive government funding".

END QUOTE

.

As you may recall on 19 July 2006 I defeated the Commonwealth of Australia comprehensively after a 5-year epic legal battle and one issue I had raised as a **CONSTITUTIONALIST** is that the Commonwealth of Australia could not provide religious benefits not provided to atheist.

END QUOTE 26-11-2009 correspondence to Kevin Rudd PM

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In my vie, as a **CONSTITUTIONALIST**, a refusal to fund "**ATHEIST FOUNDATION OF AUSTRALIA INC.**" in the same manner as any religious body causes the funding for the religious bodies to be unconstitutional. Indeed, even if I were to claim a non-religious status then the commonwealth would be obligated to provide me with the same kind of funding as a religious body as to deny such funding would cause the funding for religious bodies to be unconstitutional. As such, if a sporting body likewise seek funding for meetings, or for that matter any other private organization, being it the scouts, bike group, push bike club, soccer club or whatever they all then should be provided with Commonwealth funding if they too hold an annual meeting as may companies when they hold their AGM's! Any specific funding or taxation deduction and/or tax exemption upon the basis of religion would be unconstitutional. The religious component has no place in taxation matters for the Commonwealth of Australia and likewise would offend State embedded legal principles of a separation of Church and State. The following should be applied to any issue regarding religion:

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http://www.answers.com/topic/lemon-v-kurtzman

QUOTE

US Supreme Court:

Lemon v. Kurtzman

> 403 U.S. 602 (1971), argued 3 Mar. 1971, decided 28 June 1971 by vote of 7 to 0; Burger for the Court, Brennan and White concurring in part and dissenting in part, Marshall not participating. In this case, the Court considered the constitutionality of the Rhode Island Salary Supplement Act of 1969 and Pennsylvania's Non- Public Elementary and Secondary Education Act of 1968. Both laws allowed the state to support directly the salaries of teachers of secular subjects in parochial and other nonpublic schools.

The issue was whether these laws violate the First Amendment religion clauses, which

prohibit laws that "respect" the establishment of religion or limit its free exercise. In this case the Court established what has come to be known as the Lemon Test, which Chief Justice Warren Burger called "cumulative criteria developed by the Court over many years" (p. 642), to consider the constitutionality of statutes under the Establishment Clause. The Lemon Test added a new "excessive entanglement" prong to the existing requirements that such laws be for a secular legislative purpose (*Abington School District* v. *Schempp*, 1963) and that their primary effect neither advance nor inhibit religion (*Board of Education v. Allen*, 1968).

The Court held that both statutes violated the excessive entanglement strand of the new test. The Court was particularly concerned that teachers in a parochial school setting, unlike the mere provision of secular books, may improperly involve faith and morals in the teaching of secular subjects; further, continuing surveillance by states to avoid this situation would nonetheless involve "excessive and enduring entanglement between state and church" (p. 619). Alluding to Thomas Jefferson's famous metaphor of a "wall of separation between church and state," which the Court had previously employed to define the meaning of the Establishment Clause, Burger observed that "far from being a wall," it is a "blurred, indistinct, and a variable barrier depending on all the circumstances of a particular relationship" (p. 614).

To ensure the separation of church and state, the state would have to undertake a comprehensive, discriminating, and continuing surveillance of religious schools, including state audits and on- school visits. The Court also found that these laws foster a broader, yet different type of entanglement—the potential for divisive politics among those who support and those who oppose state aid to religious education. Although the Court has viewed political division along religious lines as one of the principal evils that the First Amendment was designed to prevent, it chose not to make fear of political divisiveness a separate and fourth tier of the test.

Attempts have been made to replace the Lemon Test with the Coercion Test, which would emphasize limiting government from coercing individuals in their free exercise of religion, and denude the Lemon Test of its "excessive entanglement" prong. These have failed as demonstrated in landmark school prayer cases such as *Lee* v. *Weisman* (1992), which outlawed school prayer at a middle school graduation, and *Santa Fe Independent School District v. Doe* (2000), which prohibited high school students from voting whether to have "invocations" at football games and choosing the person to deliver them. In *Zelman* v. *Simmons- Harris* (2002), a case in which the Supreme Court permitted school voucher programs, all prongs of the Lemon Test continued to be important to a majority of justices.

END QUOTE

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http://www.answers.com/topic/lemon-v-kurtzman

QUOTE

Lemon test

The Court's decision in this case established the "**Lemon test**", which details the requirements for legislation concerning religion. It consists of three prongs:

4. *The government's action* ***must have a secular legislative purpose****;*
5. *The government's action* ***must not have the primary effect of either advancing or inhibiting religion****;*

6. *The government's action* ***must not result in an "excessive government entanglement" with religion.***

If any of these 3 prongs are violated, the government's action is deemed unconstitutional under the Establishment Clause of the First Amendment to the United States Constitution.

The act stipulated that "eligible teachers must teach only courses offered in the public schools, using only materials used in the public schools, and must agree not to teach courses in religion." Still, a three-judge panel found 25% of the State's elementary students attended nonpublic schools, about 95% of those attended Roman Catholic schools, and the sole beneficiaries under the act were 250 teachers at Roman Catholic schools.

The court found that the parochial school system was "an integral part of the religious mission of the Catholic Church," and held that the Act fostered "excessive entanglement" between government and religion, thus violating the Establishment Clause.[1]

Held: Both statutes are unconstitutional under the Religion Clauses of the First Amendment, as the cumulative impact of the entire relationship arising under the statutes involves excessive entanglement between government and religion.[1]

Later developments

Lemon's future is somewhat uncertain. Sustained criticism by conservative Justices such as Antonin Scalia and Clarence Thomas, lack of a clear reaffirmation of the central tenets of *Lemon* over the years since the 1980s, and inconsistent application in major Establishment Clause cases has led some legal commentators and lower court judges to believe that *Lemon*'s days are numbered, and that the Court has implicitly left the decision of whether to apply the test in a specific case up to lower courts.[*citation needed*] This has resulted in a patchwork pattern of enforcement in circuit courts across the nation; while some courts apply *Lemon* in all or most cases, others apply it in few or none.[*citation needed*] The Supreme Court itself has applied the *Lemon* test as recently as 2000 in *Santa Fe Independent School District v. Doe*.[2]

See also

- List of United States Supreme Court cases, volume 403
- Sherbert Test
- Endorsement test
- *Lee v. Weisman*
- *Kitzmiller v. Dover Area School District*

Further reading

- Alley, Robert S. (1999). *The Constitution & Religion: Leading Supreme Court Cases on Church and State*. Amherst, NY: Prometheus Books. pp. 82–96. ISBN 1573927031.
- Kritzer, Herbert M.; Richards, Mark J. (2003). "Jurisprudential Regimes and Supreme Court Decisionmaking: The *Lemon* Regime and Establishment Clause Cases". *Law & Society Review* **37** (4): 827–840. doi:10.1046/j.0023-9216.2003.03704005.x.

END QUOTE

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http://thirdsectornews.ursulastephens.com/

QUOTE

Standard Chart of Accounts Project

The Standard Chart of Accounts consists of a set of accounts that can be set up in most accounting software systems. It also provides a standard data dictionary for guidance on how to process transactions and decide which transactions go to which accounts. The Standard Chart of Accounts makes financial data consistent across community organisations and is part of the Government's commitment to smarter regulation in the sector.

The Centre of Philanthropy and Nonprofit Studies (CPNS) at Queensland University of Technology in partnership with several non-profit organisations developed the Standard Chart of Accounts Project in 2007. Since then, it has been adopted by several states, and in December last years was supported through COAG as one of the best ways to reduce red tape for organisations. The Communique from the Dec 9 COAG meeting said:

"To ensure that the regulatory burden on not-for-profit sector organisations is minimised, COAG agreed to allow these organisations to meet a range of requirements with one system of a Standard Chart of Accounts for not-for-profit organisations in receipt of government grants."

Information about the **Standard Chart of Accounts Project** at the Centre for Philanthropy and non-Profit Studies is available for all states here

END QUOTE

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One has to ask how on earth can **CoAG** (Council of Australian governments) decide about non-for-profit matters when the States either separately or collectively can have anything to do with the commonwealth of Australia taxation powers? Again, as shown in this document the Framers of the Constitution made clear that when it came to State purchases or railway items then it could not be excused of paying costumes/duties or other taxation! As such call it **NOT-FOR-PROFIT** or **NON PROFIT** in the end the **RULE OF LAW** must be applied that religion plays no part in it.

.

While I understand that there are people who have a dislike for entities like the **EXCLUSIVE BRETHERN**, **SIENTOLOGY**, **HILL SIDE CHURCH**, etc, because of what they deem objectionable conduct, in reality for taxation purposes it makes not one iota difference if they are or are not religious entities or whatever they desire to aspire to as any consideration as to religion is unconstitutional! Any State classification on religious bases to be regarded **NON PROFIT** cannot be maintains and so not applied for Commonwealth of Australia taxation purposes. Meaning that any taxation exemptions of the past must be held **NULL AND VOID** and as much as the Commonwealth of Australia seeks to reclaim taxes of others who are deemed not to have paid appropriate taxation then likewise the Commonwealth must ensure that any religious based qualification for **NON PROFIT** organization is caused to payback any unpaid taxes. The commonwealth cannot whatsoever excuse any such religious entity from paying the unpaid taxes because if it were to do so then it can neither demand of anyone else to pay overdue taxes.

Likewise, any tax deductions to religious bodies, of any kind, are unconstitutional and cannot be permitted and likewise any tax exemptions.

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EITHER WE HAVE A CONSTITUTION OR WE DON"T!

(I know in proper English it is "**We either have a constitution or we don't!**", but this my slogan!)

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The following is from the **ATO** website and clearly providing for "**RELIGIOUS**" consideration regardless this being **UNCONSTITUTIONAL**.

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http://www.ato.gov.au/nonprofit/

QUOTE http://www.ato.gov.au/nonprofit/content.asp?doc=/content/64248.htm

Induction package for new administrators

If you are a new treasurer, office bearer or employee involved in the administration of a non-profit organisation - such as a charity, club, society or association - this package introduces you to the information and services we have to assist you in your role.

The package is also useful for existing non-profit administrators, as it contains an overview of non-profit tax issues and links to other sections of our website.

View the *Induction package for non-profit administrators*

Do you know about our free email update service for non-profits?

You can subscribe to the Non-Profit Organisations area of our website and receive free email updates when information is updated or added, including articles from our ***Non-Profit News Service***.

It will keep you up-to-date on key tax issues affecting the non-profit sector, new publications we release for non-profit organisations, and changes to the tax law.

Find out how to subscribe and view previous articles.

We welcome your feedback

The information contained in this package will be reviewed regularly and updated when necessary. Feedback is welcomed and can be sent by email to npc-publications@ato.gov.au

Last Modified: Wednesday, 29 August 2007

END QUOTE

QUOTE http://www.ato.gov.au/nonprofit/content.asp?doc=/content/00226265.htm

Non-Profit News Service No. 0262 - Public ancillary funds breaching trust obligations

We have found that a number of public ancillary funds endorsed as deductible gift recipients (DGRs) are in breach of their trust deed. Common errors identified in our reviews include:

- distributions paid directly to entities located offshore
- benefits provided to non-DGRs located in Australia
- distributions to other ancillary funds.

These disbursements are inconsistent with the trust obligations of a fund claiming to meet the character of a public ancillary fund and endorsed as a DGR.

Public ancillary funds are public funds established and maintained under a will or instrument of trust solely for the purpose of providing money, property or benefits to DGRs or the establishment of DGRs.

An ancillary fund must be exclusively for these purposes. It must not carry on any other activities. It is like a conduit or temporary repository for channelling gifts to other DGRs. An ancillary fund must not provide for or establish other ancillary funds.

Example

Recent reviews of public ancillary funds found that a number of entities had remitted funds directly offshore to entities that were not DGRs. Other funds were found to be distributing to entities, located within Australia, that were not DGRs or they had made distributions to other ancillary funds. These distributions were inconsistent with the purposes recorded in their trust deed.

While the actions of the trustees were well intended and the aim was to assist individuals and communities in need, the disbursements were not in keeping with their trust obligations. Public ancillary fund trust deeds reflected purposes consistent with public ancillary fund endorsement, yet trustees had failed to comply with the purposes outlined in the deed.

DGR endorsement is available to organisations and funds that meet the character and requirements of the DGR categories. Where an entity's foundation documents record it as having a particular purpose and its actions are inconsistent with that purpose, it places its endorsement at risk.

What can you do?

- Review your organisation's entitlement to endorsement.
- Advise us in writing if you stop being entitled.
- Avoid tax problems through good governance.

More information

- The requirements for public ancillary funds
- How to review DGR endorsement status

For information about the Non-Profit News Service, including how to subscribe and links to previous articles, see *About the Non-Profit News Service*.

We encourage your feedback and suggestions for future topics to be covered by the news service. You can do this by:

- email: npc-publications@ato.gov.au
  phone: **1300 130 248**.

Last Modified: Tuesday, 12 January 2010

END QUOTE

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QUOTE http://www.ato.gov.au/businesses/content.asp?doc=/content/33844.htm

GST concessions for non-profit organisations - Tax basics for non-profit organisations

Note: This document forms part of our publication *Tax basics for non-profit organisations***.** To view the full publication, click here. The information in this document has been updated for changes that have occurred since the publication was released in June 2007.

Introduction

There are a range of GST concessions that are available to non-profit organisations.

GST concession	Explanation of concession
Gifts – a gift to a non-profit organisation is not consideration for a supply.	See Gifts
School tuck shops – a non-profit organisation may sell food through a tuck shop or canteen at a primary or secondary school and treat the sales as input taxed.	See School tuck shops
GST registration threshold – the registration turnover threshold is higher for non-profit organisations than for other organisations.	See GST registration threshold
GST groups – the requirement to satisfy the 90% ownership test is waived where the entity is a non-profit organisation and all the other members of the GST group or proposed GST group are non-profit organisations and members of the same non-profit association.	GST groups

There are additional GST concessions for charities, gift deductible entities and government schools.

See the table.

Gifts

A gift made to a non-profit organisation is not consideration for a sale and is not subject to GST. The value of a gift is also excluded when calculating the non-profit organisation's GST turnover.

For a payment to be considered a gift it must be made voluntarily and the payer cannot receive a material benefit in return:

- A payment is not voluntary when there is an obligation to make the payment or the non-profit organisation is contractually obliged to use the payment in a specific way.

- A benefit is not a material benefit if it is an item of insubstantial value that cannot be put to a use or is not marketable, such as a pin or a ribbon. An item of greater value, such as a ticket to a dinner, or an item that has a use or function, such as a pen or a book, is a material benefit.

For more information refer to *Non-profit organisations and fundraising* (NAT 13095).

To obtain this publication, see More information.

School tuck shops

If a non-profit organisation (for example, a Parents and Citizens Association) operates a school tuck shop on the grounds of a primary or secondary school, it can choose to treat all sales of food through the tuck shop as input taxed.

This means that the organisation does not charge GST on its sales, and does not claim GST credits for its purchases.

As input taxed sales are not included when calculating the GST turnover for GST registration purposes, choosing to treat all sales of food as input taxed may mean that the organisation does not have to register for GST.

There are certain conditions that must be met in order to apply this concession. For more information refer to *Non-profit organisations and fundraising* (NAT 13095).

To obtain this publication, see More information.

GST registration threshold

The GST registration threshold for a non-profit organisation is $150,000. This means your non-profit organisation is not required to be registered for GST unless the GST turnover of your organisation is $150,000 or more.

You may still choose to register your organisation for GST if its GST turnover is less than $150,000. The decision to voluntarily register for GST is one that ought to be based on the administrative needs of your organisation. Some organisations may choose not to register for GST because they consider the GST reporting requirements to be a greater burden than the benefit they would receive, for example, access to GST credits.

Last Modified: Tuesday, 11 September 2007

END QUOTE

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QUOTE http://www.ato.gov.au/nonprofit/content.asp?doc=/content/33547.htm

GST branches, groups and non-profit sub-entities - Tax basics for non-profit organisations

Note: This document forms part of our publication *Tax basics for non-profit organisations***.** To view the full publication, click here. The information in this document has been updated for changes that have occurred since the publication was released in June 2007

Introduction

There are a number of options available to non-profit organisations in relation to how they structure their organisation for GST purposes.

Last Modified: Monday, 12 November 2007

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END QUOTE

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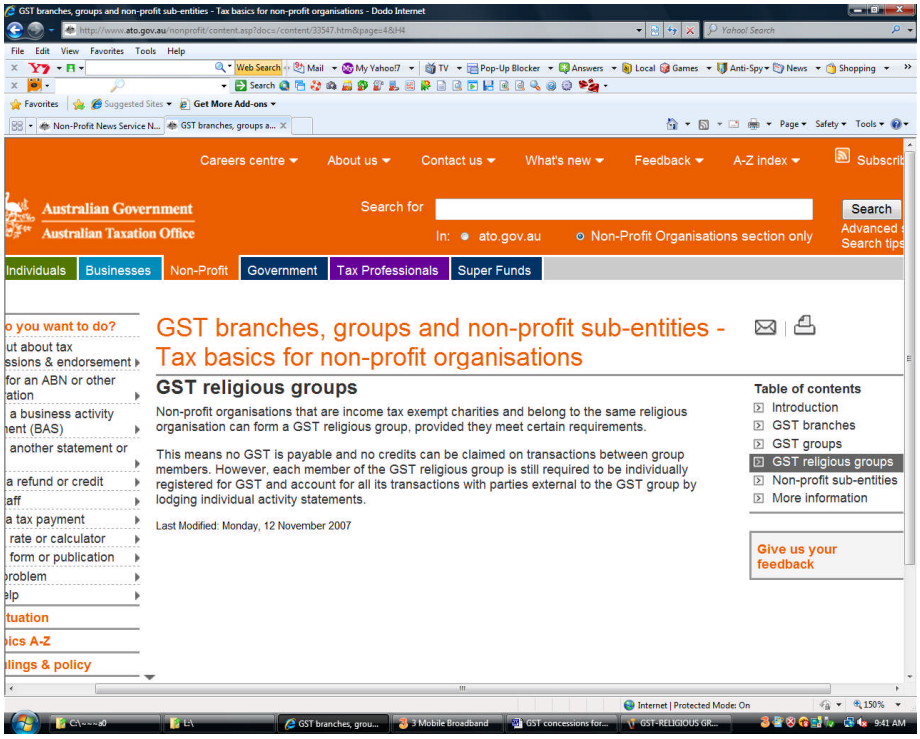

QUOTE http://www.ato.gov.au/nonprofit/content.asp?doc=/content/33547.htm&page=4&H4

GST branches, groups and non-profit sub-entities - Tax basics for non-profit organisations

GST religious groups

Non-profit organisations that are income tax exempt charities and belong to the same religious organisation can form a GST religious group, provided they meet certain requirements.

This means no GST is payable and no credits can be claimed on transactions between group members. However, each member of the GST religious group is still required to be individually registered for GST and account for all its transactions with parties external to the GST group by lodging individual activity statements.

Last Modified: Monday, 12 November 2007

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EXAMPLES of Authorities Relied upon by this website.

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QUOTE http://law.ato.gov.au/atolaw/execute_search_java.htm

All results: 1 to 20 of 497

ATO Decisions (ATO ID & CDS), ATO Interpretative Decisions

1. ATO ID 2001/65
   Taxation Classification of a Trust
2. ATO ID 2001/332
   Fringe Benefits Tax : Religious Practitioner's Exemption
3. ATO ID 2002/389 (Withdrawn)
   Superannuation guarantee scheme: employment status
4. ATO ID 2003/408
   Assessability of employment income received from Fiji by resident taxpayer
5. ATO ID 2003/1001
   Capital Allowances: project pools - project amount - community infrastructure
6. ATO ID 2004/438
   GST and supply of a religious pastoral ministry course
7. ATO ID 2004/666
   Withholding tax obligation: payment to religious practitioners performing marriage services

8. ATO ID 2004/765
   GST and religious practitioner purchasing religious tracts and selling to church members
9. ATO ID 2004/766
   GST and religious practitioner writing a book about a particular aspect of the history of the religious institution of which they are a member and selling the book to the public
10. ATO ID 2004/767
    GST and activity by a self-appointed spiritual leader of writing and selling booklets setting out beliefs and practices of their group
11. ATO ID 2006/112
    GST and annual conference held by a religious institution

ATO Decisions (ATO ID & CDS), ATO Case Decision Summaries

12. CDS10141
    Is a student engaged in full time religious studies, but being paid an 'allowance' by a church, considered an employee ?
13. CDS10349
    Is the taxpayer a 'public educational institution' for the purposes of Item 1.4 of section 50-5 (Income Tax Assessment Act 1997 (ITAA 1997))?

Case Judgments, Administrative Appeals Tribunal

14. Case A45 (22 August 1969.)
    Judgment by G. Thompson (Member):
15. Case No B 93/1967 (15 August 1969.)
    Judgment by F.E. Dubout (Chairman):
16. Case No B 93/1967 (15 August 1969.)
    Judgment by G. Thompson (Member):
17. Case D20 (17 May 1972.)
    Judgment by R.E. O'Neill (Member):
18. Case No B 17/1971 (14 June 1974.)
    Judgment by G. Thompson (Member):
19. Case No 7/1974 (5 March 1976.)
    Judgment by R.E. O'Neill (Member):
20. Case No 58/1976 (21 April 1978.)
    Judgment by R.E. O'Neill (Member):

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http://law.ato.gov.au/atolaw/results_java.htm?rank=find&cat=ALL&criteria=AND~RELIGION~basic~exact&target=ALL&style=java&recStart=21&PiT=99991231235958

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39. Council of Dominican Sisters of Australia v. Commissioner for ACT Revenue Collections - (14 January 1991) (14 January 1991)
    Judgment by RK Todd (Deputy President):
40. Australian Institute of Management (Vic) and Commissioner of State Revenue (Vic), Re - (3 November 1995) (3 November 1995)
    Judgment by GAA Nettle:

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http://law.ato.gov.au/atolaw/results_java.htm?rank=find&cat=ALL&criteria=AND~RELIGION~basic~exact&target=ALL&style=java&recStart=41&PiT=99991231235958

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53. Faith Baptist Church Inc v Chief Commissioner of State Revenue (Rd) (14 May 2008)

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http://law.ato.gov.au/atolaw/results_java.htm?rank=find&cat=ALL&criteria=AND~RELIGION~basic~exact&target=ALL&style=java&recStart=101&PiT=99991231235958

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Case Judgments, High Court

109. Giris Pty Ltd v. Federal Commissioner of Taxation - (5 March 1969) (Judgment handed down 5 March 1969.)
     Judgment by Windeyer J.:
110. Church of the New Faith v. Commissioner of Pay-roll Tax (Vict.) - (27 October 1983) (Judgment handed down 27 October 1983.)

Judgment by Mason A.C.J. and Brennan J.:

111. Church of the New Faith v. Commissioner of Pay-roll Tax (Vict.) - (27 October 1983) (Judgment handed down 27 October 1983.)
Judgment by Murphy J.:

112. Church of the New Faith v. Commissioner of Pay-roll Tax (Vict.) - (27 October 1983) (Judgment handed down 27 October 1983.)
Judgment by Wilson and Deane JJ.:

113. SGH Ltd v. Federal Commissioner of Taxation - (1 May 2002) (1 May 2002)
Judgment by Gleeson CJ, Gaudron, McHugh and Hayne JJ:

114. Federal Commissioner of Taxation v. Stone - (26 April 2005) (26 April 2005)
Judgment by Kirby J:

115. Central Bayside General Practice Association Ltd v. Commissioner of State Revenue - (31 August 2006) (31 August 2006)
Judgment by Kirby J:

116. Central Bayside General Practice Association Ltd v. Commissioner of State Revenue - (31 August 2006) (31 August 2006)
Judgment by Callinan J:

117. Federal Commissioner of Taxation v. Word Investments Ltd - (3 December 2008) (3 December 2008)
Judgment by Gummow, Hayne, Heydon and Crennan JJ:

118. Federal Commissioner of Taxation v. Word Investments Ltd - (3 December 2008) (3 December 2008)
Judgment by Kirby J:

119. Byrne v Australian Airlines Ltd (3 May 1995)
Judgment by McHugh J; Gummow J

120. Barby v Perpetual Trustee Co Ltd (25 November 1937)
Judgment by Dixon J

END QUOTE

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http://law.ato.gov.au/atolaw/results_java.htm?rank=find&cat=ALL&criteria=AND~RELIGION~basic~exact&target=ALL&style=java&recStart=121&PiT=99991231235958

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121. Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation (20 June 1919)
Judgment by HIGGINS J (1)

122. Sisters of Mercy Property Association v. Newtown and Chilwell Corporation (6 November 1944)
Judgment by Latham CJ

123. Sisters of Mercy Property Association v. Newtown and Chilwell Corporation (6 November 1944)
Judgment by Williams J

124. Kartinyeri v The Commonwealth (1 April 1998)
Judgment by Kirby J

125. AMS v AIF; AIF v AMS (17 June 1999)
Judgment by Callinan J

126. BANK OFFICIALS' ASSOCIATION (SOUTH AUSTRALIAN BRANCH) v SAVINGS BANK OF SOUTH AUSTRALIA (6 June 1923)
Judgment by HIGGINS J

127. Chesterman v. Federal Commissioner of Taxation (6 June 1923)
Judgment by HIGGINS J

128. Congregational Union of New South Wales v. Thistlethwayte (29 August 1952)
Judgment by DIXON CJ; McTIERNAN J; WILLIAMS J; FULLAGAR J

129. Doodeward v Spence (22 May 1908)
Judgment by Griffith CJ

130. Doodeward v Spence (22 May 1908)
Judgment by Higgins J

131. Public Trustee v Federal Commissioner of Taxation (13 November 1964)
Judgment by Windeyer J

132. The Queen v. Winneke; Ex Parte Gallagher (16 DECEMBER 1982)
Judgment by Murphy

133. Victoria, South Australia and Western Australia v. Commonwealth (4 SEPTEMBER 1996)
Judgment by Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ

134. Victoria, South Australia and Western Australia v. Commonwealth (4 SEPTEMBER 1996)
Judgment by Dawson J

135. Applicant A & anor v. Minister for Immigration & Ethnic Affairs & anor (24 FEBRUARY 1997)
Judgment by Brennan CJ
136. Applicant A & anor v. Minister for Immigration & Ethnic Affairs & anor (24 FEBRUARY 1997)
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137. Applicant A & anor v. Minister for Immigration & Ethnic Affairs & anor (24 FEBRUARY 1997)
Judgment by McHugh J
138. Applicant A & anor v. Minister for Immigration & Ethnic Affairs & anor (24 FEBRUARY 1997)
Judgment by Gummow J
139. Applicant A & anor v. Minister for Immigration & Ethnic Affairs & anor (24 FEBRUARY 1997)
Judgment by Kirby J
140. Kruger & Anors v. Commonwealth (31 JULY 1997)
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http://law.ato.gov.au/atolaw/results_java.htm?rank=find&cat=ALL&criteria=AND~RELIGION~basic~exact&target=ALL&style=java&recStart=141&PiT=99991231235958

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141. Kruger & Anors v. Commonwealth (31 JULY 1997)
Judgment by Brennan CJ
142. Kruger & Anors v. Commonwealth (31 JULY 1997)
Judgment by Dawson J
143. Kruger & Anors v. Commonwealth (31 JULY 1997)
Judgment by Toohey J
144. Kruger & Anors v. Commonwealth (31 JULY 1997)
Judgment by Gaudron J
145. Kruger & Anors v. Commonwealth (31 JULY 1997)
Judgment by McHugh J
146. Kruger & Anors v. Commonwealth (31 JULY 1997)
Judgment by Gummow J
147. Newcrest Mining (WA) Ltd & Another v. Commonwealth & Another (14 AUGUST 1997)
Judgment by Kirby J
148. Lemm v. Federal Commissioner of Taxation (26 November 1942)
Judgment by Williams J
149. Monds v. Stackhouse (December 23 1948)
Judgment by Latham CJ
150. Attorney-General (NSW) v. Perpetual Trustee Co (LTD) (28 June 1940)
Judgment by Latham CJ
151. Roman Catholic Archbishop of Melbourne v Lawlor & Ors; His Holiness the Pope v National Trustees, Executors and Agency Co of Australiasia Ltd & Ors (23 May 1934)
Judgment by Gavan Duffy CJ; Evatt J
152. Roman Catholic Archbishop of Melbourne v Lawlor & Ors; His Holiness the Pope v National Trustees, Executors and Agency Co of Australiasia Ltd & Ors (23 May 1934)
Judgment by Rich J
153. Roman Catholic Archbishop of Melbourne v Lawlor & Ors; His Holiness the Pope v National Trustees, Executors and Agency Co of Australiasia Ltd & Ors (23 May 1934)
Judgment by Starke J
154. Roman Catholic Archbishop of Melbourne v Lawlor & Ors; His Holiness the Pope v National Trustees, Executors and Agency Co of Australiasia Ltd & Ors (23 May 1934)
Judgment by Dixon J
155. Roman Catholic Archbishop of Melbourne v Lawlor & Ors; His Holiness the Pope v National Trustees, Executors and Agency Co of Australiasia Ltd & Ors (23 May 1934)
Judgment by McTiernan J
156. Royal North Shore Hospital of Sydney v. Attorney-general (NSW) (19 August 1938)
Judgment by LATHAM CJ
157. Royal North Shore Hospital of Sydney v. Attorney-general (NSW) (19 August 1938)
Judgment by DIXON J
158. Salvation Army (Victoria) Property Trust v. Fern Tree Gully Corporation (5 March 5 1952)
Judgment by DIXON J; WILLIAMS J; WEBB J
159. South Australia and Ors v. Commonwealth and Anor (23 July 1942)
Judgment by Latham CJ

160. Stratton v. Simpson (12 November 1970)
Judgment by WINDEYER J
END QUOTE

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HANSARD *2-3-1898* **Constitution Convention Debates** (**Official Record of the Debates of the National Australasian Convention**)

QUOTE

Mr. BARTON.-I do not think the fact that we may be held by law to be a Christian community is any reason for us to anticipate that there will be any longer any fear of a reign of Christian persecution-any fear that there will be any remnant of the old ideas which have caused so much trouble in other ages. The whole of the advancement in English-speaking communities, under English laws and English institutions, has shown a less and less inclination to pass laws for imposing religious tests, or exacting religious observances, or to maintain any religion. We have not done that in Australia. **We have abolished state religion in all these colonies**; we have wiped out every religious test, and we propose now to establish a Government and a Parliament which will be at least as enlightened as the Governments and Parliaments which prevail in various states; therefore, what is the practical fear against which we are fighting? That is the difficulty I have in relation to this proposed clause. If I thought there was any-the least-probability or possibility, taking into consideration the advancement of liberal and tolerant ideas that is constantly going on of any of these various communities utterly and entirely retracing its steps, I might be with the honorable member. If we, in these communities in which we live, have no right whatever to anticipate a return of methods which were practised under a different state or Constitution, under a less liberal measure of progress and advancement; if, as this progress goes on**,** If we, in these communities in which we live, have no right whatever to anticipate a return of methods which were practised under a different state or Constitution, under a less liberal measure of progress and advancement; if, as this progress goes on**, the rights of citizenship are more respected; if the divorce between Church and State becomes more pronounced;** if we have no fear of a recurrence of either the ideas or the methods of former days with respect to these colonies, then I do suggest that in framing a Constitution for the Commonwealth of Australia, which we expect to make at least as enlightened, and which we expect to be administered with as much intellectuality as any of the other Constitutions, we are not going to entertain fears in respect of the Commonwealth which we will not attempt to entertain with respect to any one of the states.

END QUOTE

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http://74.6.146.244/search/cache?ei=UTF-8&p=%22Church+of+the+New+Faith+v+Commissioner+of+Pay-Roll+Tax%22&fr=slv1-&u=www.cdi.gov.au/submissions/183-ChurchofScientologyAsiaPacificRegion.doc&w=%22church+of+the+new+faith+v+commissioner+of+pay+roll+tax%22&d=Z1aCOPH_QQAX&icp=1&.intl=au

QUOTE

Church of Scientology Asia Pacific Region
Office of Special Affairs
Inquiry Into The Definition Of Charities
And Related Organisations
C/-The Treasury,
Parkes Place,
Parkes, A.C.T. 2600,
14 January, 2001
Dear Sir,

We refer to your Issues paper ("the Paper") headed "Inquiry Into The Definition Of Charities And Related Organisations" and your invitation for submissions to be made in respect of that Inquiry.

Whilst the Inquiry is concerned with "definitional issues" generally those "definitional issues" are presumably most particularly relevant to the income tax law, and it is with that law that this letter is concerned.

Whilst the Paper stated that submissions should be made no later than 31 December 2000, your press release of 14 December 2001 advised that you are prepared to accept submissions lodged after that date provided they are lodged by 19 January 200 1.

The Church of Scientology ("the Church") is an Australian religious institution which has a physical presence in Australia and which incurs expenditure and pursues objectives principally in Australia. As a consequence all the income derived by the Church is exempt from Australian income tax.

The Church is satisfied with this aspect of the Australian income tax law and does not believe that this aspect of the Australian income tax law - so far as it is concerned - requires amendment.

It submits that it is a fundamental feature and expectation of Australian society that religious institutions should not be subject to income tax.

It is also submitted that for organizations, such as religious organizations, that perform a wide spectrum of charitable activities, it is not appropriate to define the various activities differently (or to attempt to distinguish between commercial and non-commercial activities undertaken by the religious organization).

Commercial activities undertaken by a religion are always ancillary to the religion; they are designed to enable the furtherance of the religion (and associated charitable activities undertaken by the religion). As Murphy J. stated in the Church of the New Faith v. Commissioner of Pay-roll Tax (Vic.) 83 ATC 4652 "Commercialization is so characteristic of organized religion that it is absurd to regard it as [disqualifying a religion]".

It is submitted that all of the activities undertaken by a religion should be regarded as being integral to the religion, and should not be discretely treated for income tax purposes. Not only would any such treatment be contrary to community expectations, but would introduce further technical and administrative complexities into the taxation law.

Notwithstanding our general acceptance of the current tax law there are a number of overseas entities associated with the Church, which are not exempt, or may not be exempt, from Australian income tax since they do not have a physical presence in Australia.

In particular there are various overseas affiliates of the Church either being its parent church, or various entities established to support that parent church and other churches affiliated with that church, which provide services to the Church. Various payments are made to these overseas affiliates. Royalty withholding tax might be payable in respect of some of these payments so made.

It is submitted that payments made by a charity (including a religious organization) exempt from Australian tax to an overseas institution (which is exempt from tax in that overseas jurisdiction) should not be subject to Australian tax (including withholding tax).

Such an exemption would reflect the policy of Australian tax law - that is, that n Australian charity (including an Australian religious institution) should not be subject to taxation.

Given that normally a payee requires a payer to absorb withholding tax the imposition of withholding tax on a payment made by an Australian charity is in substance normally the imposition of a tax on that Australian charity.

Whilst this is the case in respect of withholding tax generally, the effective imposition of tax on an Australian charity might be said to be particularly contrary to the spirit of the tax law, where tax is levied on a payment made by one charity to another (albeit that that other charity does not have a presence in Australia).

Yours faithfully,
Rev. Vicki Hanna
Church of Scientology

END QUOTE

.

Again;
http://74.6.146.244/search/cache?ei=UTF-8&p=%22Church+of+the+New+Faith+v+Commissioner+of+Pay-Roll+Tax%22&fr=slv1-&u=www.cdi.gov.au/submissions/183-ChurchofScientologyAsiaPacificRegion.doc&w=%22church+of+the+new+faith+v+commissioner+of+pay+roll+tax%22&d=Z1aCOPH_QQAX&icp=1&.intl=au

QUOTE

The Church of Scientology ("the Church") is an Australian religious institution which has a physical presence in Australia and which incurs expenditure and pursues objectives principally in Australia. As a consequence all the income derived by the Church is exempt from Australian income tax.

The Church is satisfied with this aspect of the Australian income tax law and does not believe that this aspect of the Australian income tax law - so far as it is concerned - requires amendment.

It submits that it is a fundamental feature and expectation of Australian society that religious institutions should not be subject to income tax.

It is also submitted that for organizations, such as religious organizations, that perform a wide spectrum of charitable activities, it is not appropriate to define the various activities differently (or to attempt to distinguish between commercial and non-commercial activities undertaken by the religious organization).

Commercial activities undertaken by a religion are always ancillary to the religion; they are designed to enable the furtherance of the religion (and associated charitable activities undertaken by the religion). As Murphy J. stated in the Church of the New Faith v. Commissioner of Pay-roll Tax (Vic.) 83 ATC 4652 "Commercialization is so characteristic of organized religion that it is absurd to regard it as [disqualifying a religion]".

END QUOTE

.

Even if it were to be assumed that the States could exempt payroll tax it would still not be relevant to federal taxation powers because the Commonwealth by s.116 is specifically prohibited to favour or be against any religion. As such, any decision regarding any State imposed payroll tax would be irrelevant for Commonwealth of Australia taxation purposes.

.

As shown below also a state has no legislative powers to interfere with the Commonwealth power to collect customs, duties and/or taxation and hence no State law to list a corporation and/or religious body as **NON-PROFIT** can exclude it from general income taxation applicable under commonwealth of Australia provisions and if the Commonwealth of Australia nevertheless provides for this then it is in clear violation of the constitutional legal embedded principles, as set out below.

Indeed, if religious bodies are siphoned off monies and not being all returned for public use, but for example forward it overseas and/or transfer it overseas then it must be deemed it is not a **NON-PROFIT** organization. In my view, any **NON-PROFIT** organization must account for all monies to the taxation department how this was spend and where monies has not been accounted for then the taxation commissioner cannot accept it is a **NON-PROFIT** organization.

It also should be understood that there are ample of American Authorities that make clear that while funding for books by the government can be done to both Public and Religious school, this is provided the funding is not used for religious purposes!

Where the Commonwealth of Australia provides tax exemption for any religious body then in effect it demand of all Australians taxpayers, including those not belonging to the particular religious body to pay more tax as to make up for the short fall of the taxation otherwise would have been collected from religious bodies. As such, the commonwealth is actually causing **ATEHIEST**'s to pay, albeit indirectly, the taxes that religious bodies fails to pay.

Much has also been claimed abuse torments of religious bodies upon their members and former members, etc, and this too has been addressed by the Framers of the Constitution as shown below.

One also have that religious bodies are generally in compound style of properties, where one can be deemed to be trespassing if one were to enter. In my view, any such religious body cannot be considered to be for the "**PUBLIC PURPOSE**" because the public is not permitted to freely to enter. As such any **NON-PROFIT** (Not for profit) organization that claims to operate for "**PUBLIC PURPOSES**" must be proven to be open to the public. Religious compound cannot be considered to be part of this. Albeit when I accompany my wife to her church, no one is there to stop me from entering. If one seeks to enter the compound of religious bodies such as **EXCLUSIVE BRETHERN**, **SCIENTOLOGY**, and others then one is not permitted to freely enter and I view this also ought to indicate they are not there for "**PUBLIC PURPOSES**"

.

As the Framers of the Constitution also highlighted was that **there is a separation of State and church**, and indeed the State of Victoria already commenced to do so in 1887 and thereafter and as such cannot provide any tax exempt status for any body because it is a religious body because doing so would infringe upon the separation of State and church.

State Aid to Religion Abolition Act 1871

QUOTE

1. Repeal of section 53 of the Constitution Act

From and after the thirty-first day of December One thousand eight hundred and seventy-five no moneys shall be set apart for the advancement of the Christian religion in Victoria

END QUOTE

.

In my view where this Act was not amended then upon federation it was clear that the State of Victoria was not going to fund religion, and while it related to "**Christian Religion**" the text of the Act refers to

.

QUOTE

"denomination" **shall mean any church religious body sect or congregation or the members of any church formed into or acting as a body of persons for religious purposes of what kind of faith or form of belief soever;**

END QUOTE

.

As such it appears to me that any religion, not just Christian religion was intended to be referred to.

.

At the end of this document I have reproduced a 1-4-2008 correspondence to Federal Education Minister and Deputy PM Julia Gillard and the 8 July 2008 correspondence to Mr Kevin Rudd PM should be considered also;

.

QUOTE

Version No. 001

State Aid to Religion Abolition Act 1871

Act No. 391/1871

Version as at 3 March 2003

TABLE OF PROVISIONS

Version No. 001

State Aid to Religion Abolition Act 1871

Act No. 391/1871

Version as at 3 March 2003

An Act to provide for the Abolition of State Aid to Religion.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled, and by the authority of the same, as follows:

1. Repeal of section 53 of the Constitution Act

From and after the thirty-first day of December One thousand eight hundred and seventy-five no moneys shall be set apart for the advancement of the

Christian religion in Victoria under the provisions of the Fifty-third Section and for public worship under the Eighth Part of Schedule D of the "Constitution Act", and as from that day such provisions shall be and the same are hereby repealed.

2. Definitions

In the construction and for the purposes of this Act the following terms shall if not inconsistent with the context or subject matter have the respective meanings hereby assigned to them, that is to say—

"the Governor" shall mean the person administering the government acting by and with the advice of the Executive Council;

"the Minister" shall mean the responsible Minister of the Crown administering this Act;

"denomination" shall mean any church religious body sect or congregation or the members of any church formed into or acting as a body of persons for religious purposes of what kind of faith or form of belief soever;

"head or authorised representative" shall mean the person accepted as such for the time being by the Governor;

"trustee" shall mean any person holding that office for the time being, whether named as such in the Crown grant or approved of or appointed as such by the Governor, although no legal estate may be vested in such person.

3. Denominations may dispose of trust lands granted by the Crown and apply proceeds to denominational purposes

All lands which at the time of the passing of this Act have been granted by the Crown without receiving any purchase money or promised or reserved by the Crown or by the Governor permanently or temporarily for church purposes or church and school purposes or dwelling-houses for the ministers of any denomination may, subject to the provisions hereinafter contained, be disposed of by the denomination to or for the benefit of which such lands may have been granted promised or reserved, and the proceeds of disposition applied for the purposes of such denomination in such manner as the denomination may deem most beneficial.

4. Application for power to dispose of such lands to be made by head or authorised representative of denomination

Every application for leave to dispose of any such land shall be made in the form in the First Schedule hereto by the head or authorised representative of the denomination, with the consent of the trustees of any such land resident in Victoria, or of the majority thereof, and of the person or persons, if any, entitled to minister in or occupy any building upon the land.

5. Notice of application to be given by advertisement and by notice to non-consenting trustees

Such application shall be lodged at the office of the Minister, and within one month from the time of lodging the same the applicant shall give notice thereof by advertising the same at length once in the Government Gazette and once in some newspaper circulating in the neighbourhood of the land and by serving a copy of the application upon any trustee of the land resident in Victoria who shall not have consented to such application.

6. Objections to application may be lodged

Within one month from the publication of the last advertisement any person may lodge objections to the allowance of the application at the office of the Minister, and a copy of every objection so lodged shall be forwarded by the Minister to the applicant.

7. Application to be allowed if no objection lodged

If notice of the application shall have been duly given as aforesaid, and if no objection shall have been lodged within one month from the last advertisement, and if the land described in the application shall have been granted promised or reserved as aforesaid, the Governor shall allow the application; and if any objection shall have been lodged as aforesaid the Governor may allow or reject the application, or with the consent of the applicant modify the trusts thereby proposed, and if deemed expedient for the purpose of dealing with any such objection may refer the same for the inquiry and report of any person or persons to be appointed by the Governor in that behalf; and every such allowance shall be signed by the Governor and shall be in the form in the Second Schedule hereto.

8. Publication of allowance of application to be conclusive evidence that Act has been complied with and trustees named are entitled upon trusts allowed

Upon the allowance of any application, the allowance thereof, as signed by the Governor, shall be published in the Government Gazette, and such publication shall be conclusive evidence that all the provisions of this Act in respect of the application have been complied with and that the trustees named in the statement of trusts are entitled to the land therein described in fee-simple upon the trusts thereof discharged of all trusts and limitations as to the use thereof theretofore affecting the same, anything contained in the seventh section of the **"Land Act 1869"** to the contrary notwithstanding, and upon the application of such persons the Registrar of Titles under the "Transfer of Land Statute" shall register such persons as joint proprietors in fee of the said land with no survivorship.

9. Certificate of title to issue to new trustees as proprietors under "Transfer of Land Statute" and Gazette to be deposited as document declaring trusts

The certificate of title to be issued as aforesaid shall be in the same form and of the same effect as any other certificate of title issued under the provisions of the "Transfer of Land Statute" as to the title of the proprietors, the immunity of persons dealing with them, and in every other respect; and at the time of applying under this Act for a certificate of title a copy of the Government Gazette containing the allowance shall be deposited with and retained by the Registrar of Titles, under the provisions of Section thirty-eight of the said Statute, as the document declaring the trusts of the land as to which the certificate issues.

10. Governor may frame regulations

The Governor may from time to time frame alter and revoke regulations providing for the manner in which applications under this Act, or objections thereto, shall be lodged or dealt with, or for altering the forms in the Schedules to this Act, so far as consistent therewith, and for the execution of all orders matters or things arising under and consistent with this Act and not herein expressly provided for, and such regulations when published in the Government Gazette, and purporting to be signed by the Minister, shall have the force of law.

11.No reservation to be made of Crown lands for places of public worship or dwelling-houses for ministers of any religious denomination after 1st day of July 1870

So much of section six of the **"Land Act 1869"** as relates to reservations of Crown lands for places of public worship and dwelling-houses for the ministers of any religious denomination shall be and the same is hereby repealed as from the first day of July One thousand eight hundred and seventy, save as to any reservation or application for reservation which may have been made thereunder before the said date.

12. Promise or reservation of land not to be affected until application allowed

Nothing hereinbefore contained shall be deemed to affect any promise or reservation of land in the third section mentioned, unless and until an application under this Act shall be made in respect thereof, and subject to the allowance of any such application every such promise or reservation shall be given effect to as if this Act had not passed.

SCHEDULE

THE FIRST SCHEDULE

I head or authorised representative of the denomination known as with the consent of [*names of consenting trustees*] trustees of the land described in the subjoined statement of trusts and of [*name and address of persons so entitled if any*] being the person or persons entitled to minister in or occupy a building or buildings upon the said land, hereby apply to the Governor of the Colony of Victoria for leave to dispose of the said land by the means and for the purposes mentioned in the said statement of trusts. And I hereby certify that the said land was [*state the particulars of the grant promise or reservation of the land*] granted by the Crown on the day of or promised or reserved by on the day of for the purpose of [*state in full the purposes for which the land was expressed to have been granted promised or reserved*]: That the only trustees of the said land resident in the Colony of Victoria are [*state names and addresses of all resident trustees*] of of of

That the only buildings upon the said land are [*state generally the nature of all buildings on the land, or if none, state that there are none*] and that the only persons entitled to minister in or occupy the same are the abovenamed [*if there are no such persons state the fact and omit preceding reference to the consent of such persons*].

Signature of head or authorised representative—

We consent to this application.

Signature of trustees—

Signatures of persons entitled to minister in or occupy building or buildings—

STATEMENT OF TRUSTS

Description of Land	*Names of trustees*	*Powers of Disposition*	*Purposes to which proceeds of Disposition are to be applied*
Describe land fully by metes and bounds.	Give names, residences, and occupations of proposed trustees.	State the powers which it is proposed to vest in trustees, such as "power to sell, exchange, mortgage, or lease," and if any of such powers are to be limited, state the nature of the limitation.	State distinctly the purposes to which it is intended to apply the moneys arising from the disposition to be authorised, or to which any land taken in exchange is to be applied.

THE SECOND SCHEDULE

A statement of trusts having been submitted by the head or authorised representative of the denomination of under the provisions of the "*Act to provide for the abolition of State Aid to Religion*" for allowance by the Governor, the same was allowed by him on the day of 18 , and the following is the form in which such statement of trusts has been allowed [*set out statement of trusts in full from the application, subject to any modification which may have been made therein*].

As witness the hand of the Governor of the Colony of Victoria
the day of

Governor of the Colony of Victoria.

ENDNOTES

1. General Information

The **State Aid to Religion Abolition Act 1871** was assented to on 6 January 1871 and came into operation on 6 January 1871.

2. Table of Amendments

There are no amendments made to the **State Aid to Religion Abolition Act 1871** by Acts and subordinate instruments.

3. Explanatory Details

No entries at date of publication.

END QUOTE

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What is important to be aware of is that any kind of religious body cannot have it both ways, to have their own say how they govern themselves as freedom of religion while also seeking TAX DEDUCTIONS, TAX EXEMPTIONS, etc at the account of the public purse without any kind of accountability and more over getting involved in practices with are repulsive to most Australians, as well as may be unlawful.

.

While I can understand that a body, even so happening to be a religious body, may have a certain tax exemption for being a "**PUBLIC PURPOSE**" "**NON-PROFIT**" organization as long as the religious component plays no part in it.

Taxation, including tax exemptions (as again tax exemptions place a greater burden upon others to make up for the loss of tax collected) therefore cannot be provided to **NON-PUBLIC PURPOSE** bodies because they happen to be religious bodies.

.

http://supreme.justia.com/us/83/678/case.html

QUOTE Olcott v. Supervisors, 16 Wall. 678

U.S. Supreme Court

Olcott v. The Supervisors, 83 U.S. 16 Wall. 678 678 (1872)

Olcott v. The Supervisors

83 U.S. (16 Wall.) 678

ERROR TO THE CIRCUIT COURT FOR
THE EASTERN DISTRICT OF WISCONSIN

QUOTE

What was considered was the uses for which taxation generally, taxation by any government, might be authorized, and particularly whether the construction and maintenance of a railroad, owned by a corporation, is a matter of public concern. It

was asserted (what nobody doubts), that the taxing power of a state extends no farther than to raise money for a public use, as distinguished from private, or to accomplish some end public in its nature, and it was decided that building a railroad, if it be constructed and owned by a corporation, though built by authority of the state, is not a matter in which the public has any interest, of such a nature as to warrant taxation in its aid.

Page 83 U. S. 690

For this reason it was held that the state had no power to authorize the imposition of taxes to aid in the construction of such a railroad, and therefore that the statute giving Fond du Lac County power to extend such aid was invalid.

END QUOTE

.

What therefore should be understood is that regardless what the High Court of Australia may have ruled in the **SCIENTOLOGY** case constitutionally no tax emption or tax free status can be provided by the Commonwealth of Australia upon basis of it being a religious body. Neither can any funding be provided for religious causes.

.

It should be also understood that the Preamble relating to Al Mighty was made clear by the Framers of the Constitution didn't have any purpose as to the constitution itself and more over to make sure this was understood s.116 was inserted as to avert any doubts about it.

.

http://www.news.com.au/story/0,23599,21752187-2,00.html

Tradition

Immigration minister Kevin Andrews said the test would force potential citizens to know about Australia's political system, Aboriginal history and that the nation's values were based on Judeo-Christian tradition.

"It's the sort of thing you would expect someone who goes through school in Australia would know at the end of secondary school, and probably in some instances at the end of primary school," Mr Andrews told the *Herald Sun*.

One of the questions is likely to be: "Which city is the capital of Australia: Sydney, Melbourne, Canberra or Hobart?"

Another is: "Which animals are on the coat of arms?" Among the possible answers is: "Lion and unicorn".

The test will be based on a new resource book, *The Australian Way of Life*, being drawn up by the Immigration Department.

The US Courts have extensive ruling on matters such as the one quoted below and the Framers of the Constitution themselves also explained matters.

.

116 Commonwealth not to legislate in respect of religion

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Hints for Religious Exemptions to Immunization

Please read the text below before you download, print, or use the sample religious exemption letter and support materials provided in the following link:

.

Sample Religious Exemption Letter and Supporting Documentation

Refer to the statutes. The laws require that immunization must conflict with the tenets and practices of a recognized or organized religion of which you are an adherent or member. **However, the law does not require you to name a religion at all. In fact, disclosing your religion could cause your religious exemption to be challenged.**

And

Some schools and daycares attempt **to require you to give far more information than required by law.** You are not required by law to fill out any form letters from a school or daycare. The law allows you to submit your own letter and the letter only needs to meet the bare requirements of the law. Keep it simple; do not feel you need to describe your religious beliefs here as that also is not required by law.

And

Many times, when a school or day care **questions your exemption, they are merely unfamiliar with the law or trying to coerce you to go against your beliefs by deliberately misrepresenting the law. They are betting on the fact that you don't know your rights.**

.

WELSH v. UNITED STATES, 398 U.S. 333 (1970), 398 U.S. 333**, *WELSH v. UNITED STATES*, CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 76., Argued January 20, 1970, Decided June 15, 1970**

QUOTE

1. The language of 6 (j) cannot be construed (as it was in United States v. Seeger, supra, and as it is in the prevailing opinion) to exempt from military service all individuals who in good faith oppose all war, it being clear from both the legislative history and textual analysis of that provision that Congress used the words "by reason of religious training and belief" to limit religion to its theistic sense and to confine it to formal, organized worship or shared beliefs by a recognizable and cohesive group. Pp. 348-354.

2. The question of the constitutionality of 6 (j) cannot be avoided by a construction of that provision that is contrary to its intended meaning. Pp. 354-356.

3. Section 6 (j) contravenes the Establishment Clause of the First Amendment by exempting those whose conscientious objection claims are founded on a theistic belief while not exempting those whose claims are based on a secular belief. To comport with that clause an exemption must be "neutral" and include those whose belief emanates from a purely moral, ethical, or philosophical source. Pp. 356-361.

4. In view of the broad discretion conferred by the Act's severability clause and the longstanding policy of exempting religious conscientious objectors, the Court, rather than nullifying the exemption entirely, should extend its coverage to those like petitioner who have been unconstitutionally excluded from its coverage. Pp. 361-367.

END QUOTE

.

QUOTE

Date: Thu, 15 Nov 2007 02:07:57 +1100 (EST)
From: "Gerrit H. Schorel-Hlavka" <inspector_rikati@yahoo.com.au>
To: "Jim" hunterman@goconnect.net "Jill xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx>
CC; "Garry H." <inspector_rikati@yahoo.com.au>
Subject: Re: Fw: would you run?

Jim,

.
I cannot but agree with what Jill wrote, just that somehow what she response upon was not included!
.
While I do not practice religion, my wife does and she herself is commenting that George Bush claim God told him to invade Iraq. Then we get others who use God or whatever super human being for whatever they did or are going to do to seek to justify their conduct.
.
Then we have it being said that a person goers either to **H**ell or **H**eaven.
.
Then when the day of reckoning comes then people will have their judgment day and be told to go to **H**ell or **H**eaven.
.
Moment, if they were not in hell all along but only go after judgment day then where did they go in between? Is there something like a "**H**olding cell" before anyone goes either to **H**ell or **H**eaven?
.
Is this to mean that a murderer who committed then suicide will be with the victim together for thousands of years awaiting judgment day in the "**H**olding cell"?
.
Seems that when one dies one cannot go to **H**eaven or **H**ell as there is a century or more to wait before you might be judged to go to your final destination?
.
And then why is it that the death are to rise from the sea for judgment day, if they already were to be in **H**ell or **H**eaven?
.
That is why I always make clear to people they can have and practice whatever religion they desire to have but do leave me out of it.
.
And I take it that when I am dead I am dead and if you nevertheless were still to receive an email from me, then just consider it might have been delayed. After all, not uncommon I get a copy of an email even so it was send out a day previously. I recall where I came home and my wife asked why on earth I had not bothered to send her a text message that I was delayed. I explained I had done so hours earlier. Later that night her mobile went of and she received my text message that had been sent more then 8 hours earlier from about 6 kilometres away. At least she knew I had been telling the truth.
So, if you happen to get a message from a person that is already dead, forget about reincarnation it simply is a delay in communication!
.
And, some decades ago when I was supposed to have dropped death, I saw no pearly gates, no angels singing, or whatever. My father in law told me then that I was death when I was on the floor after an accident. Well, I certainly didn't get reincarnated. to me I was not death albeit may have looked to be and when my time comes then I will not worry about anything.
.
I could always sew some pockets in my clothing to hold money for after I am death, just in case there might be some special for sale on the other end, but then if they cremate me what is the use as the money will be burned, if not already stolen in the funeral parlor so I gave that idea also a big miss.
.

Some companies never give up on the death as my wife's late husband has been death for so long but we still get offers in the mail that they offering him credit cards, insurance policies, etc.
Just wonder how he can be insured being death against accidental death?
perhaps after reincarnation?
And how is he to use the credit card and more over pay back any monies unless he can come back by reincarnation and get himself a job to earn monies?
.
We even got correspondence from churches for donations so that they will pray for him that he has a long lasting and healthy life. Excuse me the man is death long ago! If they can pray for a dead person to have longevity and better health then I somehow am not encouraged by them offering to pray for me.
.
I think that as like Jill I rather have them to leave me be.
.
Gerrit
.
Jill xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx wrote:

> Re: Would I run
>
> TO WHOM IT MAY CONCERN
>
> Can anyone tell me why these invasive types of religious "messages" are filled with so much negativity? They appear to thrive on degrading the human race. It would appear to me that God actually hated humans if we wrer to take any of these messages serious. I see it an invasion of my privacy. The way these types messagers endevour to attempt to fill the recipients with a huge guilt trip. I would not pass this type of negativity on to my worst enemy.
>
> I believe, choosing to run or walk away would not make a less a human being. A natural instinct is to want to stay alive and is a right to make a choice to live. No one should try to make another feel guilty for that and what would it prove by taking a bullet for someone who's already dead?
>
> To me this is another example of the fact that religion and common sense do not mix. Where you have one the other can not exist.
>
> The author here also says everyone wants to go to heaven. I did not choose this person as my spokes person. Who wrote this anyway? I for one do not want to go to heaven. I want to stay here on earth for as long as possible. The author of this negative message has also assumed everyone wants to be blessed. I choose not to be blessed by a self appointed spokes person for god. If ever I decided to be blessed it will be by someone of my own choosing and I would choose a professional.
>
> I'm not an "atheist" I'm a REALIST. I don't like people trashing other people for no good reason.
>
> Regards,

Jill

Jim wrote:
> ----- Original Message -----
> From: Gee Temp
> To: "Undisclosed-Recipient:;"@mail.wide.net.au
> Sent: Wednesday, November 14, 2007 2:37 PM
> Subject: would you run?
>
>
>
> Hi folks,
>
> An interesting message for Christians and atheists alike.
>
>

END QUOTE

.

As Jill in her response made clear she didn't choose the person to represent her or to speak for her, but regretfully it is too common for religious bodies to perpetrate upon the individual rights of others and often the question ought to be if this is to enhance their own financial circumstances to collect more tax exempt monies?

.

Why indeed should tax exempt monies be used to so to say solicitor others to join their kind of religious or whatever other kind of conduct they may engage into?

.

http://jmm.aaa.net.au/articles/8211.htm

QUOTE

Brethren

Around the world, the Christian Brethren are, sometimes courageously, sometimes fearfully, re-examining their emphases and practices. One of the motivating reasons is the Brethren assemblies' almost universal decline in numbers and influence. 'We seem to be stagnating' is a common plaint by perceptive Brethren leaders. In 1990, for example, 250 Brethren leaders from many countries attended a summer school on 'The Christian Brethren Movement' at Regent College, Vancouver (a seminary with Brethren roots). The conference was told that in Britain, for example, the Brethren movement is in serious decline, with assemblies down to an average size of about 45 members, half of them are shrinking, with only a quarter growing. Most have few or no members under 40. In Australia all the major Christian denominations have larger churches than the largest Brethren assemblies.

I grew up in a Sydney Brethren assembly. I am most grateful for their emphasis on the Bible, for the encouragement of most of the men to participate in preaching and leading services (I preached my first 'sermonette' at 13!), and, in particular, for the strong commitment to the Lord of those who led our fellowship. As a seminar-speaker in the church-at-large, I have been privileged to participate in about eight Brethren-sponsored conferences in the last two years.

Their agenda included these questions: 'Why aren't we seeing people converted as some other denominations are?' 'Why are many young people leaving our assemblies for other Christian churches?' 'Why are conservative Brethren assemblies declining all over the world, and why do growing assemblies almost always have a "progressive" flavour?' 'What

is our response to charismatic renewal, the call for a more public ministry by gifted women, and what about the God-given gifts of pastors and prophets to the church?' And many more.

ORIGINS. The founders of the Brethren were mainly Anglican evangelicals, and included Edward Cronin, A.N.Groves, John Vesey Parnell (later Lord Congleton), John Gifford Bellett, and J.N.Darby. They first met in Dublin, but the movement was named 'Plymouth Brethren' as their first large assembly was formed in Plymouth (in 1831).

The Brethren movement began with a desire to return to the simplicity of apostolic worship; as a protest against other churches' prevailing clericalism, spiritual dryness and formalism; and with a strong expectation that Christ would soon return. They met to share the Lord's Supper without any ordained clergy present, believing the Spirit would guide the participants.

J.N.Darby believed the other churches were in ruins, and so assemblies should not be set up with elders and deacons. Because of Darby's outstanding personal and academic giftedness he naturally assumed a significant leadership position in the early days (and was warned by Groves about his propensity to exercise undue authority). Early controversies centred around 'prophetic' interpretations, Christ's humanity, and separatism from those who were 'contaminated' by the teachings of other groups. In 1847/8 Darby led a breakaway group which had a more centralized leadership and rigorous separatism. These 'Exclusive Brethren' have since degenerated into a sectarian authoritarianism, and have themselves split into many factions. Most practise infant (or household) baptism. The 'Open' Brethren, too, have had their factions (eg. the 'Needed Truth' movement begun in 1889, refusing membership at the Lord's table to any apart from their own group).

Open or Christian Brethren have had a strong evangelistic and missionary emphasis (at one stage one in every 100 British Brethren members became a foreign missionary). They have been particularly effective in places like Argentina, southern India, Zaire, Zambia, Singapore, New Zealand, Northern Tasmania, and Singapore.

HISTORICAL DISTINCTIVES OF THE CHRISTIAN BRETHREN:

The following are the major traditional emphases of the Christian Brethren. Some of these (eg. eschatology, opposition to fellowship with Christians of other denominations) have recently been modified in more 'open' assemblies (which now generally call themselves 'churches').

* Evangelical doctrinal beliefs, based on authority of the scriptures in all matters of faith and conduct.

* Anti-denominationalism, which has led to varying degrees of 'exclusiveness' in relating to other Christians. (Anthony Norris Groves warned against the Brethren 'becoming known more for what they witnessed against than what they witnessed for'). Participation in Billy Graham crusades has done as much as anything else to break down this tendency. 'Plymouth Brethren' don't like that name. Recently it has been rejected in favour of 'Christian Brethren' or 'Brethren'. (In Australia the term 'Christian Brethren' was accepted by the then Attorney-General when a 'Marriage Bill' passed by Federal parliament in 1961).

* Baptism of believers only, by immersion.

* Weeekly 'breaking of bread', with freedom for any (males) to lead in thanksgiving, prayer, scripture exposition, etc.

* Opposition to stipended 'ordained' clergy, or church government outside the local assembly, (although inter-Assembly agencies are set up for coordinating Bible conferences, camps, overseas missions, publications, and Bible colleges).

* Dispensationalist eschatology, developed by J.N.Darby, and popularized in the Scofield Bible.

* 'We abstain from pleasures and amusements of the world. If we have evening parties, it is for the purpose of studying the Word and of edifying ourselves together. We do not mix in politics; we are not of the world; we do not vote.' (J.N.Darby 1878).

* Strong evangelistic and missionary emphasis (their first missionary was A.N. Groves, in Baghdad and India). 'Christian Missions in Many Lands' (CMML) currently has about 1200 missionaries worldwide.

SOME CURRENT CHALLENGES FOR THE BRETHREN.

Sociologist Robert Merton has said all institutions tend, over time, to be degenerative. No church, denomination, or Christian movement has ever been automatically self-renewing: they all lose their founders' fervour from the second generation onwards. In some ways the Brethren movement has seen less spiritual declension that most other Christian movements, due partly to their leadership by non-clergy. The following issues (tinged with some editorializing!) have emerged in conferences of thoughtful Brethren leaders:

* Are we as biblical as we think we are? Most of the 22,800 Christian denominations or groups think they're more 'biblical' than all the others! (After all, meeting in 'Gospel Halls' or running Sunday Schools have no biblical precedents!)

* Why are we declining in numbers? Why are most assemblies not seeing regular conversions?

* How can we biblically reassess the ministry of women in our churches? Brethren scholar F.F. Bruce has said we must view the NT ministry of women through the window of Galatians 3:28: Christ has abolished man-made hierarchies of race, economics and gender. Whereas the NT churches were way ahead of their culture in granting significant public roles to women, our churches are creating a scandal for the opposite reason! (And if God wanted to raise up a Deborah to lead his people, many of us would stop him. Fortunately God is not a legalist!)

* As with the Pentecostals ought we to review the practice of anyone speaking in worship services? How does this equate with the NT emphasis on the ministry of the spiritually gifted?

* What about the criticism by other evangelicals that we are 'docetic' - emphasizing the deity of Christ but downplaying his humanity? Or our eschatology: perhaps dispensationalism was not the NT churches' way of interpreting 'end-time prophecy'.

* Jesus' criticism of the Pharisees centred on their lack of emphasis on social justice, mercy etc. (Matthew 23:23, Luke 11:42). They knew their Bibles but missed the whole point! How many Brethren assemblies have ever, until recently, heard biblical teaching about the great prophetic emphasis on social justice?

* What of Christ's gift of leadership to his people? Sometimes Brethren assemblies are eldered by people who may be faithful, but lack leadership skills. Is it time for all of our assemblies/churches to look hard at the appointment of pastor- teachers? What authority

should they have? (Titus was asked by Paul to 'appoint' elders: should a pastor have that kind of authority today?). The NT seems to have three 'authorities' - episcopal (strong rule by some individuals), presbyterian (rule by elders), and congregational (participation by all in the decision-making process).

* What traditions are stifling the work of the Spirit in our midst? (A Canadian Brethren pastor told me the elders in his assembly would not change their 'morning meeting' format or time to reach outsiders: traditional methods were more important to them than winning the lost!).

* What is to be our response to the charismatic renewal? Although there are some excesses it is obviously a movement of God's Spirit. Are we in danger of repeating the mistake Gamaliel warned about, and fighting against God?

* **Members of Brethren Assemblies seem to complain more often than those in other churches about the lack of appropriate pastoral care in times of crisis.**

* **To what extent are we still 'sectarian'? A sect, sociologically, is a religious group that believes it has a monopoly on the truth, with little or nothing to learn from others. Everyone outside the sect is 'in error'.**

APPRAISAL.

'The contribution of the Brethren... has been out of all proportion to their numbers. They have held to the authority of the Bible during a time when it has been under constant fire. Many of their members have had leading positions in interdenominational agencies. They have been active in evangelism and have drawn attention to the church as the body of Christ, made up of all true believers and equipped with spiritual gifts distributed amongst the members.' [Harold H. Rowdon, 'The Brethren', The History of Christianity, Lion Publishing, 1977, pp. 520-521]

Commenting on the seminar mentioned at the beginning of this paper, Dr. Cedric Gibbs, ex-principal of Emmaus Bible College in Sydney, asks: 'Why are some assemblies effective in outreach and growing in humbers while others stagnate? Three things seem to mark successful assemblies in all parts of the world: a high view of the authority of Scripture (preferring this to cherished traditions), Godly and strong leadership (willing to make decisions that involve risk), and relevance to their local communities (even when that means changing established ways so as to be able to reach our neighbours).

'Has God still got a role for the Brethren Movement? My personal conviction is that he has not - if by Brethren Movement we mean a pattern of local church life which is the entrenched and inflexible product of 160 years of history. But the Brethren never wanted to have a name and a 'movement' anyway.

'Has God got a role for assemblies of Christians that want to practise NT church principles, that will allow themselves to be governed by the Word, that will hear what the Spirit is saying to the churches, and that will spend themselves in devotion to the person of Christ? Of course he has - churches like this will grow and prosper under his hand until he returns and presents to himself his 'radiant church, without stain or wrinkle or any other blemish, but holy and blameless' (Ephesians 5:27).' (Reported in Outreach, Assembly Links, and New Life, February 1991).

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(Paper presented to a combined conference of the Romaine Park Christian Centre and Montello Baptist Church, May 1993 by Rowland Croucher, Director of John Mark Ministries, Melbourne).

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http://andrewnorton.info/blog/2008/02/26/have-catholic-schools-made-catholics-an-isolated-sub-group/

QUOTE

Have Catholic schools made Catholics an 'isolated sub-group'?

These people often form a narrowly focused school that is aimed at cementing the faith it's based on … If we continue as we are, I think we'll just become more and more isolated sub-groups in our community,"

- Barry McGaw

McGaw is quoted in the context of an article about the proliferation of new 'faith-based' independent schools. Of course nobody can know for sure what the long-term consequences of these schools might be. But history provides an interesting case study, the role of Catholics in a majority Protestant society, Australia. For centuries, Catholics and Protestants viewed each other with suspicion, and though very rarely violent this was true in Australia as well. Catholics have always maintained separate schools. According to the 2005 Australian Survey of Social Attitudes (AuSSA), more than half of all current Catholics attended Catholic schools, government-funded since the 1960s. Only one of the Protestant groups (the Baptists) even gets to 20% 'other non-government school' attendance. And being very numerous, Catholics could if they wanted to create a society of their own within Australian society. But do they?

I'm sure most readers could reflect a moment on their own social circles and realise that Catholics are an integrated, and integral, part of Australian society. The AuSSA finds Catholics are more likely to join unions than Australians in general, and have average rates of participation in sports groups and voluntary associations (though perhaps Catholic, I can't tell from the data). They are more likely than the general population to agree that being a good citizen requires understanding other people's opinions. Despite the Pope's views, they are more likely than the general population to support gay marriage. Half of them even agree that public schools don't receive their fair share of the budget. In 1996, a third of them were married to Protestants. I doubt the public school lobby can find any evidence that heading on to fifty years of state aid has made Catholics more isolated or more a 'sub-group'. But of course why bother with data when prejudice can get the conclusion you want with no effort?

One of the frustrating things about the public school lobby is how rarely they seriously argue their case. Ironically enough, their belief in public schooling seems to be based on faith.

This entry was posted on Tuesday, February 26th, 2008 at 9:05 pm and is filed under Religion, Schools, Social capital & trust. You can follow any responses to this entry through the RSS 2.0 feed. You can leave a response, or trackback from your own site.

END QUOTE

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It should be understood that the Commonwealth of Australia was deliberately created as a "***religion free legislation zone***" so that all people regardless what faith the practices could call the Commonwealth of Australia to be their home.

We find however that Politicians of all colour, and in particular Prime Ministers so to say are willing to sell their soul to any one who is willing to make a substantial financial donation to his political party. Hence, this kind of misuse of **NON PRIOFIT** (**NOT-FOR-PROFIT**) tax exempted monies should be stopped from being put into the coffers of the political parties. The Framers of the constitution made clear that any poor person should be able to stand for election, as a candidate, being qualified by being an elector, however we find that political parties more and more set ground rules to favour themselves in elections and so undermine the very democratic system they are to uphold.

Being it the deposit that is demanded, and so conflicts with the Framers of the Constitution legal principle embedded in the constitution that any person being an elector is by this qualified to be a

candidate in federal elections, or the payment per vote, for long being the ire of my attention that it provides political parties a financial advantage to campaign in elections knowing they will be getting a share of payment per vote, where as an **INDEPENDENT** candidate would have no expectations as such and hence cannot rely upon this to budget for an election campaign.

It is argued that election campaigns are for the benefit of electors but when one consider the **barking dogs** advertisement of a few years ago (By the Australian Democrats as I recall) then obviously it is more of a sheer waste of taxpayers monies. Indeed, most advertising is deceptive, untrue and bias and lack generally any real issue of educating the general community. If the same system was used by other unions (As political parties are after all unions!) in the ordinary workplace environment then the very politicians misusing taxpayers monies then would go against unions if they dared to force an employer to pay for their election campaigns. As such we have **DOUBLE STANDARDS**.

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Having been a candidate in many kind of political elections I refused to incur the huge associated cost and obviously didn't get elected as few people would be aware then what I stood for as the media will generally publish articles about those candidates who publish adds with them. Once the paper finally published that I was a candidate after the election was already held! As a publisher, albeit of the record made clear to me, he had to look after his customers and so if I were to advertise with them then I too could be provided with being mentioned in articles.

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What we have therefore is very clear that taxpayers dollars are collected by religious and other **NON PRIOFIT** (**NOT-FOR-PROFIT**) tax exempted entities, by way of tax exempted donations, or other ways, and then donated to political parties as a way to seek to influence politicians in their decision making conduct.

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The Commonwealth of Australia Constitution Act1900 (UK)

QUOTE

44 Disqualification

Any person who:

(i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or

(ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or

(iii) is an undischarged bankrupt or insolvent; or

(iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or

(v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an

incorporated company consisting of more than twenty-five persons;

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But subsection (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

45 Vacancy on happening of disqualification

If a senator or member of the House of Representatives:

(i) becomes subject to any of the disabilities mentioned in the last preceding section; or

(ii) takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or

(iii) **directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State;**

his place shall thereupon become vacant.

END QUOTE

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As such by the provisions of s.45(iii) any politician who accepts monies, directly and/or indirectly from "any person" (Including a **NON PRIOFIT** (**NOT-FOR-PROFIT**) tax exempted entity) must be perceived to be in breach of s.45(iii).

This, as the monies donated will in the end even if indirectly allow the politician to pay less to his financial contribution for the election campaign as where there are no donations then the politician would have to pay more. It doesn't matter if the monies are not paid directly to the politicians as what is relevant is that the politician even if indirectly has a financial benefit by the donations. Hence, where we find often politicians, after being elected, to make substantial benefits, being it grants, bounties, etc, that those politicians are basically seeling their soul.

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The former Prime Minister John Howard as I understood it made known that he had an open door for the **EXCLUSIVE BRETHERN** because they had made substantial donations to his political party. In my view, a Prime Minister is being paid to perform a job for all people as he is like any other minister appointed not to serve his political party but to serve the Crown for and on behalf of the people, irrespective of the race, colour, religion or whatever, and as such any notion that a Prime minister or for that any other minister is more available for those who donate monies to his political party is in my view so to say selling himself out to the highest bidder.

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The folloowing articles are another example how religion is used to even justify war. While this was in the United Kingdom, it must not be overlooked that in the Commonwealth of Australia any war cannot be entered in to (unless being actually attacked by an enemy) unless the Governor-General has published in the Gazette a **DECLARATION OF WAR** subsequently to Cabinet having authorized the Minister of Defence to request the Governor-General to proclaim a war against a certain country.

One will find however that no **DECLARATION OF WAR** was Gazetted and hence the armed invasion such as into Iraq was unconstitutional, and yet billions of tax payers monies were nevertheless used for this unconstitutional murderous invasion!

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http://www.telegraph.co.uk/global/main.jhtml?xml=/global/2007/11/25/noindex/nblair125.xml

QUOTE

Mention God and you're a "nutter"- Tony blair has sparked controversy by claiming that people who speak about their religious faith can be viewed by society as "nutters".

Tony Blair: Mention God and you're a 'nutter'

By Jonathan Wynne-Jones and Patrick Hennessy

Last Updated: 12:01am GMT 25/11/2007

Tony Blair has sparked controversy by claiming that people who speak about their religious faith can be viewed by society as "nutters".

Your view: Can politics and religion mix? John Humphrys: We prefer politicians without a hotline to God Cardinal urged Blair not to reveal conversion at Vatican

The former prime minister's comments came as he admitted for the first time that his faith was "hugely important" in influencing his decisions during his decade in power at Number 10, including going to war with Iraq in 2003.

Mr Blair complained that he had been unable to follow the example of US politicians, such as President George W. Bush, in being open about his faith because people in Britain regarded religion with suspicion.

"It's difficult if you talk about religious faith in our political system," Mr Blair said. "If you are in the American political system or others then you can talk about religious faith and people say 'yes, that's fair enough' and it is something they respond to quite naturally.

"You talk about it in our system and, frankly, people do think you're a nutter. I mean … you may go off and sit in the corner and … commune with the man upstairs and then come back and say 'right, I've been told the answer and that's it'."

Even Alastair Campbell - his former communications director who once said, "We don't do God" - has conceded that Mr Blair's Christian faith played a central role in shaping "what he felt was important".

Peter Mandelson, one of Mr Blair's confidants, claimed that the former premier "takes a Bible with him wherever he goes" and habitually reads it last thing at night.

His comments, which will be broadcast next Sunday in a BBC1 television documentary, The Blair Years, have been welcomed by leading Church figures, who fear that the rise of secularism is pushing religion to the margins of society.

The Archbishop of York, the Most Rev John Sentamu, said: "Mr Blair's comments highlight the need for greater recognition to be given to the role faith has played in shaping our country. Those secularists who would dismiss faith as nothing more than a private affair are profoundly mistaken in their understanding of faith."

However, Mr Blair, who is now a Middle East peace envoy, has been attacked by commentators who say that religion should be separated from politics and by those who feel that many of his decisions betrayed the Christian community.

In the interview, Mr Blair, who was highly reluctant ever to discuss his faith during his time in office, admitted: "If I am honest about it, of course it was hugely important. You know you can't have a religious faith and it be an insignificant aspect because it's profound about you and about you as a human being.

"There is no point in me denying it. I happen to have religious conviction. I don't actually think there is anything wrong in having religious conviction - on the contrary, I think it is a strength for people."

Mr Blair is a regular churchgoer who was confirmed as an Anglican while at Oxford University, but has since attended Mass with his Roman Catholic wife, Cherie, and is expected to convert within the next few months.

He continued: "To do the prime minister's job properly you need to be able to separate yourself from the magnitude of the consequences of the decisions you are taking the whole time. Which doesn't mean to say … that you're insensitive to the magnitude of those consequences or that you don't feel them deeply.

"If you don't have that strength it's difficult to do the job, which is why the job is as much about character and temperament as it is about anything else. But for me having faith was an important part of being able to do that… Ultimately I think you've got to do what you think is right."

Mr Blair's opponents say his religious zeal blinded him to the consequences of his actions, and point to his belief that his decision to go to war would be judged by God.

The Rt Rev Kieran Conry, the Roman Catholic Bishop of Arundel and Brighton, said last night that Mr Blair's comments echoed the feelings of religious leaders.

Mr Campbell, in the same TV programme as Mr Blair, said the British public were "a bit wary of politicians who go on about God".

Related articles
John Humphrys: Politicians without hotline to God
Analysis: To many of us he is a hypocrite
Cardinal urged Blair not to reveal conversion
8 November 2007: Tony Blair to become Catholic 'within weeks'
23 June 2007: Blair meets Pope amid conversion rumours
15 October 2004: Blair is ready to convert, says Catholic priest
END QUOTE
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http://www.telegraph.co.uk/news/main.jhtml;jsessionid=YNQ11I5O1Q21DQFIQMGSFFWAVCBQWIV0?xml=/news/2007/11/25/nblair225.xml
QUOTE

Tomany of us he isn't a nutter but a hypocrite

By Damian Thompson
Last Updated: 1:45am GMT 26/11/2007

Analysis

In next Sunday's BBC interview, Tony Blair says that as prime minister he shied away from talking about religion for fear of being thought a "-nutter". But in the eyes of many Roman Catholics, he is something worse: a hypocrite.

There was passionate opposition in the Catholic community to the Iraq war, which Pope John Paul II condemned unreservedly. That anger is now subsiding, but there is still discomfort at the thought of a warmonger being received into the Church. The defensive tone of this latest interview will do nothing to impress Mr Blair's critics.

The real sticking point, however, is the issue of abortion. Catholics have not forgotten that the former PM, although claiming to oppose abortion, consistently voted with hard-line pro-abortionists at a time when he was already attending Mass. This they regard as sickening hypocrisy - and they wonder why Cardinal Murphy-O'Connor is so silent on the matter.

The cardinal is expected to receive Mr Blair into the Church in his -private chapel quietly in the next few months, having dissuaded him from attracting bad publicity by announcing his conversion during his visit to Rome this summer.

Last week, a respected Westminster priest - who is not dentified with any faction and has never criticised the cardinal publicly - told me he was "in despair" over his boss's eagerness to claim the scalp of a politician who has fought against the pro-life cause.

This priest believes that the reception of Mr Blair will scandalise the faithful and anger the Vatican, which is already irritated by Cardinal Murphy-O'Connor's opposition to Pope Benedict's liturgical reforms.

The truth is that, if Mr Blair had been born a Roman Catholic, he would already be barred from receiving Communion by many bishops on account of his support for abortion. He might even face excommunication.

Yet this is the man whom Cardinal Murphy-O'Connor feted at a reception in Rome, and who will probably be afforded the unique honour of joining the Church in His -Eminence's private chapel, fussed over by sycophantic clergy.

The late Cardinal Thomas -Winning was so disgusted by Tony Blair's equivocation on abortion that he could barely bring himself to speak to him.

Fortunately for Mr Blair, the leader of the Church in England and Wales is more accommodating.

• *Damian Thompson is editor in chief of 'The Catholic Herald'*

END QUOTE

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What politicians see to overlook is that with the swell of births among Muslims then in time the Commonwealth of Australia will have a majority of Muslims and then they can use the very tax abuses now used to favour certain religions as to give tax credits, tax exemptions, and whatever to so to say build a Mosk on every street corner and they can simply hold that what was good enough in law to serve Christians is good enough now for them.

To me any tax exemption, tax credit, etc, is the same as Appropriation and therefore must be governed by an Appropriation bills. If therefore no appropriation bill can be legislated for religious funding then neither can there by any de facto appropriation for religion by way of tax exemption, tax deduction, tax credit, etc.

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QUOTE

Peter Costello - Treasurer

Tax deductibility of gifts to St Paul's Cathedral restoration fund

23 April 2002 – Press Release

Today I am announcing the Government's decision to amend the income tax law to allow tax deductions for gifts to the value of $2 or more to the St Paul's Cathedral Restoration Fund.

As a result, gifts made to the Fund from today to 22 April 2004, **will be deductible for income tax purposes.**

The Fund has been established to raise money for the restoration, refurbishment and improvement of St Paul's Anglican Cathedral, Melbourne and in particular for important repair and restoration work to the Cathedral spires.

St Paul's is an important place of worship and a significant Melbourne landmark that has pride of place at the heart of the city. The Cathedral was consecrated in 1891, with the erection of the spires beginning in 1926. In recent years there has been an appeal to enable the restoration of the Cathedral's magnificent organ, and the Cathedral has benefited from a grant under the Government's Federation Fund. The granting of gift deductibility status will complement these measures and assist the Cathedral to raise additional funds, thereby ensuring the important restoration work can be completed.

Legislation to give effect to this announcement will be introduced as soon as practicable.

Taxpayers should ensure that they receive a receipt for their donation.

Contact:Niki Savva 02 62 777 340

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As is made clear in this document any funding (including tax deductions, etc) must be for the "**whole of the Commonwealth**" and not just for any particular entity and certainly not for a religious entity.

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More over the office of the Prime Minister has no constitutional validity of using about $400 million as his own slash funds to spend as he likes because the constitution doesn't provide for a legislative power for a Prime minister's office.

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http://en.wikipedia.org/wiki/Scientology_as_a_state-recognized_religion

QUOTE

[edit] Australia

In 1982, there was a ruling by the High Court of Australia, in Church of the New Faith v. Commissioner Of **Pay-roll Tax**. **The court ruled that the government of Victoria could not deny the Church the right to operate in Victoria under the legal status of "religion."** All three judges in the case found that the Church of the New Faith (Church of Scientology) was a religion. Justices Mason and Brennan said (referring to the Church of Scientology as "the Corporation"):

The question to which the evidence was directed was not whether the beliefs, practices and observances of the persons in ultimate command of the organization constituted a religion but whether those of the general group of adherents constituted a religion. The question which the parties resolved to litigate must be taken to be whether the beliefs, practices and observances which the general group of adherents accept is a religion.

And in conclusion:

It follows that, whatever be the intentions of Mr. Hubbard and whatever be the motivation of the Corporation, the state of the evidence in this case requires a finding that the general group of adherents have a religion. The question whether their beliefs, practices and observances are a religion must, in the state of that evidence, be answered affirmatively. That answer, according to the conventional basis adopted by the parties in fighting the case, must lead to a judgment for the Corporation.

Justice Murphy said:

Conclusion. The applicant has easily discharged the onus of showing that it is religious. The conclusion that it is a religious institution entitled to the tax exemption is irresistible.

and

The conclusion to which we have ultimately come is that Scientology is, for relevant purposes, a religion. With due respect to Crockett J. and the members of the Full Supreme Court who reached a contrary conclusion, it seems to us that there are elements and characteristics of Scientology in Australia , as disclosed by the evidence, which cannot be denied.

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http://en.wikipedia.org/wiki/Scientology_as_a_state-recognized_religion

QUOTE

[edit] Australia

In 1982, there was a ruling by the High Court of Australia, in Church of the New Faith v. Commissioner Of **Pay-roll Tax**. **The court ruled that the government of Victoria could not deny the Church the right to operate in Victoria under the legal status of "religion."**

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This should be placed in its proper context that where a State allows for exclusion of pay roll tax for any religion then any form of religion or alleged religion is to be excluded. However, if payroll tax were to be taken over by the Commonwealth, and for this all the Commonwealth needed to do was to legislate for payroll tax, then that would be the end of any religion to be excluded from payroll tax.

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It should be understood that the exclusion of religions from payroll tax undermines trade and commerce in that a hardworking person could set up a business and has to pay payroll tax while then a religious organisation could open up next door having the same product but by not having to pay payroll tax then can undermine the hard working business. That in my view is not what was intended and I view that the States should either abolish exclusions of religious bodies of payroll tax or the Commonwealth of Australia should commence to legislate for payroll tax and by this the States automatically are prohibited to raise payroll tax as revenue.

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However,, one has to be careful that this is not to aid the political party in office in the federal government as to blackmail the States.

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Currently the push for the States to hand over their powers regarding hospital is a sheer and utter nonsense because the constitutional framework is that either one or the other but not both can legislate on a subject matter. The Prime Minister isn't giving away his own moneys but uses the monies of hardworking taxpayers and then as I view it does no less then to blackmail the States as other Prime Minister before him did likewise.

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If the Commonwealth collects say 1000X on monies and requires for usage of the public service and the running of the Department to use 600X of this then it is not for the Federal government to terrorise the States to hold them at ransom that unless they comply with its demand they can only get a certain slice of the monies where as by increments the Federal government is gaining more and more power, albeit unconstitutional, and then willing to provide more of the balance of the 400X then what we have is to show the youth of today that blackmail and terrorism really is acceptable if it is perpetrated by the Federal government against the States, and so its State citizens.

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It should be understood that regardless if the States or the Commonwealth pays the bill in the end the monies are collected from the taxpayers! As such it is not monies belonging to the commonwealth or the States but the taxpayers. As such when the Federal government promoted to provide more funding if the States hand over certain legislative powers then the Commonwealth is simply extorting powers from the States without any real financial benefits to the citizens.

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As has been set out in this document if there are States who for example have a **WATER** dispute that falls outside the exclusive legislative powers of one particular State then to provide an overall legislative provision it may be suitable in certain circumstances to hand over to the Commonwealth, provided it is by consent by way of State referendum of the relevant States, to do so. However, when it goes to the interference of country hospitals then this is no business of the Commonwealth and it cannot blackmail any State because it is an internal State matter.

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While there has been talk about another referendum about a **REPUBLIC**, again there is no legislative powers for the commonwealth to do so and hence it neither can promote a referendum regarding a matter to which s.128 referendum powers cannot be applied for.

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What we therefore have is that billions of tax payers monies is being wasted time and time again and there appears to be no overall supervision in regard of this.

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Regardless what might be argued against Iran, at least as I understand it there is a constitutional body that requires each and every Bill proposed to be placed before the Parliament first to be checked if this is constitutionally permissible.

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In the Commonwealth of Australia it is all done on political views and the rot coming from this is destroying many lives in the process.

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The **Vivian Alvarez Solon** case is a clear example where the government became the terrorist against this woman and it was the tax payers who ended up having to pay a reported $10 million dollars for the Minister disregard of the **RULE OF LAW** and **DUE PROCESS OF LAW**.

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Hansard *1-3-1898* Constitution Convention Debates

QUOTE **Sir JOHN DOWNER**.-

> **I think we might, on the attempt to found this great Commonwealth, just advance one step, not beyond the substance of the legislation, but beyond the form of the legislation, of the different colonies, and say that there shall be embedded in the Constitution the righteous principle that the Ministers of the Crown and their officials shall be liable for any arbitrary act or wrong they may do, in the same way as any private person would be.**

END QUOTE

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In my view it should have been the Minister and the officials that should have been personally sued for acting outside constitutional powers as I have set out in past publications the entire COMMONWEALTH DETENTION CENTRE system is unconstitutional and so also the way deportations are conducted.

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So, who really is looking after the proper usage of taxpayers monies?

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As I have for years recommended is that all governments of the States/Territories and Commonwealth have a non-political **OFFICE-OF-THE-GUARDIAN**, a constitutional body that is answerable to the Crown, being it the Governor or Governor General, pending which entity is relates to, and which has to provide advise to any Government as to its views about the constitutional validity of any Bills proposed to be submitted to the Parliament. Also, that where a Bill is deemed to be in conflict to the constitution and the Bill nevertheless is presented to the Parliament then the **OFFICE-OF-THE-GUARDIAN** has the legal position to place the matter before the High Court of Australia as to challenge before the Court the constitutional validity of the bill. In this manner Bills which are suspected from being in conflict with the constitution then can be adjudicated upon before having the parliament wasting a lot of time (and so monies) on debating a Bill that may never be constitutionally valid.

What this also means is that instead of leaving it up to a citizen to try to challenge the legislation to its validity, and remember the Cocopop legislation, then it will be taken before the Bill is debated upon.

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The monies it would cost to have an **OFFICE-OF-THE-GUARDIAN** at each government would be easily saved by having legislation avoided that are unconstitutional and/or otherwise may be inappropriate.

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More over, this **OFFICE-OF-THE-GUARDIAN** could be also used to provide statements as to what each section of the constitution means and how it can be applied, so that it wouldn't make a

difference if it is a Member of Government, a judge or any citizen they all would be able to be provided with precisely the same information.

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Let's use an example.

In 1967 there was this s51.(xxvi) referendum held about removing the wording about Aboriginals from that section so that the Commonwealth was able to legislate in regard of Aboriginals. As far as I understood it this was a s.128 referendum about Aboriginals and not about any other race, being it Chines, Japanese or whatever.

Anyone competent constitutionalist will be aware that a section of the constitution has a meaning that is applicable as is and it cannot be having a different meaning pending which person it relates to. As such the original meaning of s.51(xxvi) from federation was that the commonwealth of Australia could legislate against a specific race and by this they would automatically loose their franchise (Obviously to avoid them voting to so to say overthrow the legislation.) but this section could not be used against the "general community"! (See also Hansard debates such as of 2-3-1898)

Aboriginals albeit being excluded from counting of the population were not deprived whatsoever by the commonwealth and neither could be deprived by the Commonwealth of exercising their franchise (see s.41of the constitution) once they had been granted franchise by their colony/State. As such the 1908 White only legislation was unconstitutional where it denied Aboriginals to vote because they all along had the right to vote in federal elections once they had obtained colonial/State franchise.

It was for this, as I understand it to be, also that when in the early 1950's the Federal government entertained to amend s.51(xxvi) it's legal advise was that it could not use s.51(xxvi) for this purpose but rather it should create a new section for this. The Federal government then abandoned the s.51(xxvi) altogether. However the Aboriginals themselves and I understand the United Nations also specifically pressed for the s.51(xxvi) amendment in the belief that it would enhance Aboriginals, where to the contrary on constitutional grounds Aboriginals from by federation being regarded to be equal to other Australians were no deemed to be equal to other "coloured inferior races". Rather then gaining franchise they lost it by the s.51(xxvi) referendum but politicians simply do not understand this as much as they never understood that "citizenship" is a State legislative power and has nothing to do with "nationality".

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As such having an **OFFICE-OF-THE-GUARDIAN** can only benefit the understanding of Australians what the constitution is really about and this whole nonsense about Monarchy versus Republic is precisely that nonsense because the constitution doesn't permit the Commonwealth of Australia to be turned into some republic, as it is not even a country!

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No country exist with the name Commonwealth of Australia as it is a "**POLITICAL UNION**" and those who cannot even grasp this certainly better start to learn what the constitution really is about.

We have politicians travelling the world at taxpayers monies even to study a garbage dump overseas where they don't even understand what the constitution is about and indeed their own nationality as they claim it is "Australian citizenship" whereas no such nationality exist as Australians are in the end either natural born or naturalised British nationals.

http://www.geocities.com/englishreports/77ER377.html

Calvin's Case 7 Coke Report 1a, 77 ER 377

QUOTE

> 4. And as to the fourth, it is less than a dream of a shadow, or a shadow of a dream: for it hath been often said, natural legitimation respecteth actual obedience to the sovereign at the time of the birth; for as the antenati remain aliens as to the Crown of England, because they were born when there were several Kings of the several kingdoms, and the [7-Coke-27

b] uniting of the kingdoms by descent subsequent cannot make him a subject to that Crown to which he was alien at the time of his birth: so albeit the kingdoms (which Almighty God of his infinite goodness and mercy divert) should by descent be divided, and governed by several Kings**; yet it was resolved, that all those that were born under one natural obedience while the realms were united under one sovereign, should remain natural born subjects, and no aliens; for that naturalization due and vested by birthright, cannot by any separation of the Crowns afterward be taken away: nor he that was by judgment of law a natural subject at the time of his birth, become an alien by such a matter ex post facto.**

END QUOTE

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http://www.geocities.com/englishreports/77ER377.html

Calvin's Case 7 Coke Report 1a, 77 ER 377

QUOTE

3. Where the King hath several kingdoms by several titles and descents, there also are the ligeances several: but the King hath these two kingdoms by several titles and descents; therefore the ligeances are several. These three arguments are collected also from the words of the plea before remembered.

3. Leges. **From the several and distinct laws of either kingdom, they did reason thus: 1. Every subject that is born out of the extent and reach of the laws of England, cannot by judgment of those laws be a natural subject to the King, in respect of his kingdom of England: but the plaintiff was born at Edinburgh, out of the extent and reach of the laws of England; therefore the plaintiff by the judgment of the laws of England cannot be a natural subject to the' King, as of his kingdom of England**.

END QUOTE

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http://www.geocities.com/englishreports/77ER377.html

Calvin's Case 7 Coke Report 1a, 77 ER 377

QUOTE

By all which it is manifest, that the protection and government of the King is general over all his **dominions** and kingdoms, as well in time of peace by justice, as in time of war by the sword, and that all be at his command, and under his obedience.

END QUOTE

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http://www.geocities.com/englishreports/77ER377.html

Calvin's Case 7 Coke Report 1a, 77 ER 377

QUOTE

3. There be regularly (unless it be in special cases) three incidents to a subject born. 1. That the parents be under the actual obedience of the King. 2. That the place of his birth be within the King's dominion. And, 3. The time of his birth is chiefly to be considered; for he cannot be a subject born of one kingdom that was born under the ligeance of a King of another kingdom, albeit afterwards one kingdom descend to the King of the other. For the first, it is termed actual obedience, because, though the King f' England hath absolute right to other kingdoms or dominions, as France, Aquitai, Normandy, &c. yet seeing the King is not in actual possession thereof, none born there since the Crown of England was out of actual possession thereof, are subjects to the King of England. 2. The place is observable, but so as many times ligeance or obedience without any place within the King's dominions may make a subject born, but any place within the King's dominions may make a subject born, but any place within the King's dominions without obedience can never produce a natural subject. And therefore if any of the King's ambassadors in foreign nations, have children there of their wives, being English women, by the common laws of England they are natural-born subjects, and yet they are born out-of the King's dominions. But if

enemies should come into any of the King's dominions, and surprise any castle or fort, and [7-Coke-18 b] possess the same by hostility, and have issue there, that issue is no subject to the King, though he be born within his dominions, for that he was not born under the King's ligeance or obedience. But the time of his (a) birth is of the essence of a subject born; for he cannot be a subject to the King of England, unless at the time of his birth he was under the ligeance and obedience of the King. And that is the reason that antenati in Scotland (for that at the time of their birth they were under the ligeance and obedience, of another King) are aliens born, in respect of the time of their birth.

END QUOTE

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Those who favour a REPUBLIC are entitled to pursue this as long as they do this in a lawful manner and not try to misuse s.128 referendum powers of the constitution for this.

In my published books in the **INSPECTOR-RIKATI**® series on certain constitutional and other legal issues I have canvassed this issue extensively but do not accept that taxation monies should be used and be squandered on this issue where politicians themselves haven't got a clue what the meaning and application stands for.

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Again, the 1967 amendment was a con-job upon Aboriginals and also upon the electors because say I was in power I could have deported every Aboriginal as non-citizen because they are constitutionally no longer a citizen because the moment the Commonwealth legislated against Aboriginals their citizenship was **AUTOMATICALLY** lost.

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This is the danger when people are like sheep following what some political leaders are pursuing where they haven't got a clue what really is constitutionally applicable.

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After all, where the amendment was relating to Aboriginals and not as to Chines, Japanese, etc, then clearly s.51(xxvi) was not intended to alter the application in regard of other races! Therefore the inclusion of Aboriginals means they are then to be regarded in the same manner as other races.

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It also means that the Northern Territory laws and the monies used from taxpayers in the process are used unconstitutional as the Framers of the Constitution made clear that any law within s.51(xxvi) was to be used against a special race against all people of that race. It means that when there is legislation against Aboriginals, then it doesn't matter if the Aboriginal is a Member of Parliament, an Aboriginal as a lawyer, doctor, office worker, public servant, judge or, so to say, simply sleeping under a tree as the legislation applies to all Aboriginals. Meaning that to legislate against Aboriginals that they must ensure their child attend to an education facility or they cannot use the pool then the same applies to Aboriginal parents anywhere else in the Commonwealth of Australia. It means that where any law is enacted against Aboriginals all members of Parliament (including those of the Northern Territory) are no longer State/Territorian citizens and hence neither hold "Australian citizens" (being a political status and nothing to do with nationality) and so have no right to be a lawyers/judge, Member of Parliament, elector, etc.

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For the records this was extensively litigated by me as a constitutional issued in a 5-year legal battle before the County Court of Victoria and on 19 July 2006 I comprehensively defeated the Commonwealth of Australia on all constitutional issues I had raised. As such, it is an issue that was subject to a constitutional challenge and the Court upheld both my cases against the Commonwealth of Australia.

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It seems therefore to be clear that there is an urgent need to have an **OFFICE-OF-THE-GUARDIAN** that can finally provide constitutional **FACTS** rather then **FICTION**.

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It could then without any political bias issue statements as to what really is constitutionally applicable and more over instead of having High Court of Australia judges having to use some law clerk or other person to try to discover what is constitutionally applicable then they can call upon the **OFFICE-OF-THE-GUARDIAN** and request a copy of its statement and then the judges can work from there on to do their own further investigation if they desire to do so. We had previously a judge appointed to the High Court of Australia where this judge refused to hand down a decision because he declared he didn't know the constitutional issue. With a split 3 for and 3 against the appeal the appellant lost the case. In my view it is sheer and utter nonsense that this kind of situation can exist. We know towel about the Cross Vesting Act in the ***Wakim*** HCA 27 of 1999 where it was found to be unconstitutional albeit very few people are aware that already way back in 1994 I challenged its application in the High Court of Australia! Dawson J then merely assumed it was a valid application as he did also in 1995!

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And as to the Cocopop taxes that were unconstitutionally collected the Framers of the Constitution made clear that any tax wrongly collected had to be returned to those whom were they payers of the tax. The Commonwealth cannot keep the taxes nor donate it to anyone but must return (refund) the monies to its rightful owners. The fact that the Australian Taxation Office (ATO) as like with the GST has no records is immaterial because the onus is upon the Commonwealth to ensure that every cent on taxation extracted from a citizen is refunded to the citizen where it was wrongly extracted though any agent (business) that acted on behalf of the ATO.

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What we have now is that businesses, in particularly on so called Sunday markets (albeit they often are operating on other days also, who charge for GST but do not at all pass this on to the ATO because they do not have any record keeping. Despite my recommendations over a number of years that the ATO should make it mandatory that business operating on such kind of Sunday market should be using ATO issued payments books with pages numbered as to show the relevant monies collected and the amount of GST received, this still has not been implemented even so like the Thomastown Market in Melbourne there are millions of dollars changing hand in one day alone.

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Likewise so the issue of (back on that again) tax exemptions, tax deductions, tax credits or whatever regarding religious bodies.
Constitutionally if there is a tax exemption for religious bodies then it must also apply to a non-religious body, that is on a federal level!
As such, any taxation investigation/inquiry better appropriately deals with this also.

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In my view an **OFFICE-OF-THE-GUARDIAN** that can avoid simular absurdities can in fact save a lot of taxpayers monies in the process.

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To underline my submissions as to clamping down on misuse of **NON PROFIT** (**NOT-FOR-PROFIT**) entities that are using the monies collected for paying of victims of sexual abuse and, as I understand it, often under conditions of "**silence**" (confidential agreement) by a victim then I view this cannot be deemed to be for "**PUBLIC PURPOSES**" for which **NON PROFIT** (**NOT-FOR-PROFIT**) entities are registered for I now will quote some details.

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QUOTE

STATEMENT BY THE GOVERNOR-GENERAL
20 FEBRUARY 2002

Sexual abuse of children is totally abhorrent to me, and always has been. I believe it to be one of the most repugnant and serious of crimes. It can never be condoned or excused.

The community generally and more particularly those in positions of authority have a clear obligation to protect children from this vile activity and abuse of power.

As Archbishop of Brisbane I was confronted with a number of cases in which I was required to exercise my judgment about how to respond to allegations of child sexual abuse. In some of these cases, there were not only allegations but also admissions of child sexual abuse.

I exercised my judgment in each of those cases in good faith, to the best of my ability, and drawing upon both my religious beliefs and the best advice then available to me in the circumstances of the day.

I fully accept that those who have the authority to exercise these judgments must be accountable for their actions and that my decisions in these cases are now properly the subject of scrutiny.

This scrutiny should be properly informed by an understanding of the facts. Inaccurate or distorted reporting and analysis will simply inhibit the community and its organizations in their endeavours to better deal with these tragic events. It is achieving success in those endeavours that must be given the highest priority by all involved.

Accordingly, I welcome the announcement by Archbishop Aspinall that he will convene an inquiry into matters of sexual abuse involving the Anglican Diocese of Brisbane. I will cooperate with that inquiry fully and in any way that I can.

A deal of the media reporting, both print and television, that has occurred in the recent period has been neither properly informed nor conducive to safeguarding the interests of children and their freedom from risk of sexual abuse.

I have thus thought very long and hard about how to respond to the various assertions made about my handling of allegations of sexual abuse.

I have examined my actions, my records, my conscience, my memory and my responsibilities. I have also taken into account the difficult issues of confidentiality. On balance, I have decided that I must issue this detailed statement. While I understand and share the anguish of people involved directly or indirectly in child abuse situations**, I feel obliged to set the record straight as there have been serious distortions in the way the issues have been projected in the media.**

I do so knowing that this requires me to recall events and conversations some of which occurred many years ago. I make this statement **to the best of my memory** and notes. I stand ready to address any issues with the facts and the truth to the best of my ability.

Child sexual abuse cases are inherently difficult and complex. Each case is different. Sexual abuse raises a number of often competing issues and principles such as the rights of children, rights of parents, rights of the accused, confidentiality and availability of evidence.

Of these issues, the rights of the child must always be paramount. And, amongst those rights, the free ability to involve law enforcement agencies is fundamental. I have never actively discouraged any individual from taking a matter of sexual abuse to the police. Nor would I ever do so.

In reflecting on the Church's approach to child sex abuse during my earlier years as Archbishop of Brisbane, I have come to the conclusion that we were operating within a system that should now be recognized as ill-equipped to deal with the complexity of the issues. I acknowledge that the Church had not kept pace with community expectations and demands for greater transparency and accountability in dealing with these problems. **I acknowledge I was part of that system.** I became conscious of these deficiencies and the Diocesan Council and I instigated a number of processes for reform. On refection we could have done more.

One of the fundamental problems is that the Christian notion of forgiveness has not been reconciled clearly enough with more robust and transparent community processes for remediation and the avoidance of future risk. This is a fundamental issue for all churches

and public institutions. I hope that an outcome of the focus on my handling of these cases will be a quickening of the pace of reform in this area.

The structure of the Church and the governance procedures in place at the time meant there were no clear guidelines for when church leaders should become involved and how. This has led to a perception that complaints of sexual abuse were covered-up and that outcomes favoured priests over victims. While I do not believe the objective evidence justifies such conclusions, the fact that such perceptions arise is a reality to which I and the Church must respond.

I have never sought to cover-up or resile from dealing with an allegation of child sexual abuse, no matter how difficult. I have always attempted to exercise my judgment and authority in a way that balances all competing interests.

The exercise of judgment is the central element in the cases that I will address below. Choosing between black and white is easy and perhaps I should be envious of those who perceive the world in that way. I do not. The church exists for the salvation of broken people, people broken by what may have been done to them, people broken by the evil they do to others. The human and interpersonal issues faced by any church leader, to my mind, involve many shades of grey. Over the years I have made judgments drawing on my professional training and experience. I accept that others in the same circumstances might well make different judgments. In retrospect, if faced with the same circumstances today, some of my judgments may have been different. I do not pretend that all my judgments have been perfect. **I regret those I may have got wrong.**

Child abuse is one of the most difficult and serious of social problems confronting our community. There is a report of a child abuse every five minutes in Australia. It is an issue that I have tried to address to the best of my ability over 40 years in my various roles in the community. I refuse to turn away because it is too difficult. I vow to continue to help the community and to take a lead to deal with this most urgent problem.

In the passages that follow I set out my detailed response to various allegations repeatedly made in the print and television media in recent weeks to which I am presently able to respond. Should further media reports contain material that I consider warrant comment from me, I will respond appropriately at the time.

Toowoomba Prep School

I detailed the limited nature of my involvement in this matter in my earlier statement in December 2001. There are however three particular matters raised in the *Sunday* and *60 Minutes* program to which I should provide an additional response.

Allegation: That for three years after the rape of Marj's daughter, Guy would rape or sexually abuse up to 80 girls at this school.

- There is no evidence to support this allegation.
- Guy's suicide note named 20 girls from Toowoomba Prep and another school interstate.

The school and the Toowoomba Hospital Suspected Child Abuse Network (SCAN) team followed up with each of their families. I have recently been informed by a senior Toowoomba paediatrician, Dr Prebble, that no cases were reported to the SCAN team and that there was accordingly nothing for them to investigate.

- The available evidence to date is that no more than 3 girls were sexually abused by Guy at Toowoomba Prep.
- We previously knew of the two girls involved in the charges against Guy.
- More recently we have become aware of another girl who has only recently informed her family that she was raped by Guy in 1988. This is the daughter of Marj who was interviewed on the *Sunday* and *60 Minutes* programs.
- Another couple interviewed by *Sunday/60 Minutes* (Sue and John Neale) clearly indicated that their daughter was not molested.

- Abused children are in no way assisted by gross exaggeration of this kind made by the *Sunday* and *60 Minutes* programs.

Allegation: "Only the parents of the 20 girls named in the suicide note were to be told the truth."

- The School Council decided that only the parents of the girls named in the suicide note should be specifically advised of Guy's conduct. I was not party to that decision. The charges against Guy were, of course, a matter of public record and widely known within the community.
- I was informed on returning from leave on or about 4 February 1991 that the School Council had met the Toowoomba Hospital's SCAN team and had formulated an action plan. Under this plan the headmaster was to take certain action, including:
  - writing urgently to the parents of each of the children mentioned in Guy's suicide note;
  - providing assistance to the SCAN unit and the Health Department;
  - speaking to all the children at the school at the earliest opportunity after the holidays;
  - informing the SCAN unit be of the school's response to the parents of the girls mentioned in Guy's note; and
  - advising the families of the two girls known to have been abused of the action to be taken by the School Council.
- The School Council also immediately reviewed its boarding house administrative practices and agreed to consider paying counselling fees for the girls.

Allegation: That there was a cover-up of Guy's abuse.

- I have set out above the decisions which the School Council took, with advice from the Toowoomba Hospital, and the directions it gave to the headmaster, after it became aware of Guy's abuse.
- These decisions were not made or implemented immediately upon the revelation of Guy's activities. This led to some concerns that there was a cover-up involved. However, the delay in acting was partly because of the summer vacation and the absence of school authorities and pupils, and partly due to the need to await the SCAN team's advice. While action could have been taken more quickly, there was in fact no cover-up.

A Queensland Priest

Allegation: That I allowed a 62-year-old Queensland priest to continue his licence until retirement at 65 years, with knowledge that he had committed an act of sexual abuse prior to his becoming a priest.

- The *Sunday* and *60 Minutes* programs referred to a priest and events involving an unnamed boy that took place some 20 years ago. These events took place before the priest was ordained.
- The family of the boy informally approached the diocese in late 1993 reporting that their two sons had been abused by the priest before he was ordained and expressing concern about the priest continuing in his office.
- When I was informed of the sexual abuse, I immediately confronted the priest who readily admitted the incidents. I insisted that he give me a full account of his previous actions.
- After making inquiries I could find no evidence of his having offended since becoming a priest.
- I required the priest to seek assistance from a psychiatrist with whom I could liaise. The psychiatrist advised me verbally that paedophiles **may re-offend**. In light of this, I wrote to the priest alerting him to the psychiatrist's advice about the dangers of re-offending

and urging him to take the utmost care. He promised to do so, and agreed to report to me regularly.

- In light of these matters, I formed the view that he could continue as a priest but only on a number of conditions designed to avoid the danger of any recurrence:
- I required him to apologise to the victims and the family;
- I directed that he was to have nothing to do with children or youth organizations;
- I informed the regional bishop of the action that I had taken so that he could assist me in maintaining close surveillance to monitor the priest's ongoing behaviour;
- I informed the other bishops within the diocese of my action, in the interests of transparency and collegiality and to seek any suggestions for alternative courses which were not forthcoming at the time (although some unease was expressed at a later time when the priest held a Permission To Officiate which allowed him to conduct alternative services in his retirement);
- I required him to disclose the matter to his wife and I personally spoke with the priest's wife about the need for her to be alert to the priest's ongoing behaviour; and
- I maintained occasional contact with the victim and agreed to his request that the church provide him with counselling (which he did not eventually take up).
- Upon his acceptance of these conditions, I concluded that the risk of any recurrence of what I then believed was isolated activity some 20 years ago was not such that the priest could not continue in office until retirement. Whether he would later receive permission to undertake occasional locums on his retirement in two years time was contingent on his conduct in the concluding years of his active ministry.
- Some eight years later, a separate matter became the subject of a police investigation. The priest has now been charged and pleaded guilty on separate charges. These offences also occurred before he became a priest. **It was because of these charges that his licence was recently revoked.**
- **I completely support that decision.**
- I am deeply disturbed that, despite my specific questioning of him on this point, the priest did not inform me about these other abuses and that evidence of them was not otherwise available to me. Had this not been the case, my decision would most definitely have been different.

Allegation: I am supposed to have told the father that it was better to upset one family rather than an entire parish.

- While I cannot recall the detail of our conversation, **I cannot believe that I would have said this.** A sentiment of this nature is inconsistent with my principles and beliefs.
- I know that members of the family had difficulty accepting my decision not to revoke the priest's licence. While I understand their feelings, I was required to form a judgment on all the material then available to me. I made a pastoral judgment in good faith based on my belief that the right protections were in place and that nobody would be at risk**. I believed at the time that the priest had not transgressed since his ordination. This remains the case and there is no evidence that any child has suffered harm as a result of my decision.**
- **I accept some will criticise the decision I made and, with the benefit of hindsight and especially with the facts that have now emerged, I recognise that it would have preferable if the priest's licence had been revoked.**

"David"

Allegation: On the Sunday/60 Minutes programs, a silhouetted figure called "David" claimed that I sought to dissuade him from taking allegations to the police.

- When I saw the *Sunday/60 Minutes* programs I could neither recognise "David" nor recall meeting him. This was still the case when I commented on "David" during the "Australian Story" program on Monday night.
- However, I now understand from checking my diary that "David" is a person with whom I met at the end of August 1993.
- I have no clear recollection of the details of our conversation. In particular, I do not recall him raising the prospect of approaching the police. If he did so, however**, I do not believe I would have urged him not to go to the police.**
- **As a trained social worker and priest**, I would never seek to dissuade an individual from going to the police or other authorities. In any such counselling, my practice was to ensure that individuals were aware of all the options for seeking redress in respect of their allegations of sexual abuse and of the potential ramifications of each for them and their families.
- In following this course I have never sought to improperly or inappropriately discourage any victim from exercising their fundamental right to raise a matter of sexual abuse with the police.
- Now that I have clearly identified "David", I recall that, in 2001, "David" had telephone conversations with me in which he indicated a need for counselling**. I offered to pay for this. I** arranged for one of the church agencies to help him. As it transpired, I believe he did not take up this offer.
- By way of clarification I mention that, during the "Australian Story" interview, I incorrectly assumed that the priest to whom "David " referred may have been associated with the now closed St George's Home in Rockhampton. This was because of "David's" reference to the priest having ceased to be a priest in the last 12 months. I now understand this not to have been the case.

Mr Alec Spencer

Allegation: On the Sunday / 60 Minutes programs, Mr Spencer said he attended a meeting at which he alleges that I said "…the people who make these allegations are often deviants and misfits and can't be trusted."

- **I do not believe that I would ever have made such a statement.** I find the language attributed to me abhorrent and against all my professional training and beliefs.

Allegation: Mr Spencer also complains that I did not want to deal with him in relation to his claimed experiences at St George's Home, Rockhampton, claiming that I was about to take long service leave.

- My recollection is that Mr Spencer told me on two occasions that he wanted to discuss his experiences with me, and that in each case this occurred after the only meetings of Queensland heads of churches that he ever attended as a representative of the Assemblies of God.
- After the first meeting, I indicated my readiness to meet him even though Rockhampton was in a different diocese. I asked my secretary to make an appointment for Mr Spencer to see me should he make contact. He did not do so.
- On the second occasion, I again indicated my willingness to meet him, while mentioning that I was unable to do so in the immediate future as I was about to leave for the Lambeth Conference of Anglican bishops held in Canterbury (not long service leave as Mr Spencer claimed). Again he did not follow up and the next I heard of him were the allegations, attributed to him two years ago in The Courier Mail and similar to those he made on the *Sunday / 60 Minutes* program.

Ross McAuley

Allegation: The Weekend Australian and the Sunday/60 Minutes programs are critical of the appointment of the Cathedral's Precentor, Ross McAuley, to the diocesan sexual abuse committee when I knew an allegation of abuse had previously been made against him. I am also criticised for not informing the committee of this allegation when appointing him to it.

- McAuley and I worked together for nine years at the Brotherhood of St Laurence in Melbourne. Throughout that period I had no reason whatsoever to suspect any impropriety on his part and particularly in relation to sexual abuse of children. My assessment was that he performed his duties with the Brotherhood with distinction.
- In 1995, McAuley was appointed by the Cathedral Chapter as Precentor in Brisbane, a job primarily concerned with the Cathedral's liturgy and for which he was well qualified.
- Not long after his appointment to Brisbane, I received a short letter from Mr Stephen Lacon making allegations about McAuley's sexual behaviour many years previously in Mr Lacon's presence.
- I informed the bishops of the diocese of the allegation raised in the letter. I did this at our weekly meeting. We arranged for the complaint to be investigated by a small panel of experts. The panel met the complainant and a representative of a sexual abuse advocacy group.
- A panel representative, independent of the diocese, investigated the matter as fully as he could. He reported to the panel that he could not verify Mr Lacon's complaints. The investigator advised that none of his allegations could be verified, that no witnesses could be found and that Mr Lacon appeared confused as he was making contradictory statements.
- It was noted at the meeting of bishops at which the matter was reported that Mr Lacon's advocate did not press for further investigation.
- I also had a long meeting with McAuley, putting the allegations to him along with the material provided by Mr Lacon. He strongly denied the allegations.
- Some months later we were establishing a committee to deal with clergy sexual abuse. We needed a priest with social work training and the necessary perception and sensitivity to work with and provide balance on the committee. McAuley was recommended to me by the chair of the panel. I discussed both the recommendation and the prior allegation against McAuley with the bishops at our weekly meeting. After reviewing all the circumstances, we agreed that McAuley's name should be given to the committee to fill the final vacancy.
- Because the panel and independent investigator had failed to find any grounds to support Mr Lacon's complaint, I did not consider it appropriate for me to divulge the fully investigated complaint to the committee.
- Subsequently, a 24-year-old male member of the choir made a complaint about an inappropriate sexual advance to him, as an adult, by McAuley.
- This matter was investigated by the clergy sexual abuse committee without him taking any part, other than his participation in formal mediation. The committee was unable to resolve all the issues before it and eventually referred the matter to me with a written recommendation that he be stood down as Precentor and accept counselling.
- On investigation, and after interviewing both the complainant and McAuley in depth, I concluded that the allegation of inappropriate sexual behaviour could not be corroborated and that the matter essentially arose from an irreconcilable breakdown between them in relation to a business venture being undertaken by them. Because of this I decided that there was insufficient grounds to remove him from the position of Precentor.
- However, McAuley took extended sick leave and took up certain of the recommendations of the committee. Later it became clear that the Cathedral could not afford to keep the separate full-time Precentor position and soon after McAuley moved to Tasmania.

Allegation: In the Sunday/60 Minutes programs, a member of the sexual abuse committee, Mr David Axten, claimed that McAuley's employment at the Cathedral could have posed an ongoing risk to the children of the choir.

- I utterly reject that suggestion.
- Given the unsubstantiated nature of Mr Lacon's complaint and my conclusion that the subsequent complaint of a homosexual approach to an adult was simply a manifestation of an inter-personal dispute related to a business venture, I consider that there were no grounds to assume that there was a risk to children in the choir
- At this point I need to correct a detail I provided in the "Australian Story" interview on Monday night. I mistakenly said that Bishop Noble alone handled the Lacon complaint. This is not correct and I apologise to him.

Bishop Donald Shearman

Allegation: That I did not revoke Bishop Shearman's right to officiate after I was informed of his abuse of a girl in the 1950s.

- The Sydney Morning Herald on Saturday 16 February carried a front-page story with the banner headline "G-G spared sex abuse bishop". Certain details were set out in a later article in The Courier Mail in which former Bishop Don Shearman identifies himself as the retired bishop in question. It is a very sad set of circumstances for all involved, spanning some 50 years.
- The facts as I understand them to be are as follows:
- Retired Bishop Shearman had sex with a girl of about 15 years of age when he was a young curate some 50 years ago. The girl was a resident in a church hostel he supervised. That act on his part cannot be condoned, and I have never condoned it regardless of whether or not the girl was a willing participant.
- Shearman confessed his actions to his then Bishop and offered to resign, but this was not accepted.
- In the 1970s a relationship commenced between Shearman and the then adult woman involved in the 1950's incident and this lasted for a short period.
- In the mid 1980s, after Bishop Shearman had resigned, the woman complained to my predecessor about Shearman's conduct;
- The then Archbishop then sought to achieve a resolution of the woman's grievances, with some apparent success.
- In the mid 1990s the woman approached me, raising the same grievances against Shearman. I referred the matter to the clergy sexual abuse committee which made a number of recommendations, including formal mediation. I was an observer at that formal mediation between her and Shearman and, at its conclusion, I believed that a resolution of the grievances had been achieved.
- It was in all these circumstances that I formed the view that there was no need to revoke former Bishop Shearman's Permission To Officiate (P.T.O.). A P.T.O. allows a retired priest to conduct occasional church services.
- Subsequently it became apparent, early last year, that the resolution understood to have been achieved at mediation had broken down and the woman again raised her concerns in letters to other bishops. For this reason, Bishop Shearman and I agreed that he should discontinue any public ministry in his retirement.
- Adverse inferences have been drawn from the fact of Bishop Appleby's revocation of retired Bishop Shearman's P.T.O. shortly after my departure from the diocese. The fact is that the formal withdrawal of the P.T.O. by the Bishop Administrator followed the agreement I made with former Bishop Shearman not to exercise ministry publicly.

Provision of Counselling

Allegation: The Sunday / 60 Minutes program reporter's claim that $35m has been spent on refurbishing the Cathedral while only $500 had been spent on counselling for victims of sexual abuse.

- I reject this allegation. While there is an appeal for $25m for the completion of the Cathedral (of which about half has been raised), the fact is that significant amounts have been allocated to support counselling.

St Paul's School

Allegation: The Daily Telegraph of today alleges that I "endorsed a secret cash settlement which hushed up direct evidence of sexual abuse perpetrated against boys at a Anglican Church School in Brisbane".

- Legal proceedings were instituted against St Paul's School arising out of alleged sexual abuse by Kevin John Lynch, the Counsellor of that school.
- Those proceedings were settled on terms mutually agreeable not only to the Church but to the plaintiff and his family. In the usual way, the settlement included a confidentiality clause. I understand that the fundamental purpose of this clause would have been to protect the privacy of the boys involved. It is certainly the case that I never insisted that such a clause be inserted.
- While I was informed of the settlement, I was not asked to approve of it. The decision in this regard was taken by the Church's insurers in consultation with the diocesan General Manager, who in turn was advised by the diocese's independent solicitors.
- It would have been totally inappropriate and unacceptable to have forced the plaintiff to suffer the further anguish of litigation simply to avoid the baseless allegation now made that "hush money" was paid.

END QUOTE

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QUOTE

Muslims who want to live under Islamic Sharia law

The Whole world Needs A Leader Like This!

Prime Minister Kevin Rudd - Australia

Muslims who want to live under Islamic Sharia law were told on Wednesday to get out of Australia , as the government targeted radicals in a bid to head off potential terror attacks..

Separately, Rudd angered some Australian Muslims on Wednesday by saying he supported spy agencies monitoring the nation's mosques. Quote:

'IMMIGRANTS, NOT AUSTRALIANS, MUST ADAPT. Take It Or Leave It. I am tired of this nation worrying about whether we are offending some individual or their culture. Since the terrorist attacks on Bali , we have experienced a surge in patriotism by the majority of Australians. '

'This culture has been developed over two centuries of struggles, trials and victories by millions of men and women who have sought freedom'

'We speak mainly ENGLISH, not Spanish, Lebanese, Arabic, Chinese, Japanese, Russian, or any other language. Therefore, if you wish to become part of our society . Learn the language!'

'Most Australians believe in God. This is not some Christian, right wing, political push, but a fact, because Christian men and women, on Christian principles, founded this nation, and this is clearly documented. It is certainly appropriate to display it on the walls of our schools. If God offends you, then I suggest you consider another part of the world as your new home, because God is part of our culture.'

'We will accept your beliefs, and will not question why. All we ask is that you accept ours, and live in harmony and peaceful enjoyment with us.'

'This is OUR COUNTRY, OUR LAND, and OUR LIFESTYLE, and we will allow you every opportunity to enjoy all this. But once you are done complaining, whining, and griping about Our Flag, Our Pledge, Our Christian beliefs, or Our Way of Life, I highly encourage

you take advantage of one other great Australian freedom, 'THE RIGHT TO LEAVE'..'

'If you aren't happy here then LEAVE. We didn't force you to come here. You asked to be here. So accept the country YOU accepted.'

Maybe if we circulate this amongst ourselves, WE will find the courage to start speaking and voicing the same truths.

If you agree please SEND THIS ON and ON to as many people as you know

END QUOTE

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QUOTE

Muslim Sharia law... very scary

Saturday, 30 January, 2010 3:38 PM

From:

To:

She is a real person folks so.....For USA read UK as well.

Be sure to Google Nonie Darwish.....some very interesting reading. She is former Muslim who converted to Christianity...these revelations are from one who knows....

READ AND WEEP FOR THE WORLD!

Nonie Darwish is real and widely published. This is sobering and disturbing material. Hard to figure how to deal with it. Reminds me of the disastrous takeover of Afghanistan by Taliban with newly imposed sharia law.

Joys of Muslim Women

by Nonie Darwish

In the Muslim faith a Muslim man can marry a child as young as 1 year old and have sexual intimacy with this child. Consummating the marriage by 9. The dowry is given to the family in exchange for the woman (who becomes his slave) and for the purchase of the private parts of the woman, to use her as a toy.

Even though a woman is abused she can not obtain a divorce. To prove rape, the woman must have (4) male witnesses. Often after a woman has been raped, she is returned to her family and the family must return the dowry. The family has the right to execute her (an honor killing) to restore the honor of the family.

Husbands can beat their wives 'at will' and he does not have to say why he has beaten her.

The husband is permitted to have (4 wives) and a temporary wife for an hour (prostitute) at his discretion..

The Shariah Muslim law controls the private as well as the public life of the woman.

In the West World (America & UK) Muslim men are starting to demand Shariah Law so the wife can not obtain a divorce and he can have full and complete control of her. It is amazing and alarming how many of our sisters and daughters attending American Universities are now marrying Muslim men and submitting themselves and their children unsuspectingly to the Shariah law.

By passing this on, enlightened American & UK women may avoid becoming a slave under Shariah Law. Ripping the West in Two.

Author and lecturer Nonie Darwish says the goal of radical Islamists is to impose Shariah law on the world, ripping Western law and liberty in two. She recently authored the book, Cruel and Usual Punishment: The Terrifying Global Implications of Islamic Law..

Darwish was born in Cairo and spent her childhood in Egypt and Gaza before immigrating to America in 1978, when she was eight years old. Her father died while leading covert attacks on Israel . He was a high-ranking Egyptian military officer stationed with his family in Gaza ...

When he died, he was considered a "shahid," a martyr for jihad. His posthumous status earned Nonie and her family an elevated position in Muslim society. But Darwish developed a skeptical eye at an early age. She questioned her own Muslim culture and upbringing. She converted to Christianity after hearing a Christian preacher on television.

In her latest book, Darwish warns about creeping sharia law - what it is, what it means, and how it is manifested in Islamic countries.

For the West, she says radical Islamists are working to impose sharia on the world. If that happens, Western civilization will be destroyed. Westerners generally assume all religions encourage a respect for the dignity of each individual. Islamic law (Sharia) teaches that non-Muslims should be subjugated or killed in this world.

Peace and prosperity for one's children is not as important as assuring that Islamic law rules everywhere in the Middle East and eventually in the world. While Westerners tend to think that all religions encourage some form of the golden rule, Sharia teaches two systems of ethics - one for Muslims and another for non-Muslims. Building on tribal practices of the seventh century, Sharia encourages the side of humanity that wants to take from and subjugate others.

While Westerners tend to think in terms of religious people developing a personal understanding of and relationship with God, Sharia advocates executing people who ask difficult questions that could be interpreted as criticism.

It's hard to imagine, that in this day and age, Islamic scholars agree that those who criticize Islam or choose to stop being Muslim should be executed. Sadly, while talk of an Islamic reformation is common and even assumed by many in the West, such murmurings in the

Middle East are silenced through intimidation.
While Westerners are accustomed to an increase in religious tolerance over time, Darwish explains how petro dollars are being used to grow an extremely intolerant form of political Islam in her native Egypt and elsewhere.

In twenty years there will be enough Muslim voters in the U.S. to elect the President by themselves! Rest assured they will do so... You can look at how they have taken over several towns in the USA .. Dearborn Mich. is one... and there are others...

I think everyone in the U.S. should be required to read this, but with the ACLU, there is no way this will be widely publicized, unless each of us sends it on!

It is too bad that so many are disillusioned with life and Christianity to accept Muslims as peaceful.. some may be but they have an army that is willing to shed blood in the name of Islam.. the peaceful support the warriors with their finances and own kind of patriotism to their religion..

While America/UK is getting rid of Christianity from all public sites and erasing God from the lives of children the Muslims are planning a great jihad on America ..

This is your chance to make a difference...! Pass it on to your email list or at least those you think will listen.

END QUOTE

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Again the Framers of the Constitution made clear that any religious practices would have to be within the confinement of Australia law (State/Territorian & Federal) and it is a misconception that any religious entity can somehow create a compound closed off with high fences, security guards and provisions of holding rooms/cells to punish any person as this cannot be permitted to be falling within the system of a **NON PROFIT** (**NOT-FOR-PROFIT**) registered entity for "**PUBLIC PURPOSES**".

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http://au.news.yahoo.com/a/-/mp/6221911/addict-has-15-abortions-in-17-years/

QUOTE

"Addict" has 15 abortions in 17 years

Yahoo!7 October 15, 2009, 1:17 pm

A mother who says she was an "abortion addict" has admitted having 15 terminations in 17 years.

Irene Vilar said that from the age of 16 to 33 she could not prevent herself from getting pregnant - and then getting a termination.

"Of course, this did not mean I wanted to do it again and again," said the now 40-year-old mother of two.

"A druggie also wants to stop every time."

For much of that period she was in a difficult marriage with an older man who did not want children with her, she said.

She would "forget" to take her birth control pills, get pregnant, panic that she would lose her husband and arrange an abortion.

Her past is explored in her memoir *Impossible Motherhood: Testimony of an Abortion Addict*, which has provoked an outcry from many anti-abortion campaigners.

"The majority of pro-choicers - and I don't blame them - are somewhat confused," Ms Vilar told the LA Times.

"My story is a perversion of both maternal desire and abortion, framed by a lawful procedure that I abused," she writes in her book

"A moment came when not being pregnant was enough motivation for wanting to be pregnant. Getting pregnant began to be simply a habit."

But she believes the availability of abortion saved her life as she would have found a way to end her pregnancies, legal or not.

She is now raising two daughters, aged three and five years old, and two teenage stepchildren with her second husband, whom she met in 2003.

To verify her story, Ms Vilar produced medical records and her book was fact-checked and vetted by lawyers, according to her publishers.

END QUOTE

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I DO NOT PROMOTE ANY RELIGIOUS VIES BUT I TAKE THE POSITION THAT NEITHER MYSELF OR ANYONE WHO READS THIS DOCUMENT WOULD HAVE EXISTED WERE IT NOT BECAUSE OUR MOTHERS DIDN'T ABORT US.

We were given the right to live and we should not deny others to do so.

Taxpayers should be caused to pay under the health scheme something that is not really at all a health issue.

For sure, if there is an incident that a female is the result of an unwanted pregnancy due to rape and medically it is deemed to be appropriate to have an abortion taking place then this might be justified, but I cannot accept that having 15 abortions in 17 years can be classified as for health reasons and as such is a gross abuse and misuse of taxpayers moneys. This is not an issue about an unwanted child but about generally a preventative pregnancy but women refuse to avoid the risk of pregnancy and then misuse and abuse the health system as to incur the cost of pregnancies. It means that the so to say health dollar needed badly to be spent for those really in ill health are used instead for a commodity such as abortions.

Instead of having a health system that funds infertile women who have difficulties to become pregnant and paying on the other hand for abortions we would do better to encourage women who have fallen pregnant but do not desire to have a child to nevertheless carry the child and pass it on to those who badly desire a child but are unable to conceive a child.

Not a surrogate system as such but a system controlled by the Commonwealth where the woman is provided with free medical care cost, incurred in relation to the pregnancy, upon her handing over the baby to another couple.

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While I am well aware that weomen claim it is their body and they can do with it what they like, and indeed they are right in this for sofar they are refering to their own body but when a child is conceived it is not their body but the body of a child (in whatever state it is in) and they have no right to abort this child merely upon their owen say so as they had every right, so to say, to keep their legs close to avoid any pregnancy in the first place.

If a man can be held legally responsible for donating his sperm into a woman and a preganacy results then likewise the participating women must equally be held legally responsible and the

child conceived is a child of both, not just one of them, and must be considered to have a right to live regardless if either or both parent were to desire otherwise.

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We cannot have that if a person inflicts harm upon a pregnant women and as result the foetus dies the person then can be legally liable where as if the women herself caused the foetus to die then somehow it is "her right to make a decision about her body" where in real she isn't at all making any decision about her body as she gave up that right when she participated in sexual intercourse., and as such she really claims to have the right to terminate the rights of the foetus.

Fancy a woman being infertile to use infertility at huge cost to the taxpayers and then when pregnant end's up to split with the biological father and then she makes clear "it is my right to do with my body as I like" and then have an abortion. Surely no **FAIR MINDED PERSON** can accept this gross misuse and abuse of taxpayers dollars?

If she got herself pregnant then by this she did forgo any rights relating to the foetus she carries, simple as that.

Again, the exception is where doctors hold that upon special medical reasons it might be appropriate for an abortion to take place. For example is a 9 year old girl is raped and by it became pregnant then doctors might view that the child may be right is she want's to have an abortion. Still, the child should have a say in it and if she wants nevertheless keep the child then so be it.

Likewise where there is a case of life and death, say after a car accident, and doctors are placed in a situation where they may have to consider to terminate the foetus to save the life of the mother then again this is a medical issue.

However, I do not accept that abortions done because of a woman not wanting to be pregnant is a medical issue as where a woman knowingly and willingly engage in sexual activities that can produce a pregnancy then she must be equally held accountable for this as a man would be. If a woman claims to have the right to abort the child then one has to consider the alternative that then a man not wanting the women to have become pregnant also could insist the woman then has an abortion as he doesn't want the child! Women then will cry out that this cannot be permitted because the unborn-child in their body. As such woman want it each way to have the sole determination if the child shall live or die but the biological father has no say in it whatsoever and is left in question to face possible 18 years of child support payment merely as to if the woman might or might not keep the unborn baby.

In my view abortions should not be classified as a health issue unless certified by doctors that it is in fact a health issue and again it should be the exception rather then the rule.

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I was assisting once a well known case where the former husband discovered that 2 out of three children of the marriage were actually not his biological children. Later the Court held that the former wife suffered a medical condition that she needed sexual intercourse with another man. So much for a marriage being between one woman and one man! Anyhow, it seems darn silly to me that a woman having extramarital sexual intercourse over a number of years with another man somehow can claim this is due to a medical illness. Ample of women have extra marital sexual intercourse as ample of married men do and surely they do not all claim it is due to some illness. What the court did disregard is that even if she suffered from this illness it nevertheless didn't excuse her conduct to pervert the course of justice time and time again to collect for years after the marriage break-up to claim child support from the former husband even so she was then all along knew that the man she since was living with was the biological father of two of her children. Somehow her illness needing another man for sexual intercourse seemed to have evaporated.

In my view, when a woman demands child support then she is publicly claiming that the child is that of the person she is claiming child support from and she would then be barred in law to ever contest the paternity. What we have however is that women claim child support and then when the child turns 18 then announce that after all the man who all along was paying child support

isn't the biological father. This cruel twist is showing how malicious such women are not just against the men concerned but also tho their own children to have deceived them also all along to deny them the knowledge of their true biological parent.

In Family Law however you can have a woman claiming child support of two or more men and actually be able to achieve this even neither may actually be the biological father! This is how rotten the system is. In my view this whole Child Support as a "Debt to the commonwealth" is unconstitutional as it purports a private debt to the custodian parent:" to become a "Debt to the commonwealth" but yet the commonwealth then conduct matters totally different then it being a "Debt to the commonwealth"

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For example when I was a single parent of one of my daughters since she was one year old the child Support Agency refused to collect a single cent from the non-custodian mother and didn't do so until the child was about 21 years old, where it then pursued me to "cancel" the Child Support Debt" which I refused. If the child support Debt was a "Debt to the Commonwealth" then legally I have no place to play as to authorise a cancellation of the non-payment of some 17 years of child-support. They talk about so called dead-beat fathers but the dead-beat mothers are often worse.

The Family court however on basis of the child support (I wasn't getting) nevertheless calculated that therefore I could afford making 1,000 kilometre round trips to allow for access. As such, the Family Court of Australia wasn't dealing at all with reality!. More over, the Child support Agency made clear that unless they receive a payment from the non-custodian parent they would not make any payment to me. As such it had nothing to do with a "Debt to the Commonwealth" merely that the Commonwealth was so to say administrating the transfer of monies received. At one stage the mother was able to get Legal Aid lawyers to argue that she couldn't afford paying child support (by then the child was already 14) because she had one of her adult children living with her free of cost. Moment, try a man to get out on such an argument and the court will say that has nothing to do with the child you created, you simply have to pay and your further problems are for you to sort out.

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The Court at the time nevertheless reduced child support payment to be $20.00 a week, but true to the mothers nature she maintained not to pay any. Here we had taxpayers paying for her legal Aid lawyers for what?

The Framers of the Constitution made clear that all revenue from whatever source should be one Consolidated Revenue funds, albeit the issue was also that loans (for the Commonwealth and/or States) should be in a different fund as to avoid it all to be put together.

What we have however is that the "Debt to the Commonwealth" is not at all put in Consolidated Revenue funds but somehow is used in another manner. Even where the Child Support Agency has monies that, being due to lost cheques in the mail or otherwise, never were claimed then remain payable but the Child Support Agency makes little to no attempt to ensure that the monies are paid out as soon as possible. Indeed it also has a system that a cheque received say on the first of the months is not issued to the custodian parent until the 15th, as such the Child Support Agency by delaying millions of dollars in payments is making a handsome profit in interest! Yet a non-custodian parent who were to pay child support a single day late can be held accountable for ignoring the child's interest and wellbeing, where the Child Support Agency delays payments for a massive 14 days or longer.

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In my view no child should be valued upon the pay capacity of the non-custodian parent but all children should be equal under the law. Hence, this entire child support system should be abolished and replaced with a special tax levy that applies to people say from the age of 18 till the age of 40 and this special tax then is to provide every child to the same level of child support and not that children of non-paying parents are getting not a single cent while others are getting many thousands of dollars per mount.

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By abolishing the entire child support system we will also remove a lot of friction between parents.

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Where I was a single parent with up to 5 children in my care I never received child support through the child support agency and yet still managed to come through.

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In my view the Child Support Agency is unconstitutionally using the taxation office to calculate Child Support payments and otherwise withhold payments even so constitutionally the Commonwealth is prohibited from doing so as it must obtain a court order before it can garnish a payment and only if it is a State court order!

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Also, if the custodian parent is standing in a civil position not having any powers himself/herself to access taxation records then it cannot be that the agent "the Commonwealth" can exercise a greater power then the grantor. Hence if the father/mother cannot access taxation records then likewise the agent, the Commonwealth, should not be permitted to do so either, regardless that ordinary the Commonwealth has all legislative powers over taxation. The Abbott case (199401995) underlined how absurd it was where even the High Court of Australia enforced the $4,000.00 Child Support Agency claim only then the Child support Agency to refund the monies as after all they concluded Mr Abbott had no "Debt to the Commonwealth" at all. Now how darn silly for the highest court of the land to make a judicial decision upon **FICTITIOUS** claims.

While obviously this kind of litigation is keeping a lot of employers from being unemployed but really that should not be the concern to taxpayers. Let the commonwealth implement a taxation system that is fair and proper to them also.

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We cannot have a system where basically a woman becomes pregnant and then so to say sort out which man she thinks is likely to pay most of child support payments and then allocate him to be the biological parent. After all why make known the unemployed bloke next door is the biological father when you can rip off some rich dude who has plenty of money to spare (so they argue) and who would be happy to accept a child as his own – well until she becomes nasty after a few years and make clear he isn't the biological father and stop any contact with the child.

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The issue of a **CHILD SUPPORT LEVY**

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If the entire Child Support System is abolished then the monies saved to keep propping up this system would go a long way to ward other more important matters. And if a CHILD SUPPORT LEVY were to be enacted to all 18 to 40 years old, regardless if they have any child(ren) then this would be fairer to all children. Those who for medical reasons cannot be in the run to become a parent, being it severely disabled person, etc, could always apply on medical grounds for being exempted of such a levy.

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As an Attorney (not lawyer) I have assisted many in Family Law issues over the decades and in fact in 1985 created the document **ADDRESS TO THE COURT/TRIBUNAL** as to make litigation a more level playing field. This document has since been used in civil and criminal cases in all levels of courts including the High Court of Australia. It enables a party to provide a type written set out of the legal issues being argued, including references to Authorities, etc. As His Honour Lyndemayer J, way back in 1994, made clear during an successful appeal hearing he would like lawyers to follow this example as it would allow judges to retire to their chambers and avoid misunderstandings and misconceptions. What this document aids with also is that instead of having an unrepresented litigant, often highly emotionally charged and in at times using the English language as a second language then can at their leisure have others assisting to prepare the legal set out and provide it to the court and other party before the trial.

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Alice Carter whom also acted as legal adviser for the Northern Territory in her report about a visit to the Family Court at Melbourne remarked;

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QUOTE

> **unfortunately, much of the proceedings I witnessed were repetitive, and general disorganisation,....**

END QUOTE

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Page 22 27-8-1997
QUOTE

> Further more the court was disorganised as many files were missing and cases were adjourned early **as many counsel failed to turn up**.

END QUOTE
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QUOTE

> The counsels and their clients also presented themselves well dressed and I could see that anyone who was not dressed suitably would be extremely obvious. I felt that the emphasis on looking acceptable could easily disadvantage some people. **The whole attitude of the court to parties was rather more authoritarian then supportive,.....**

END QUOTE

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QUOTE

> **Moreover, I felt that the judges were inclined to be slightly patronising and pedantic.**

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QUOTE

> ... and the judge's demands that she speak louder reinforced my observations on the authoritarian, patronising attitudes of the judges.

END QUOTE
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QUOTE

> I am now able to understand the general public's fear of going to court and facing judges; I, too, was overawed by the excessive formality and surprised by the appearance, **at least of the judges' authoritarian and patronising attitude towards others in the court room.**

END QUOTE

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It ought to be noted that Alice Carter is a lawyer!

.
Again, taxpayers monies are wasted because of the way the Family Court of Australia operates but it would be too extensive to canvas this in this document. Save to say however that time and again I have people contacting me about the fees and charges also because of the huge cost involved (for them) to seek an application to be filed, etc.
A bad example is that while the Framers of the Constitution specifically provided for matrimonial matters to be for Commonwealth legislative powers so that there is a legislation provision covering the whole of the Commonwealth of Australia, it is found that when in 1994 in the Abbott case the wife filed the application for dissolution of marriage in one registry and the husband filed his response in another registry opposing the dissolution of marriage the court held that because it wasn't filed in the same registry albeit still being the Family Court of Australia registry then the husbands application, etc, was not filed in the right court, and so disregarded.
Again, it would be too comprehensive to outline all issues but I view much of taxpayers monies are wasted on litigation that unrepresented litigants are blamed for but actually are the product of conduct of lawyers involved who pursue adjournments often of fabricated excuses. As such they

are causing cost to taxpayers by having the court to hear the matter again later where this can be avoided. As to just to give an example.

In a file I obtained the hand written notes of the instructing solicitor to the counsel appearing in court was to seek an adjournment on the basis of the sexual abuse allegations made against the father but a note of warning not to overplay this issue because investigation had been conducting clearing the father of any wrongdoing.

As such, lawyers are misusing their position in that regard to obtain inappropriately an adjournment. By this often casing a poor unrepresented person to incur cost to attend such kind of hearings.

Justice should not be provided to those who can afford it but should be available to all and the fees charged are an absurdity.

Likewise where His Honour Joske J in the Zabena case misconceived the provisions of the Family Law Act and then held that a party had to pay for transcript, which up to then were provided free of charge, this resulted that many to poor to pay the huge cost of transcripts then could not continue with their appeal. As such the incorrect interpretation resulted to unrepresented litigants having to abandoned an appeal or not at all institute any because of the lack of monies.

Again, the system needs to be overhauled so as to ensure that those before the courts can obtain **JUSTICE**. Also, that it is a system that not unduly caused cost to the taxpayers.

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I am often so to say bombarded by callers who seek assistance (FREE OF CHARGE) because of problems with Legal Aid or others. In one case the man was facing his 6th CONTEMPT hearing and by then 20 lawyers already had been involved. So on request, as a **CONSTITUTIONALIST** I commenced to assist the man and advised the judge that she actually had no jurisdiction, etc. As I had pointed out to her honour there was not a shred of evidence before her that this man ever had acted unlawfully! While opponent lawyers argued differently nevertheless Her Honour ordered a **PERMANENT STAY** of the contempt proceedings, and after ward I discovered from the transcript of the 6 hearings that Her Honour actually never even had formally charged this man with any offences, yet Legal aid in their correspondence to this man advised he better purge his contempt! Having held 15 hearing in total where this unrepresented person actually had done no legal wrongdoing then one may ask how much cost was there to the taxpayers to conduct those **VEXATIOUS** hearings?

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Obviously we also have cases where so to say everyone is jumping on the bandwagon to claim being sexual abused even so afterwards it is found that the sexual abuse claimed never could have taken place as such. As a police sergeant of Lalor once made known that 9 out of 10 rape allegations were afterwards found to have been consensual sexual intercourse but where a woman afterwards fearing she might have fallen pregnant of the sexual encounter then fabricated the rape story as not to get into troubles with the husband.

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In my view, it would be worth while for the Commonwealth of Australia as well as the states/Territories to invest taxpayers monies into video systems where when a person is allegedly sexual abused the story of the alleged victim is video recorded. This also because police officers at times write up what they deem is more likely to ensure a conviction rather then to write down the precise wording. Having at times been a police witness myself in mainly motor vehicle incidents I had time and time again to request the officer concerned to change the statement to what I had stated as I wouldn't accept the version they had made out of it. As a police officer tried to convince it was better that way because it would rather assist in scoring a conviction I nevertheless insisted it was corrected to the version I had stated.

When the Commonwealth of Australia invest many millions of dollars into Family Law cases relating to sexual abuse, etc, I view it would be a lot cheaper to ensure video recording as to

possibly reduce the cost of protracted litigation where a alleged victim can be found to have fabricated the version.

I recall a case where a woman requested my assistance against the father, alleging he had sexual abused one of the two daughters. He had all along legal representation but while the sexual abuse allegations were not held to be proven nevertheless the mother gained custody. Not long thereafter the mother gave me the understanding that she had problems with Centrelink and so she better get rid of the girl to the father, and she made known she had concocted the whole sexual abuse allegations and actually coached her daughter what to say, etc. In this case I contacted the father and arranged for him to collect the girls and that all relevant documentations were signed but still this man had to go through huge cost to come each time from interstate to attend to court hearings and all this what turned out to be concocted sexual abuse allegations.

Regretfully because of so many false accusations being made then where really sexual abuse is perpetrated the real victims often then have so to say a hard time to be understood to be real victims and not fabricating a story.

Hence, I view that a better funding system should exist to seek to sieve out the concocted stories of sexual abuse, etc.

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QUOTE **Australian False Memory Association** (Inc.)

ACCUSATIONS OF CHILDHOOD SEXUAL ABUSE BASED ON RECOVERED MEMORIES: A FAMILY SURVEY

Merle Elson
Psychologist, Melbourne

ACCUSATIONS OF CHILDHOOD SEXUAL ABUSE BASED ON RECOVERED MEMORIES: A FAMILY SURVEY

Merle Elson
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"Our daughter disappeared from our lives four years ago, leaving a short note stating memories of abuse (with no details)... We don't know where our daughter and grandchildren are as there has been no communication at all ." (accused parents)

"I was amazed to find it is possible to be arrested just on the basis of someone making unbelievable allegations and to be treated like a criminal. The police behaved as though I was guilty, even though they ended up not believing the accusations themselves." (accused mother)

"I would like to know what it was that I did." (accused father)

The following data was obtained from a postal Family Survey undertaken during late 1996 to early 1997 amongst the members of the Australian False Memory Association (AFMA). An eight page questionnaire containing 87 questions was developed from similar questionnaires used by the False Memory Syndrome Foundation (FMSF) in the United States and the British False Memory Society (BFMS) in the United Kingdom. It was considerably abbreviated and modified for Australian use. The questionnaire was distributed by mail to 110 parents who stated that they had been falsely accused of childhood sexual abuse, usually by a daughter, based on her "recovered memories". Typically these memories were recovered after the daughter had attended psychotherapy for some unrelated problem, apparently following many years or decades of amnesia, and with no previous awareness of being sexually abused by her parents.

The above quotations are from returned questionnaires and illustrate some of the reasons this survey was undertaken. From her personal experience as the partner of a falsely accused father, the writer has had contact with hundreds of other accused parents during the past three years. Professionally**[2],** the first client she assisted who was affected by this phenomenon was a 45 year-old feminist, accused by her son, arrested and interrogated by the police, and suffering from "stunned shock and disbelief". The experiences detailed in this survey are being repeated an unknown

number (certainly hundreds) of times around Australia**[3].** There was a vital need to know more accurately just what was happening and it was imperative to present these facts to those who may be in a position to alleviate some of the destruction being caused by the recovery of dubious memories.

For many years prior to the dramatic entrance of the recovered memory phenomenon into her personal life, the writer had worked with sexual assault survivors: women and men who had suffered abuse as children or adults. Most were unable to even temporarily forget their abusive experiences and none ever displayed massive repression, that is, total amnesia for their trauma. Many complained that, regardless of how hard they tried, they were frequently haunted by thoughts of the abusive incidents.

Sexual abuse of children not only certainly occurs, it is widespread. More widespread than many people feel comfortable to believe. Ironically, this survey has actually proved once again the prevalence of childhood sexual abuse, but *not* abuse that was forgotten and then recovered as memories with the help of a therapist or self-help book. It is hoped that this study will help to clarify the difference between the two forms of abuse in order that both will eventually be stopped. Abuse is caused to both the client, and to his or her family by unproven, harmful forms of therapy that almost always lead to psychological and physical deterioration**[4]** for all persons involved.

Now that more recovered memory cases are being disproved in courts and most of the psychiatric and psychological professional associations are issuing warnings against memory recovery techniques, the number of false accusations is starting to decline. Even therapists who were involved in these dubious practices are finally beginning to realise the unreliability of pseudomemories, with some even apologising to families for the harm they have caused. Hopefully, as the focus of attention turns away from bizarre recovered memory claims, more public resources will become available to supplement the fight against all the real, rather than imaginary, pedophiles.

Introduction

Completed questionnaires were received from 83 families prior to the closing date, indicating a high response rate of over 75 per cent, which compares favourably with other similar surveys overseas. In addition to their completed questionnaires, many respondents also sent additional material including court transcripts, reports and assessments, written statements of accusations, and many offered to provide any further information that may be required.

The survey provided a wealth of data and interesting results. Some of the findings were as expected, and served to confirm results from similar overseas surveys and anecdotal observations. Other findings though, were more unusual; some were discovered in response to additional questions based on the writer’s intuition, whereas others were completely unanticipated.

The most unexpected and surprising finding was the prevalence of actual sexual abuse that had been experienced by the accusers earlier in their lives, including a large percentage during their childhood. This discovery will hopefully lead to further investigation to help explain its significance. Until then, further interpretation would be purely speculative.

Another aspect of this survey which also requires more research is the apparent correlation between the recovery of allegedly false memories of childhood abuse and an actively religious upbringing. This was demonstrated in several of the survey's results, including the extremely high percentage of accused fathers who were clergy, the disproportionate representation of 'fundamentalist' denominations among accused families, and the high number of accusers who (as adults) were conducting religious activities. All of these factors would not be so remarkable in the USA, which has a high level of fundamentalist religious involvement. However, as present-day Australia is a more secular, non-church-going country, the above findings are noteworthy.

For some time it has been accepted, and backed up by other survey results, that various stressors in the accusers' current stage of life appear to play a precipitating role in the recovery of false memories. What this present survey has shown is that the most prevalent stress factor affecting the accuser was "moving house". This was not only rated the most frequently occurring stressful event just prior to the accusations being made; it was also the highest rated event classified as family stress, during the accuser's childhood.

There was confirmation in the survey results, of the observation of accused families and the false memory associations, that there appears to be a large percentage of accusers who work in the field of counselling and sexual abuse. There could be various interpretations made of this finding, however they would be inconclusive without more detailed investigation. Another observation confirmed was that of the above average intelligence of the accusers - indicated not only by parental assessment, but also by school completion rates and university attendance.

Another relevant variable that appeared in this survey was the absence of a satisfactory personal relationship in the accusing person's life. Very few of the accusers were in what the respondents classified as a happy marriage or partnership. Even amongst those who were married or in a relationship at the time they made their allegations, many had broken up two to three years later (at the time of the survey). Therefore, in addition to any other triggering events, being without a supportive partner appears to also be a risk factor for an accuser. Being a psychologist, I could not help speculating whether there may be something in the ancient Greek concept of 'hysteria' - the notion of an unsatisfactory sexual relationship being the cause of hysterical female behaviour. There is even one case of an hysterical conversion disorder included in these survey results.

The results are presented in a similar order to the questions and sections as they appeared in the survey. Accordingly, some related information may appear under separate headings, for example, details about the accusing person (such as average age), may appear under "Family details" and then again later under "Events connected with the accusation". This method of presenting results following the format of the questionnaire appeared preferable as it will assist individual participants in comparing their own personal responses with that of the combined totals of the survey on any particular question.

As 98% of the accusing persons in this survey were female, the whole report is written in the feminine gender to avoid the unwieldiness of using his/her, she/he, etc. Generally comments will also apply to the two male accusers.

Section 1: FAMILY DETAILS

1.1 The fathers

A high proportion of the fathers of the accusing persons were born overseas (33.75%) with 30% of all the fathers in the survey being born in Great Britain. According to the *1997 Year Book Australia* (Australian Bureau of Statistics) 19% of Australians "had at least one overseas born parent" (p.94). It is estimated that most of the fathers were Caucasian. The average age of the fathers in 1997 was 63 years with 70% of the fathers aged between 55 and 75 years.

Based on the occupations of the fathers, the vast majority appeared to be middle-class (approximately 90%) and perhaps 7% could be classified as 'working-class'. This is characteristic of all the other overseas studies which show the accused fathers to be typically well-educated, white and of high socio-economic status. A few occupations were extremely over-represented in comparison to the general population, for example, 10% were clergy, 10% teachers and 7% academics. Unfortunately relevant comparative data on occupations is not yet available from the 1996 Australian census. However, based on earlier data obtained from the Australian Bureau of Statistics, approximately 0.08 of the population worked as clergy or in related professions, which is a remarkable difference to the survey fathers. In 1995-96 the proportion of employed males working in education generally was 4.1%**[5],** compared to the survey's total of 17%.

Ninety-three percent of the fathers represented in the survey had been accused of sexually abusing their children during childhood,**[6]** based on the recovered memories of their daughters. Of these, 36% were the only person accused, but more than half of the fathers (57%) were not the only person accused, that is they were 'co-accused'. Most of these were accused together with the mothers, but some were amongst multiple accusations (up to as many as ten) made by the accusing person.

1.2 The mothers

Almost a quarter (24%) of the mothers of accusing persons were born overseas, which is not a high proportion given the high number of people born overseas in the Australian population. It is only slightly higher than the average of 19% of Australians having at least one parent born overseas.

The average age of the mothers in 1997 was 61 years, therefore as expected, they are in a similar age group to the fathers in the survey.

It was more difficult to define the mothers according to occupations because there was a large number of homemakers. Sixteen percent were in medical/nursing occupations and 14% were teachers - similar to the proportions in these occupations amongst employed Australian women in 1995-96**[7]**.

Sixty per cent of the mothers were not accused at all, although a large percentage - 37.5% - were 'co-accused', often as being accessories or observers of the alleged crime in collusion with the father. Only 2.5% of mothers were the only person accused (in the British survey**[8]** 6% of biological mothers were the only one accused). The low number of mothers solely accused could be due to the fact that very few sons have made allegations against their mothers. This in turn may be partially explained by the fact that few males, compared to females, seek therapeutic help, which appears to be strongly implicated in the recovery of memories of an abusive childhood.

1.3 Children: The accuser and their siblings

1.3.1 The accuser

Ninety-eight per cent of the accusers were female which is a higher proportion than in most similar overseas studies. For example, 87% of the accusers in the British False Memory Society survey were female, and 92% in the USA survey conducted by the False Memory Syndrome Foundation. The New Zealand study was closest to the present Australian one with 99% female accusers with only one male accuser.**[9]**

The average age of the accusing person at the time of completing the survey in 1997 was 34 years (see further information in section 3.2 regarding the accusing person's age at the time the accusations were made).

The most frequent ordinal position was that of the middle child in the family; 35% of the accusing persons were the eldest in their family and 19% were the youngest. These results are similar to both the British and American surveys, which found that accusers were first-born children in 39% (British) and 42% (USA) of cases. However, the middle child was not a specific category in the overseas survey results, and it is difficult to make comparisons as, depending on the size of the family, the middle may be the second, third or other. Anecdotal evidence had led to the belief that accusers were more likely to be the middle child in the family. In order for that to be confirmed it would be necessary to specifically design a study focusing on birth order - an opportunity for an Adlerian-oriented psychologist.**[10]** Having had early training in Adlerian Psychology, I believe this (family constellation) is one of the overlooked aspects of the recovered memory phenomenon.

At the time of the survey only 40% of the accusers were married or in a de facto relationship, therefore the majority of the accusers (average age in their thirties) were without partners. However more than half have children, which at 3.75 per woman, is more than double the current Australian average number of children per family and higher than any Australian average recorded this century. The 1995 Australian fertility rate was 1.8 children per woman, and at the beginning of the 20th century it was 3.5 per woman.**[11]** It could be speculated that having more than the average number of children, and especially if caring for them without a partner, may cause stress overload on these women.

Seventy per cent of the accusers had completed their secondary education to year 12. Australia has a very high year 12 retention rate and in 1997 it was 71%**[12].** However these women were completing their secondary education on average over 16 years ago when the figure would have been considerably lower. There was also a remarkable 60% who had received a tertiary education compared to the Australian average of 24% attending tertiary institutions in 1995.**[13]** In the British survey 48%, and in the New Zealand sample 38%, of the accusers had attended university, which are also much higher percentages than the average university attendance in those countries. These figures strongly indicate that, in Australia and internationally, the accusers as a group, are better educated than the general population.

The occupations of the accusers were almost identical in both this Australian survey and the British one. The so-called caring professions (psychologists, counsellors, social workers, teachers and similar) accounted for 37% in both these surveys. Statistics for 1995-96 show that the proportion of employed females in these fields in Australia was approximately 27%. There were 18% involved with home duties in Australia and 17% in Britain. In Australia 28% of the accusers were unemployed, compared to 35% in the British survey. However, this unemployment rate is not disproportionately high as, in Australia in

1995, 30% of females in the same age group as the accusers were not in the paid labour force. **[14]**

With regard to the accusing person's contact with their family, more than a third had practically no family contact at all, a third were in contact with most of their family, and the remainder were in contact with only some members of their family - usually one or two of their siblings. This was a higher level of family contact than that reported in the British survey: in 59% of cases in the UK there was no contact between the accuser and their family, whilst 41% had some contact. Ever since the naming of the false memory syndrome accused parents in America have experienced the same cutting off of contact with their accusing child. The severance of family ties has always been a salient feature of this syndrome, unlike other psychological problems where support networks are usually encouraged and family input valued.

1.3.2 The accuser's siblings

The average number of children in the accusing person's family-of-origin was 4.2, a considerably higher average than in the wider Australian population which in 1995 was 1.8 children per family **[15]**. However, during the sixties, when these families were growing up, Australia was going through a period of high fertility known as the "baby boom" and the average family then included approximately three children.

An unexpected statistic was that, out of all the siblings represented in this survey - a total of 252 - only **14.7%** believed the accusations of their accusing sibling. However, in spite of not believing, a large proportion (58%) remained in contact with the accuser, representing a hopeful avenue of communication between estranged parents and their accusing adult child. It is often tempting for accused parents to try to coerce their non-accusing offspring into taking sides, to make a definite alignment with either the parents or the accuser. By allowing their non-accusing children to maintain a neutral stance, parents would instead preserve an important conduit between themselves and the accuser. Even minimal communication may assist later efforts at family reconciliation.

Fourteen siblings (5.5%) of the original accusers also later became accusers and it is of interest that ten of these fourteen attended the same therapist as their accusing sister. Anecdotal evidence from the legal sphere indicates that it is becoming increasingly common for a second sibling to later join her accusing sister in recovering questionable memories of childhood sexual abuse after attending the same therapist. In the United States 12% of respondents to the 1997 FMS Foundation survey had more than one accuser in the family **[16]** and in the British survey 10% of families had more than one accusing daughter **[17]**.

1.4 Family religion during the accusing person's childhood

During their childhood almost two-thirds (63%) of the accusers were brought up in either "very active" or "active" religious family environments. However most of the accusers as adults (over 70%) later rejected any active religious practice. Several accusers who grew up in non-religious families, were later participating in New Age beliefs.

Religious denominations:	**%** (of actively religious)	1996 Census
Fundamentalist Christians (Christian Brethren, Baptist, Reform Church, Jehovah's Witnesses, Seventh Day Adventists, etc.)	39%	3%
Anglican (Church of England, Episcopal)	20%	21%

Roman Catholic	18%	26%
Uniting	15%	7%
Others	3%	

The above table clearly shows that an unusually high proportion of accusers come from the more fundamentalist type of Christian denominations, especially when compared to their level of representation in the Australian population as provided by the 1996 Census**[18]** and listed in the above table. Although these denominations altogether accounted for only 3% of the entire Australian population, 39% of accusers came from this type of family background. Families with Uniting Church membership had approximately double their representation in the survey compared to the total population. In comparison, Roman Catholic families were under-represented, and Anglican families in the survey were equal to their population numbers.

Various theories have been expounded as to likely explanations for the apparent correlation (in Australia and the USA) between family upbringing in fundamentalist religious beliefs and the later emergence of recovered memories and bizarre accusations against parents. Like anyone who has spent years involved in the recovered memory phenomenon, I have my own speculative ideas. However, until there is further large scale research, they will just remain as speculations and not testable hypotheses.

These results relating to religious affiliation in this Australian survey differ markedly from the British one which found that approximately 90% of British families were from the more traditional churches, being predominantly Church of England and Roman Catholic. Therefore, this is one aspect of the false memory syndrome where there appears to be considerable difference between Australia and Britain.

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Section 2: FAMILY EXPERIENCES

2.1 Methods of discipline

Survey participants were asked to indicate what methods of discipline were used when the accusing person was young. The list of options included "none" and "other" which enabled respondents to add any other disciplinary methods not provided.

The following tables are presented in order of the frequency of the methods selected and are shown separately for children under 12 years of age and over 12 years. It was encouraging to observe that the most favoured method of discipline was reasoning, even with children in the under twelve years age group.

Method 0-12 years	**No.**	**% [19]**
Reasoning ……..	59	71
reprimanding	54	65
smacking or spanking ……...	50	60
admonishing	47	57
logical consequences ……...	30	36
sending to room	29	35
shouting ……... ……..	26	31
denying privileges	22	27
grounding …….	14	17
other: pull hair [cultural]***[20]**	1	1
time-out room *	1	1
shoe/wooden spoon*	1	1

Method 12 years & over	**No.**	**%**
reasoning	58	70
admonishing …….	35	42
reprimanding	32	39
logical consequences ……...	31	37
grounding	19	23
denying privileges ..…….....	15	18
shouting	12	14
sending to room ……...	7	8
smacking or spanking	4	5
other: not speak to child* …….	1	1
time-out room * **[21]**	1	1

2.2, 2.3, 2.4 Child rearing

Almost 80% of parents stated that they "only seldom" or "never" resorted to any physical punishment of the accusing child when he or she was growing up. However as the above table shows 60% indicated that they had smacked or spanked their accusing child when she was under twelve years old. Although this may appear a high proportion using physical punishment by present-day standards, these parents are now in their sixties and seventies and raised their children at a time when "spare the rod and spoil the child" was the guiding principle. Many parents of that generation felt that physical discipline was necessary during early childhood, with the more verbal types of discipline at a later stage.

In comparison to their other children, accused parents felt that they had spent an average amount of time with the accuser during her childhood. Therefore there was no support for speculating that the accusing child had either been given less or more attention than her non-accusing siblings. Psychological theories would suggest either scenario: for example, if a child is a real victim of incest, she is frequently given more attention by the offending parent, whereas if a child is neglected in comparison to her siblings, she may grow up feeling resentment toward her parents. Although it is not possible to draw conclusions from parents self-reported memories of their behaviour towards their children, the fact that the survey parents report average time spent with their accusing child, would tend to indicate neither of the above theoretical scenarios.

An idea I had prior to undertaking this study (based on anecdotal evidence) was that the accusing person may have been considerably indulged or spoilt as a child, both materially and in the amount of parental attention they received. However, the results indicate that only 28% of parents thought this occurred within their families. The great majority (70%) believed the accuser was not indulged or spoilt any more than other children.

2.5 Periods of family stress

Parents were asked to list any periods of family stress that may have affected the accusing person when he or she was growing up and to provide the age of the child when the stressful experience occurred to the family.

The responses to this question indicated some common incidents were experienced by many of the accusing persons during their childhood. For example, 27% of the accusers had experienced major relocation of the family home, often due to their parents transferring work locations to interstate or overseas. ‘Moving house’ is one of the under-estimated extremely stressful situations people can experience. The reader is referred also to section 3.1 regarding events occurring to the accuser as an adult immediately prior to the accusations being made.

Almost a quarter (23%) of the accusing persons experienced the death of an immediate family member during their childhood. This appears a high percentage, yet without a comparable control group it is not possible to conclusively state that it is exceptional. The death of a significant person also featured in the stressful experiences of the accusers prior to making their allegations (see 3.1.). Psychological scales used to assess stressful life experiences usually rate the death of a significant other person as one of the most significant stressors.

The most unexpected experience during the childhood of many of the accusing persons was that of actual sexual abuse. Thirteen percent of parents knew of actual sexual abuse experienced by their accusing child, perpetrated by some other person, that they were willing to write about on their questionnaire. This level of childhood sexual abuse is particularly noteworthy as this information was volunteered in response to a general question about stressful *family* experiences that "may have affected the accusing child". Thirteen per cent appears to be a high rate of childhood sexual abuse to find when not actually asking about it. For further information on this topic, refer to section 4.1.3 which specifically asked if the respondent knew of any sexual abuse actually suffered by the accusing person.

Section 3: THE ACCUSATIONS

3.1 Events preceding the accusation

3.1.1 Stressful experiences prior to the accusations

The following table lists, in order of frequency, the stressful experiences known to the respondent, which occurred to the accusing person during the two to three years prior to the allegations being made. Twenty-one items were provided, based on known psychological stressors and respondents were given the opportunity to include any additional experiences which may have occurred. These added events are marked with an asterisk. (Table inserted on following page).

Relationship problems: As was expected - based on widespread anecdotal evidence - their adult daughter's major relationship problems preceded allegations of childhood sexual abuse in many families. The British survey found that 55% of the accusing persons had recently experienced relationship problems; a similar result to the 52% found in this survey. The major disruption caused in a person's life when they experience serious problems in their main personal relationship often causes severe emotional disturbance. It is the way in which this emotional disorder is handled that unfortunately sometimes leads to disreputable therapists and the recovery of so-called repressed memories. These previously unknown memories of childhood abuse are then used to explain the emotional pain being experienced, instead of looking for the cause in the person's current situation.

Death of a family member or friend: The number of accusing persons recently experiencing the death of a family member or friend (22%) was very similar to that of their childhood experiences where 23% had stressful bereavement experiences. The loss of a significant person through death is well-known as one of the most stressful human experiences. It is a situation that cannot be overcome or altered and its finality presents a challenge to a person's coping ability, especially if they are experiencing emotional problems at the time.

Stressful experiences occurring to accusing person prior to accusations[22]

moving to new home	44	53
major relationship problems …….	43	52
emotional or psychological illness	34	41
major changes in work conditions ……..	27	33
commencing or completing study	27	33
major change in financial situation …….	21	25
major life changes	20	24
buying a house or business ……...	19	23
death of family member or friend	18	22
physical illness or serious injury …….	17	20
divorce or separation	15	18
pregnancy, miscarriage or abortion ……	14	17
eating disorder	14	17
marriage or permanent relationship ……	13	16
drug or alcohol abuse	12	14
birth of a child ……	11	13
exceptional personal success	10	12
serious car or work accident ……	4	5
*name change	4	5
victim of crime, e.g. assault, robbery …….	4	5
serious illness of children	3	4

*post natal depression …….	2	2
*endometriosis & food/chemical sensitivities	2	2
*saw psychologist ……..	1	1
*lonely overseas	1	1
*operation - tubal ligation ……..	1	1
*overseas trip including contact with a pedophile	1	1
*moving to live & work overseas ……..	1	1
*in-laws & others living in house	1	1
*diagnosed bi-polar disorder at age 22 ……	1	1
serious change in partner's health	0	0

Moving to a new home: Surprisingly the *most* frequent stressful experience was that of moving to a new home: this had also been the most frequently mentioned stressful experience during the childhood of the accusing person. To be the most frequently mentioned stressor both during childhood and adult life, this experience must have had considerable impact on the families concerned. Moving one's place of residence is frequently connected to other forms of change in one's lifestyle, such as schools, employment, church, friends and local community networks.**[25]** The British study found that only 21% of the accusing persons had recently moved home; the considerably higher Australian figure may reflect a culturally different, more mobile lifestyle. And in Australia even a move to a neighbouring state may involve distances of more than a thousand kilometres - something not experienced in, say, England.

Emotional or psychological illness: A large number of accusers were perceived as suffering an emotional or psychological illness (41%) which is not surprising as the usual false memory syndrome scenario is that the person experiences a problem for which they attend psychotherapy. They then gradually come to believe that they are victims of an abusive childhood and begin to recover supposedly repressed memories of being sexually abused by their father and others. This recovery of dubious memories is frequently accompanied by a marked deterioration in the person's psychological well-being (for documentation see, for example, the Washington State Crime Victims Compensation Program as reported in the FMS Foundation News-letter, vol.5, no.5, May 1996, p.1).The British survey also found a similar percentage suffering from emotional and psychological illnesses.

Eating disorder: Only 17% apparently suffered from an eating disorder prior to making their accusations and, as will be detailed later, only 3% were known to have been diagnosed by their therapist (after the accusations) as having an eating disorder. The number of accusers with eating disorders appears very low, given that many therapists believe that an eating disorder is a reliable indicator of childhood sexual abuse. Even more significant results became evident on cross-tabulating questionnaire data. Of all the 27 accusers who were known to the respondents to have actually been sexually abused**[26]** (eighteen of them as children), only one had been diagnosed as having an eating disorder. And of the fourteen accusers who had an eating disorder prior to making their allegations, not one was known to have been sexually abused - apart from their unsubstantiated "recovered memories". Therefore in this survey there appears absolutely no correlation between eating disorders and actual sexual abuse.

Overall, this section indicates that accusing persons have been affected by multiple stressful experiences, both during their childhoods and as adults prior to making their accusations of childhood sexual abuse based on "recovered memories". It appears that the most significant

of these is: moving to a new home, the breakdown of an important relationship and the death of a significant person.

3.1.2 Additional experiences

In addition to the checklist provided above, respondents were also asked if they knew of any other experiences that may have contributed to the accusations. Because this was an open question the responses were extremely varied, however one trend seemed to be evident. More than a third of the accusing persons were affected by unsatisfactory sexual relationships, which included at least one instance of an apparent hysterical conversion disorder of temporary blindness.

Footnotes:

1 All rights reserved. No part of this report may be reproduced, stored in or introduced into a retrieval system, or transmitted, in any form or by any means, without the prior written permission of the author.
2 The writer, Merle Elson, has a private practice as a psychologist in a Melbourne suburb.
3 Several hundred parents, allegedly falsely accused of childhood sexual abuse on the basis of recovered memories, have contacted the Australian False Memory Association (AFMA). Only current financial members of the AFMA in 1996 were surveyed for this study.
4 See, for example, research of the Washington State Crime Victims Compensation Program, as reported in the FMS Foundation Newsletter, vol 5, no.5, May 1996, p.1.
5 1997 Year Book Australia, No 79, W.McLennan, Australian Bureau of Statistics, Canberra. p.109.
6 Seven per cent of survey fathers were not the accused person, i.e. others in the family were accused.
7 Op.cit. p.109.
8 Gudjonsson, G H. Accusations by adults of childhood sexual abuse: a survey of the members of the British False Memory Society (BFMS), Applied Cognitive Psychology, Vol 1, 3-18, 1997.
9 Goodyear-Smith, F A, Laidlaw, T M & Large R G. Surveying families accused of childhood sexual abuse: A comparison of British and New Zealand results. Applied Cognitive Psychology, Vol 11, 31-34, 1997.
10 Alfred Adler, the founder of Individual Psychology on which many present-day parenting skills programs are based, placed great importance of a child's position in the family constellation. For example, Rudolf Dreikurs in Fundamentals of Adlerian Psychology (1953) described the middle child as having "neither the same rights as the older nor the privileges of the younger. Consequently, a middle child often feels squeezed out between the two. He (sic) may become convinced of the unfairness of life and feel cheated and abused." (emphasis added). p 41.
11 Op.cit. p.86.
12 The Age (Melbourne), 19/1/98, p.2.
13 Op.cit. p.249.
14 Op.cit. p.121.
15 Op.cit. p.86.
16 Pamela Freyd. Talk presented at Memory and Reality: Next Steps Conference, Baltimore, 22-23 March 1997.
17 Gudjonsson, G. The members of the BFMS, the accusers and their siblings. The Psychologist, March 1997, p113.
18 Social & Housing Characteristics, Australia, Australian Bureau of Statistics, Canberra, 1996, p.43.

19 Note that the percentages do not add to one hundred as most respondents selected more than one method of discipline.

20 The parent who added that she pulled her child's hair as a method of discipline explained that this was a common, culturally accepted practice in her country-of-origin.

21 All items marked with an asterisk were added by respondents.

22 These experiences occurred during the period of two to three years prior to making the allegations.

23 Many experienced more than one of these situations.

24 Percentages have been rounded to the nearest whole number.

25 Unless, of course, the move is only a short distance and the family remains in the same neighbourhood. However, most of the moves mentioned by these families were over extreme distances, i.e., interstate and overseas.

26 See section 4.1.3 for details regarding the actual sexual abuse (known to the respondents) that had been experienced by the accusers.

Australian False Memory Association
Caring for Families and Individuals

Email the AFMA at *false.memory@bigpond.com* PO Box 285
Fairfield Vic 3078

Ph: 02 9977 4076

END QUOTE

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It must be clear from the above that we must be careful not to create some mass hysteria that every **NON PROFIT** (**NOT-FOR-PROFIT**) entity is involved in sexual abuse and is paying of victims for their silence but at the same time we must have in place a system that will protect taxpayers from having funding intended to be used for "**PUBLIC PURPOSES**" ending up of so to say paying of victims or otherwise not being used for which the **NON PROFIT** (**NOT-FOR-PROFIT**) entity is registered for.

.

It is therefore I view essential as to have the obligations (referred to above) as to seek to minimise any misuse and abuse of monies while not seeking to make it difficult for genuine operating **NON PROFIT** (**NOT-FOR-PROFIT**) entities to conduct their affairs in all honesty.

.

Obviously we also have to consider not just sexual abuse but also other conduct that may be deemed unbecoming to that of a **NON PROFIT** (**NOT-FOR-PROFIT**) entity operating for "**PUBLIC PURPOSES**".

.

We have also to consider decisions such as ***Adelaide Company of Jehovah's Witnesses Incorporated -v- The Commonwealth [1943] HCA 12; (1943) 67 CLR 116*** (14 June 1943) RICH J

.

This as to legislative powers and other matters and likewise so the following;

.

Below I have quoted a submission by **Scientology** for being a religion and for this being able to get tax exemption because of the raising of funds for religion including commercial activities. This I
view is in fact unconstitutional.

I understand that the High Court of Australia made a ruling that Scientology is a religion, but in my view this cannot whatsoever make a case for tax-exemption because;

.

71-391a001doc-State Aid to Religion Abolition Act 1871

2. Definitions

In the construction and for the purposes of this Act the following terms shall if not inconsistent with the context or subject matter have the respective meanings hereby assigned to them, that is to say—

"denomination" shall mean any church religious body sect or congregation or the members of any church formed into or acting as a body of persons for religious purposes of what kind of faith or form of

belief soever;

.

Therefore it would be inappropriate for the State of Victoria to determine that Scientology for being a religion then is to be deemed a not for profit religion (denomination) and for this to be tax exempted.

.

The High Court of Australia in its judgment failed to take consideration of this.

.

116 Commonwealth not to legislate in respect of religion
The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

.

Hansard 2-3-1898 Constitution Convention Debates

Mr. REID.-**I suppose that money could not be paid to any church under this Constitution?**

Mr. BARTON.-**No; you have only two powers of spending money, and a**

church could not receive the funds of the Commonwealth under either of them.

[start page 1773]

.

Hansard 2-3-1898 Constitution Convention Debates

Mr. OCONNOR.-Yes. But the amendment of the American Constitution to which the honorable and learned member refers was rendered

necessary by the fact that there is not the definite division of powers in that Constitution that we have in our Constitution. **I cannot imagine that clause 52 gives any ground from which it could be argued that the Federal Parliament has the right to interfere in regard to the exercise of religion, or to deal with religion in any way.**

.

The Commonwealth of Australia therefore cannot interfere with religious practices but the States can. The Commonwealth neither can provide FUNDING for religious practices by way of taxation exemptions or tax deductions and the State of
Victoria clearly already prior to federation separated State and Church and as such when it joined the federation it had this embedded principal in the Constitution.

.

Therefore I view that any DENOMINATION cannot have tax concessions on the basis that it is a religion because this is unconstitutional, both for the commonwealth and the State of Victoria .

.

Further, I view that the Commonwealth for itself should determine what is deemed to be for federal purposes a not-for-profit organisation AND IT CANNOT ALLOW REGISTRATION OF ANY ORGANISATION ON BASIS OF BEING A RELIGION.

.

Therefore there must be a separation of non-commercial purposes and commercial purposes and profits must be made taxable. We must stop this elaborate rip of upon taxpayers by denominations by stopping tax exemptions for denominations.

.

This has nothing to do with the social welfare work performed by denominations, as where the religious body can show that it spend monies towards assisting the poor, regardless of his/her religious beliefs or the lack thereof, then it would be appropriate for those purposes for the Commonwealth to allow registration as a not0-for-profit organisation for this part.

.

The USA courts have extensively canvassed the issue of funding in particular to religious bodies providing education and I have in my past published books in the **INSPECTOR-RIKATI®** series extensively canvassed this and as such do not need to repeat the same, however it came down to it that the Federal Government is to fund education cost of students attending religious schools provided that the funding was used for secular and so non-religious purposes.

.

The Commonwealth clearly does have legislative powers to prohibit any not-for-profit organisation to be entitled to the registration as a not-for-profit organisation where it fails to provide for compliance with State and/or federal laws regarding conditions of under age children and/or where the not-for-profit organisation uses a condition of secrecy towards State and/or federal law enforcement officers and other State and/or federal staff to ensure that laws governing children are not breaches.

.

What this would amount to is that any not-for-profit organisation, regardless of being a denomination or not, would be put on notice that if they are employing children contrary to legal provisions under State and/or federal laws then their registration will be deemed invalid and they will be liable for taxation in an ordinary manner as any other business.

.

We have organisations such as Exclusive Brethern and the Scientology and others who are purported to be not-for-profit organisation but are in a veil of secrecy that defies to be a not-for-profit organization. Hence, any business that purposes to be a not-for-profit organisation must be deemed accountable to the general public, as after all it is depriving the general public of taxation being paid by it, and therefore in all its conduct must remain transparent.

.

Take for example the Salvation Army. For tax exemption purposes it would require to be divided in two parts for accountability. One part would be for being a not-for-profit organisation where it can account for all monies raised being invested into assisting people regardless of their religious beliefs and another part in its religious collections that cannot be tax exempted as to allow this is unconstitutional.

Therefore, any organisation that seeks registration for not-for-profit organisation must separate its religious part as this cannot be allowed to be tax exempted.

.

QUOTE

The Church of Scientology ("the Church") is an Australian religious institution which has a physical presence in Australia and which incurs expenditure and pursues objectives principally in Australia . As a consequence all the income derived by the Church is exempt from Australian income tax.

END QUOTE

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Again

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Hansard *2-3-1898* Constitution Convention Debates

QUOTE

Mr. REID.-I suppose that money could not be paid to any church under this Constitution?

Mr. BARTON.-**No; you have only two**

powers of spending money, and a church could not receive the funds of the Commonwealth under either of them.

[start page 1773]

END QUOTE

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Providing tax exemptions clearly is providing funding.

.

HANSARD *1-3-1898* Constitution Convention Debates

QUOTE

Mr. GORDON.- The court may say-"**It is a good law, but as it technically infringes on the Constitution we will have to wipe it out.**"

END QUOTEEND QUOTE

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Again, there is no issue where tax-exemption is provided for secular matters. However, if any denomination is limiting its assistance to the needy to religious membership of a denomination then it cannot be deemed to be entitled to be classified as a not-for-profit organisation.

.

As I understand it about the assistance provided by the Salvation Army it does not stipulate and neither enforce any religious conduct or membership but will assist any person irrespective of having a religious beliefs. As such, this is the kind of welfare assistance I deem for that part would be entitled to receive not-for-profit tax exemption, where as other denominations that are ambivalent in providing services and/or those who require membership of their denomination could not be deemed to classify for not-for-profit tax exemptions.

.

When any organisation (religious or not) pursues a tax exemption it must be deemed that the organisation is telling the world that they are in it for the good of others and not seeking to make a profit at the expense of the tax payers. Hence, such organisations must then be held to comply to a certain code of conduct that they will observe all relevant State and Federal legal provisions and failing to do so their status as a not-for-profit organisation will be deemed to be void.

.

Organisations who now may exploit under age children may then realise that they better do not because they could loose their status of being a not-for-profit organisation and so applicable from when the breaches of law were occurring. As such, even if breaches were finally detected some years later having been occurring over the years the taxation would then have to be adjusted for those years that the breaches were found to have occurred.

.

HANSARD *8-2-1898* Constitution Convention Debates

QUOTE

> **Mr. HIGGINS**.-I did not say that it took place under this clause, and the honorable member is quite right in saying that it took place under the next clause; **but I am trying to point out that laws would be valid if they had one motive, while they would be invalid if they had another motive.**

END QUOTE

.

Therefore any legislation targeted upon religions, at least by the commonwealth, could be deemed unconstitutional, but if it were to apply to all businesses seeking not-for-profit registration then it would not be unconstitutional.

.

In my past published books I exposed how a not-for-profit (non-religious) organisation was having children allegedly in apprenticeship even so after a
mere few weeks to tell them there was no work while the not-for-profit organisation was collecting thousands of dollars in apprenticeship training.

.

In my view this company was abusing the not-for-profit registration by making huge profits. Hence I view that any not-for-profit organisation must declare every cent it spend so the public can hold them accountable. Also that there must be a legislation in place that any not-for-profit organisation must not exceed a certain percentage of wages, etc.

.

As I understand it we had a councillor who reportedly raised hundreds of thousands of dollars and about 10% ended up with charities and the rest he appeared to have paid to himself for consultancy fees. This to me underlines the gross abuse and mismanagement of the not-for-profit registration and the tax exemption by this.

.

We also have that collections for not-for-profit organisations are being done by companies who then may pay less then 10% of donations to the charity. Yet the entire donation somehow is made tax deductible. What we therefore have is that if I were to own a not-for-profit business and were wanting to reduce my own taxable income then I could effectively make a donation to my own not-for-profit business and score tax-emption for the monies received from this not-for-profit business and also have a tax deduction for the monies so donated. A double whammy, so to say.

.

In my view, the registration for not-for-profit companies should be federally controlled and then states could adopt the federal system. It would then exclude not-for-profit registration on pure religious grounds!

.

It would mean that no longer tax payers are ripped of by the unpaid taxes being sent overseas! After all whenever any not-for-profit organisation is excluded from paying taxes it means that taxpayers have to make up the shortfall!

.

We either have a constitution or we don't and it is long overdue that we adhere to the constitutional provisions and limitations.

.

HANSARD *31-1-1898* Constitution Convention Debates

QUOTE

> **Mr. SOLOMON.- We shall not only look to the Federal Judiciary for the protection of our interests, but also for the just interpretation of the Constitution:**

END QUOTE

.

Regretfully, you will find that the High Court of Australia in its various judgements fails to appropriately consider the intentions of the Framers of the Constitution. Still, having set out the

above I urge that you ensure urgent and appropriate action is taken so any business that seeks to have a not-for-profit registration for tax-exemption purposes does earn that right by being secular in its conduct and obeys all legislative provisions such as those applicable to under age children, including their education and work hours.

.

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE **Mr. HIGGINS**.-

I know that a great many people have been got to sign petitions in favour of inserting such religious words in the preamble of this Bill by men who know the course of the struggle in the United States, but who have not told the people what the course of that struggle is, and what the motive for these words is. I think the people of Australia ought to have been told frankly when they were asked to sign these petitions what the history in the United States has been on the subject, and the motive with which these words have been proposed. I think the people in Australia are as reverential as any people on the face of this earth, so I will make no opposition to the insertion of seemly and suitable words, provided that it is made perfectly clear in the substantive part of the Constitution that we are not conferring on the Commonwealth a power to pass religious laws. I want to leave that as a reserved power to the state, as it is now. **Let the states have the power. I will not interfere with the individual states in the power they have, but I want to make it clear that in inserting these religious words in the preamble of the Bill we are not by inference giving a power to impose on the Federation of Australia any religious laws.**

END QUOTE

.

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE

Mr. HIGGINS.-**No; I think the honorable member will see that a recital in the preamble to the Constitution is a very different thing from an oath which may be taken in a court of justice or anywhere else.**

Mr. DOUGLAS.-**You will find that you can make an affirmation without referring to Almighty God. Any person can make an affirmation who has no belief in Almighty God.**

The CHAIRMAN.-I do not think the honorable member is in order in making a speech.

Mr. HIGGINS.-**I thank the honorable member for being disorderly under the circumstances. I think there is a good deal of force in what he says, but I also see this, that the taking of an oath in a court of justice or on taking office is quite a different thing from having in a well thought-out preamble to a Constitution any reference to religious belief.**

END QUOTE

.

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE

Dr. QUICK (Victoria).-I have no doubt that the Convention ought to thank the honorable member (Mr. Higgins) for the warning he has thought fit to give; at the same time, I, for one, see no cause for fearing that any of the dangers he has suggested will arise from inserting these words in the Bill. He has said that under the American Constitution, in which no such words as these appear, certain legislation has been carried by Congress forbidding the opening of the Chicago Exhibition on a Sunday. If under a Constitution in which no such words as these appear such legislation has been carried, what further danger will arise from inserting the words in our Constitution? **I do not see, speaking in ordinary language, how the insertion of such words could possibly lead to the interpretation**

that this is necessarily a Christian country and not otherwise, because the words "relying upon the blessing of Almighty God" could be subscribed to not only by Roman Catholics and Protestants, but also by Jews, Gentiles, and even by Mahomedans. The words are most universal, and are not necessarily applicable only to Christians. I see no reason whatever for fearing that any danger will arise from placing the words in the preamble. This is a Constitution in which certain powers are conferred on the Parliament of the [start page 1737] Commonwealth. I do not know that the placing of these words in the preamble will necessarily confer on that Parliament any power to legislate in religious matters. It will only have power to legislate within the limits of the delegated authority, and the mere recital in respect to the Deity in the preamble will not necessarily confer on the Federal Parliament power to legislate on any religious matter. Whatever may have been the legislation of Congress as to the Chicago Exhibition, there may be reasonable grounds for doubting as to whether it may not be *ultra vires*.

END QUOTE

.

While so much is argued about transferring legislative powers from the States to the Commonwealth, such as they did regarding Aboriginals (S.51(xxvi), the problem is that then the Commonwealth of Australia has no constitutional powers to legislate as to sacred sites of Aboriginals because s.116 of the constitution prohibits it to legislate as to religion. As such there is a **BLACKHOLE** created, this as the States no longer could legislate!

QUOTE

116 Commonwealth not to legislate in respect of religion

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

END QUOTE

.

The following deals with religion and trust issues. Again, regardless what may be applied within State matters, under Commonwealth law no special consideration as to religion can be provided.

.

Hansard *2-3-1898* Constitution Convention Debates

QUOTE **Mr. OCONNOR**.-

The Commonwealth Parliament will have no right whatever to interfere with these matters unless by some implication arising out of a provision of [start page 1779] this kind. **With regard to the subject of the amendment of the honorable and learned member (Mr. Symon), there is no doubt that the Commonwealth might have the right to impose any form of oath which it thought fit as a qualification of office.** I am quite willing however, that some such provision as the honorable and learned member has suggested should be inserted in the Constitution, so that it would not be possible for the Commonwealth to require a religious test.

END QUOTE

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http://law.ato.gov.au/atolaw/view.htm?rank=find&criteria=AND~RELIGION~basic~exact&target=CD&style=java&sdocid=JUD/51CLR1/00005&recStart=141&PiT=99991231235958&recnum=154&tot=497&pn=ALL:::ALL

QUOTE

Roman Catholic Archbishop of Melbourne v. Lawlor & Ors; His Holiness the Pope v National Trustees, Executors and Agency Co of Australiasia Ltd & Ors

51 CLR 1

1934 - 0523C - HCA

(Judgment by: Dixon J)

Between: Roman Catholic Archbishop of Melbourne

And: Lawlor & Ors

Between: His Holiness the Pope

And: National Trustees, Executors and Agency Co of Australiasia Ltd & Ors

Court:

High Court of Australia

Judges:

Gavan Duffy CJ

Rich J

Starke J

Dixon J

Evatt J

McTiernan J

Subject References:

Charities

Gift to establish Catholic daily newspaper

Validity

Dependent relative gift

Taxation and revenue

Estate duty

Alteration of statutory order of application of assets

Contrary provision

Legislative References:

Property Law Act 1928 (Vic) No 3754 - s 131

Administration and Probate Act 1928 (Vic) No 3632 - s 33; s 34; s 163; Second Schedule, Part II

Estate Duty Assessment Act 1914 No 22 - s 35

Hearing date: 6 March 1934; 7 March 1934; 8 March 1934; 9 March 1934; 23 May 1934

Judgment date: 23 May 1934

MELBOURNE

Judgment by:

Dixon J

The Roman Catholic Archbishop of Melbourne and the Bishops of Ballarat, Bendigo and Sale compose the Hierarchy in Victoria. To them the testator specifically bequeathed certain personalty "as a nucleus, to establish a Catholic daily newspaper." He proceeded to bequeath specifically other personal property "to the same beneficiaries ... to found a farm, or supplement those already secured, for the training of delinquent or orphan boys, to country life; the income from these two benefactions, to be used for Catholic education, or any good object the Hierarchy may decide, until sufficient funds are in hand, to found the daily paper and secure the farm." Half the residue of the estate he gave "to the Hierarchy in addition to the bequest, already made, to establish a Catholic daily paper." The construction of this residuary disposition is disputed, but, in my opinion, its meaning is that, for the purpose of establishing a Catholic daily paper, an additional bequest is made to the

Hierarchy, not that, besides the bequest already made for establishing a Catholic daily paper, a bequest, unconditioned by any expression of purpose, is made to the Hierarchy. The specific and the residuary gift alike raise the question whether a bequest for the establishment of a Catholic daily paper is valid. "A trust to be valid must be for the benefit of individuals, which this is certainly not, or must be in that class of gifts for the benefit of the public which the Courts in this country recognize as charitable in the legal as opposed to the popular sense of that term" (per Lord Parker of Waddington, Bowman v Secular Society Ltd,[F33] at p. 441). "There are four objects, within one of which all charity, to be administered in this Court, must fall; 1st relief of the indigent; in various ways: money: provisions: education: medical assistance; etc; 2ndly, the advancement of learning: 3rdly, the advancement of **religion**»; and 4thly, which is the most difficult, the advancement of objects of general public utility" (Sir Morice v Bishop of Durham,[F34] at p. 951). This classification, which, in substance, was adopted by Lord Macnaghten in Pemsel's Case,[F35] does not mean that whatever can be brought within the description of one of these heads is a good charitable purpose, but that what cannot be referred to any of them is not recognized as charitable (In re Macduff).[F36] A trust for the purpose of «**religion**» is prima facie a trust for a charitable purpose. It is, however, not every purpose of «**religion**» that falls within the legal conception of charity. Religious uses or purposes, using these terms in their natural unrestricted meaning, undoubtedly include purposes which may or may not be charitable (cf., per Cussen J., In re Dobinson; Maddock v Attorney-General).[F37] The prima facie rule supplies a presumption which, if no contrary intention appears in the trust instrument, operates to confine the religious purpose within the boundaries of legal charity. "In connection with the expression 'charitable uses or purposes,' and also 'religious purposes,' the Court has taken upon itself to give them what may be called artificial meanings, and to read those artificial meanings into the wills of testators as well as into Acts of Parliament. 'Charitable uses or purposes' applies to much more than almsgiving or the relief of poverty, and extends to a number of matters set out in The Commissioners for Special Purposes of the Income Tax v Pemsel.[F38] On the contrary, 'religious purposes,' for the purpose of upholding bequests, has been restricted in its meaning to such purposes or uses as are charitable, so that by these two devices charitable uses or purposes are made very extensive, and religious uses or purposes are made sufficiently restricted to fit in with that extensive meaning of charitable uses or purposes" (per Cussen J., In re Dobinson; Maddock v Attorney-General).[F39]

> "The process by which in England it has been held that a trust for 'religious purposes' must receive effect is thus concisely stated by Lindley L.J. in the case of White v White,[F40] at p. 53.
>
> **'We come therefore to the conclusion, first, that the gift is for religious purposes; and secondly, that being for religious purposes, it must be treated as a gift for 'charitable' purposes unless the contrary can be shewn. If once this conclusion is arrived at the rest is plain. A charitable bequest never fails for uncertainty'"**

(Grimond (or Macintyre) v Grimond,[F41] at p. 609, per Lord Moncrieff, whose judgment was approved in the House of Lords).[F42]

In order to be charitable the purposes themselves must be religious; it is not enough that an activity or pursuit in itself secular is actuated or inspired by a religious motive or injunction: the purpose must involve the spread or strengthening of spiritual teaching within a wide sense, the maintenance of the doctrines upon which it rests, the observances that promote and manifest it (cf. Keren Kayemeth Le Jisroel Ltd v Inland Revenue

Commissioners,[F43] at pp. 657, 661). The purpose may be executed by gifts for the support, aid or relief of clergy and ministers or teachers of «religion», the performance of whose duties will tend to the spiritual advantage of others by instruction and edification; by gifts for ecclesiastical buildings, furnishings, ornaments and the like; by gifts to provide for religious services, for sermons, for music, choristers and organists, and so forth; by gifts to religious bodies, orders, or societies, if they have in view the welfare of others. A gift made for any particular means of propagating a faith or a religious belief is charitable; moreover, a disposition is valid which in general terms devotes property to religious purposes or objects. But, whether defined widely or narrowly, the purposes must be directly and immediately religious. It is not enough that they arise out of or have a connection with a faith, a church, or a denomination, or that they are considered to have a tendency beneficial to «religion», or to a particular form of «religion».

The law has found a public benefit in the promotion of «religion» as an influence upon human conduct; but it has no standard by which to estimate what public benefit of that order is produced indirectly or incidentally by means which, although they may be considered to contribute to the good of «religion», are not in themselves religious and do not serve directly a religious object. There have been many, and there are still some, provisions of the law, the maintenance or abrogation of which has been a matter of deep concern to adherents of one or other religious faith. But these have been considered, not charitable religious purposes, but political objects. In Bowman's Case,[F44] Lord Parker of Waddington said:"The abolition of religious tests, the disestablishment of the Church, the secularization of education, the alteration of the law touching «religion» or marriage, or the observation of the Sabbath, are purely political objects. Equity has always refused to recognize such objects as charitable ... a trust for the attainment of political objects has always been held invalid, not because it is illegal, for every one is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift. The same considerations apply when there is a trust for the publication of a book. The Court will examine the book, and if its objects be charitable in the legal sense it will give effect to the trust as a good charity: Thornton v Howe;[F45] but if its object be political it will refuse to enforce the trust: De Themmines v De Bonneval."[F46] It is accordingly well recognized that what concerns a religious denomination goes far beyond the religious purposes which are charitable. "There are, beyond question, many purposes peculiar to every religious denomination, which are not charitable" (per Lord FitzGibbon L.J., MacLaughlin v Campbell).[F47]

The objects of a denomination may extend to purposes which, although pious, philanthropic, or benevolent, may not be charitable (cf. per Holmes L.J. (4); cf. per Porter M.R.)[F48] Thus, in In re Jackson; Midland Bank Executor and Trustee Co v Archbishop of Wales,[F49] a bequest to the Archbishop for the time being of Wales to be applied by him inter alia, "in his discretion in any manner which he might think best for helping to carry on the work of the Church in Wales" was held bad by Eve J., because, "Any expenditure which he might in his discretion think best calculated for helping the work of the Church would ... be within his discretion irrespective of the question whether it was of a charitable nature or not".[F50] Counsel for the next of kin said:"It is impossible on the true construction of the will to say that the use of the Archbishop's discretion must necessarily be charitable. He might use the money provided by the gift to promote a newspaper or a political campaign having for its object the restoration of the Established Church in Wales. That clearly would not be a charity".[F51] (Cf. per Russell J. in In re Tetley,[F52] who, in relation to "patriotic purposes" gives the illustration of a newspaper.) In In re Bain[F53] a bequest to the Vicar of a Church "for such objects connected with the Church as he shall think fit," was upheld only because it was construed by the majority of the Court as confined to objects

directly connected with the Church in contradistinction to objects which are only conducive to the welfare of the parishioners or the congregation who attend the Church; that is, as confined to the support of the Church, its fabric, and its services.

It was agreed, however, that, if the bequest included the various activities organized or carried on under the superintendence or authority of the Church, the gift would be bad (cf. In re Stratton; Knapman v Attorney-General).[F54] Again, in In re Davies; Lloyds Bank Ltd v Mostyn,[F55] Clauson J. and the Court of Appeal held invalid as non-charitable a trust in favour of an Archbishop "for work connected with the Roman Catholic Church in the ... Archdiocese." Clauson J. said:[F56]

> "The expression 'work connected with the Roman Catholic Church' must cover much that was not in the strict sense charitable.
>
> Thus, the carrying on of a social club, qualification for membership of which was adherence to the Roman Catholic faith, could not be said to be a charitable purpose, but it was 'work connected with the Roman Catholic Church.'"

Finally, in Dunne v Byrne,[F57] the Privy Council drew the contrast between purposes of «religion» and things conducive to the good of «religion». They are not synonymous, but the latter is wider and more indefinite. "The fund," said Lord Macnaghten,[F58] "is to be applied in such manner as the 'Archbishop may judge most conducive to the good of «religion'» in his diocese. It can hardly be disputed that a thing may be 'conducive,' and in particular circumstances 'most conducive,' to the good of «religion» in a particular diocese or in a particular district without being charitable in the sense which the Court attaches to the word, and indeed without being in itself in any sense religious. In Cocks v Manners,[F59] there is the well known instance of the dedication of a fund to a purpose which a devout Roman Catholic would no doubt consider 'conducive to the good of «religion»,' but which is certainly not charitable. In the present case the learned Chief Justice suggests by way of example several modes in which the fund now in question might be employed so as to be conducive to the good of «religion» though the mode of application in itself might have nothing of a religious character about it." The instances, which the learned Chief Justice (Sir Samuel Griffith) had suggested, appear from the following passage from his judgment:[F60]

> "It seems to me that purposes may reasonably be called conducive to the good of «religion» although they have no such direct tendency. For instance, it might well be said that a political propaganda for the purpose of procuring State endowment of churches or denominational schools, or the establishment of a newspaper conducted on religious or high moral principles, or the establishment of a contemplative order of nuns, would be purposes conducive to the good of «religion». Certainly the Archbishop might reasonably think so. I do not at present see my way to deny such a proposition. But I do not think that either purpose would be a charitable purpose."

His Honour, therefore, gave as an instance of a non-charitable purpose the very thing which the testator has directed, and apparently the instance gained the approval of the Privy Council. Perhaps the *dictum* of Griffith C.J., so approved, should be treated as decisive of the present question. But, without the help of this precise authority, the answer to the question would not appear to me to be doubtful. The character of the journal contemplated by the testator is indicated only by the phrase "a Catholic daily newspaper." There are no expressions referring to the purposes of «religion». It is only such expressions that should be presumptively construed as charitable. The reference to religious objects must be contained, if at all, in the word "Catholic." But that word embraces much more than the

"purposes of «religion»" even in the ordinary unrestricted sense of those words. The phrase "Catholic daily newspaper" should, perhaps, be interpreted in the light of the fact that the fund is placed in the hands of the Hierarchy in Victoria. But even so its character cannot be considered as differing from similar newspapers conducted elsewhere under the authority of the Church, which, as the affidavit filed states, are established as "one of the means adopted by the Catholic Church for the maintenance and propagation of the Catholic faith and the advancement of the Catholic «religion»." The nature of those newspapers is described as follows:

> "Such newspapers in addition to ordinary daily news and articles of general interest include a record of events of special interest to Catholics, contain articles on religious and moral topics, propagate and defend accepted moral principles and Catholic doctrines and religious, moral and sociological subjects, and oppose and denounce principles, ideas and doctrines hostile to or subversive of Christaian faith and morality."

The carrying on of such an object is not a charitable religious purpose, as the citations I have made from authority appear to me clearly to establish. The conduct of a newspaper may be considered conducive to «religion» or a form of «religion», but no more. Indeed, it is an activity which cannot be confined even within the very wide description of "conducive to «religion." There is, in my opinion, no other head of charity, to which the bequest can be referred, and, accordingly, I think it is not charitable.

It is contended, however, that s. 131 of the Victorian Property Law Act 1928 operates to give validity to the bequest for the establishment of a Catholic daily newspaper. This enactment makes the following provision:

> **"(1)**
> No trust shall be held to be invalid by reason that some non-charitable and invalid as well as some charitable purpose or purposes is or are or could be deemed to be included in any of the purposes to or for which an application of the trust funds or any part thereof is by such trust directed or allowed.
> **(2)**
> Any such trust shall be construed and given effect to in the same manner in all respects as if no application of the trust funds or any part thereof to or for any such non-charitable and invalid purpose had been or should be deemed to have been so directed or allowed."

The suggestion is that, in so far as religious purposes are contained within the description "Catholic daily newspaper," they may be segregated from the non-charitable elements with which they are associated in that description, and, by force of this section, given by themselves an independent effect. The contention appears to me to confound the purposes of the newspaper with the purposes of the trust. The purpose of the trust was to contribute to the foundation of a newspaper of a specified character. The character is non-charitable. A newspaper of another character is then assumed, having some of the attributes which the newspaper described by the will would possess, but lacking many others. Such a newspaper is necessarily different in character and its establishment is another purpose, not part of the same purpose. The object of s. 131 is apparent. It was to remove or provide against a very well known ground upon which many dispositions were invalidated. That ground is that a trust not in favour of an individual is wholly invalid, if, according to its terms, the trustees are at liberty to apply the fund as well to purposes outside the definition of charity as to purposes within it, and if independently of the trustees, no measure is provided of the amount applicable to the non-charitable purpose. "It is undoubtedly the law that, where a bequest is made for charitable purposes and also for an indefinite purpose not charitable, and no apportionment is made by the will, so that the whole might be applied for either purpose, the whole bequest is void" (per Lord Halsbury L.C., Hunter v Attorney-General,[F61] at p. 315). Such cases are altogether different from the present, where one

particular application of the fund is authorized, namely, towards the establishment of a Catholic journal, and that object is not contained within the legal definition of charity. The true application of the statutory provision is well illustrated by the directions of the will as to intermediate income of the same fund, namely, "the income from those two benefactions, to be used for Catholic education, or any good object the Hierarchy may decide, until sufficient funds are in hand, to found the daily paper and secure the farm." "Any good object" goes beyond charitable purposes and, therefore, apart from s. 131, the whole trust of income would fail, but the section operates to exclude the non-charitable purposes and leave the income applicable to Catholic education, and, perhaps, also to other charitable purposes answering the description "good object," although this is doubtful. Upon the assumption that the bequest to establish the newspaper was held void, it was contended that the trust of income should be upheld, either as an independent and severable trust, or because it was segregated and validated by the operation of s. 131. A charitable trust of income of indefinite duration would result. In my opinion the trust of income is dependent upon the trust of corpus. It is a direction for the application of income of a fund disposed of for a main purpose pending the effectuation of that purpose. The failure of the trust of corpus involves the trust of intermediate income, and s. 131 has, I think, no application. For these reasons I am of opinion that the answers given by the Full Court to the first three questions in the originating summons were right, and that the appeal from that part of the order should be dismissed.

This conclusion makes it necessary to consider the appeal from the declaration made by the Full Court in answer to the tenth question in the originating summons. That declaration is: "That the funeral testamentary and administration expenses, debts and Victorian probate duties and the pecuniary legacies are payable out of the bonds and stock of the testator not specifically bequeathed in or by the said will." The declaration gives effect to the interpretation which the Court placed upon a provision of the will introducing the gift of residue. The provision is as follows: "If the bonds and stock reserved for probate and any liability of mine, are insufficient for the purpose, and all the cash bequests mentioned, the more readily saleable (advantageously realizable) to be sold to meet the liability; the balance, if any, and the remainder of my estate shares etc., not mentioned or bequeathed, to be realized at an opportune time, in an active market, and divided equally one half to" etc The order of application of assets is, in the absence of a contrary direction in the will, determined now by statute. In the case of funeral, testamentary and administration expenses, debts and liabilities payable out of the estate, not including Victorian probate duty and Federal estate duty, the incidence of the burden involved in their discharge is dealt with by s. 34 of the Administration and Probate Act 1928 and the Second Schedule thereto. The remarkable amendment to Part II. of the Schedule made by the Statute Law Revision Act 1933 (No. 4191) does not apply to this case. In the case of Victorian probate duty, the incidence is determined by s. 163 of the Administration and Probate Act 1928. In the case of Federal estate duty, it is determined by s. 35 of the Estate Duty Assessment Act 1914-1928.

(1) Funeral, testamentary and administrative expenses, debts and liabilities and pecuniary legacies: Secs. 33 and 34 and the Second Schedule of the Victorian Administration and Probate Act 1928 correspond to ss. 33 and 34 and the First Schedule of the English Administration of Estates Act 1925, whence they are taken.

The order of application of assets prescribed by s. 34 may be varied by the will of the deceased (Second Schedule, Part II., 8 (a)). Section 33, which has effect subject to the provisions of any will (sub-s. 7), imposes upon property as to which the deceased dies intestate a trust for conversion. The expression "intestate" includes a person who leaves a will, but dies intestate as to some beneficial interest in his real or personal estate (s. 4, definition of "intestate"). Out of the proceeds of conversion there are to be paid funeral, testamentary and administration expenses, debts and other liabilities properly payable

thereout, having regard to the rules of administration contained in the enactment, and, out of the residue of the money, there is to be set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will, if any, of the deceased (s. 33 (2)).
In the order of application of assets prescribed for solvent estates, the first is:

> "Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies."

The second in order is property disposed of by a residuary or general gift, but, again, "subject to the retention thereout of a fund sufficient to meet any pecuniary legacies."
The third is property disposed of for the payment of debts; and the fourth, property charged with the payment of debts. Then the fifth is

> "The fund, if any, retained to meet pecuniary legacies."

Last follow, in order, property specifically devised or bequeathed and property appointed under a power. We should, I think, hesitate to depart from the interpretation placed upon these provisions in England, at any rate by decisions of the Court of Appeal. It appears now to be established that the first category includes all property and every interest which is not effectually disposed of by will. If dispositions are void or lapse, and, in consequence an estate or interest remains undisposed of, that estate or interest falls into the category of assets first applied, in the statutory order of the application of assets. Further, it is established that a share of the residue given under a lapsed or void disposition falls under this head (In re Lamb,[F62] per Eve J.; In re Kempthorne,[F63] per Maugham J.; In re Tong,[F64] per Clauson J.; In re Worthington).[F65] (Contrast In re Kempthorne,[F66] per Lawrence L.J.)
It is also established that the undisposed of property, including lapsed and invalidly given shares of residue, is the primary source for the payment of pecuniary legacies. This is the interpretation put upon the words, "subject to the retention thereout of a fund sufficient to meet any pecuniary legacies," considered with the direction contained in s. 33 (2) to set aside a fund out of the proceeds of conversion to provide for them (In re Worthington).[F67]
The application of the provisions so interpreted is attended by much difficulty. As the purpose of the rules contained in Part II. of the Schedule is to determine how the dispositions of the estate shall bear the outgoings such as debts and liabilities, which go in diminution of the total, it might have been understood as speaking of the various portions of the estate prior to that diminution. But pecuniary legacies form, not an outgoing from the estate, but portion of the estate liable in its due order to bear outgoings. Residue prior to the deduction of debts may be ascertained, and the debts may be thrown on that part or share of the amount so ascertained, which is undisposed of, in exoneration of other parts or shares. But the ascertainment involves the prior deduction of the amount of the pecuniary legacies. If these are then thrown against the undisposed of share of residue, the deduction is restored and the whole residue is swollen, including the lapsed share. Further, there is necessarily some contrariety between the will and the statutory directions. A will containing bequests of pecuniary legacies and residuary dispositions must mean that the residuary legatees shall take what is left after the deduction of pecuniary legacies. The payment of the legacies is meant to be prior to the ascertainment of the share of residue, which, ex hypothesi, lapses, and, according to the statutory directions, would provide the source of the payment. But the statutory rules have effect subject to any intention which appears from the will with reasonable clearness.
Thus, in the course of his judgment in In re Tong,[F68] referring to In re Lamb,[F69] Clauson J. says:

> "If on the true construction of the will the residue meant that which was left after the debts and funeral and testamentary expenses and legacies had been paid, the will itself could have made provision for the discharge of those payments, and recourse to Part II. of the Schedule would be unnecessary."

But could true residue mean anything else? It appears to have been considered that a solution of the difficulty so arising is supplied by the existence of an express direction in the will for the prior deduction of legacies, debts or expenses in ascertaining residue. Such a direction has been treated as a sufficient indication that these burdens shall be regarded as discharged before the undisposed of residuary share is ascertained, and not out of that share. But effect is given to the statutory order in the absence of some such express direction, or, at any rate, of some reference to the deduction of these payments. In In re Lamb, the will gave specific and pecuniary legacies, and proceeded to direct that "the rest residue and remainder" of the estate should be divided into shares, one of which lapsed. Eve J. could "see nothing to exclude the application of the statutory order",[F70] and threw the pecuniary legacies[F71] as well as debts upon the lapsed share of residue. But, in In re Petty; Holliday v Petty,[F72] Astbury J. considered that the statutory order was displaced by the will because it directed conversion of the real and personal estate, and, out of the proceeds, payment of funeral and testamentary expenses, debts and legacies, and then disposed of "the residue of the said moneys" in moieties. He distinguished In re Lamb on the ground that the will in that case contained a mere direction to pay debts followed by a specific devise, a gift of legacies, and, subject thereto, a residuary disposition. In In re Atkinson; Webster v Walter,[F73] the lapsed gift was a devise of realty, not a share of residue. But the will bequeathed the personalty upon trust for conversion, and out of the proceeds, for payment of the funeral and testamentary expenses and debts and the legacies. Clauson J. said:[F74]

> "Here the will contains a clear direction to the trustees to convert the personal estate and out of the moneys produced by such conversion to pay his funeral and testamentary expenses and debts: until that provision is worked out there is no necessity to have recourse to Part II. of the First Schedule of the Act."

In In re Kempthorne,[F75] a division of the residuary personalty was directed "subject to and after payment of my funeral and testamentary expenses and debts and the legacies bequeathed by this my will or any codicil thereto, and the duty on any legacies bequeathed free of duty." The Court of Appeal held that the statutory order of application of assets did not apply and make a lapsed share the primary source for payment of liabilities and legacies. Lord Hanworth M.R. said:[F76]

> "The terms of the will are explicit and the fund, or net residue, is not ascertained-does not come into being-until the expenses, debts and legacies, have been paid."

Russell L.J., as he then was, said:[F77]

> "The statutory order of application of assets is overridden by the testator's own provisions, the effect of which is (to put the result in another way) that the only personal estate as to which he has died intestate is a share of what personal estate remains after the expenses and debts have in fact been paid thereout."

In In re Tong,[F78] the Court relied upon the distinction between, on the one hand, an express direction to pay prior charges followed by a bequest of "the remainder" of the estate, and, on the other hand, the mere existence of prior charges which must be provided before ascertaining residue. The will directed payment of legacies free of duty and payment of all duty on gifts out of the estate, and it bequeathed pecuniary legacies and annuities and dealt with specific realty. The testator then disposed of "the remainder of my estate" in shares, one of which lapsed. Clauson J. said:[F79]

"When I come to the final gift I find a disposition of the 'remainder of my estate.' This I construe, in view of the preceding reference to estate duty, as a direction to pay the estate duty and the legacies out of the general estate before ascertaining the fund which is the subject-matter of the final gift; but I can find no direction dealing with funeral, testamentary and administration expenses, debts and liabilities, other than and except this estate duty. In order to ascertain how these expenses, debts and liabilities must be met I must, by reason of s. 34, sub-s. 3, of the Act turn to Part II. of the First Schedule."

Accordingly the statutory order prevailed in the case of debts and the like, but not in that of legacies. This judgment was approved in the Court of Appeal. But Romer L.J. said:[F80]

"I fail to find anything in the will amounting to an indication of the testator's intention that the funeral and testamentary expenses and debts generally should be paid in any other mode than that specified in Part II. of the First Schedule. Even if the testator had directed his executors to pay all his funeral and testamentary expenses and debts and then given the remainder of his estate on certain trusts, I should still have hesitated to say that this amounted to an indication that the expenses and debts were to be paid in any other order out of the assets than that provided for in the First Schedule.

The truth of the matter is that there is nothing in this Act which prevents or is intended to prevent executors from paying expenses, debts and liabilities out of the first assets coming to their hands available for the purpose; and Part II. of the First Schedule really only deals with the ultimate adjustment of the burden as between the parties becoming entitled to the testator's estate. Therefore the use of such a word as 'remainder' does not seem to me to make any difference. Such words throw no light on how as between the persons having beneficial interests in the remainder the liability for expenses and debts is to be apportioned. On this point I agree with the learned Judge."

(Cf. In re Littlewood; Clark v Littlewood.)[F81] In In re Worthington,[F82] the will bequeathed legacies free of duty, and then devised and bequeathed all the residue of the estate both real and personal in two equal shares, one of which lapsed. Bennett J. distinguished between debts and legacies on the ground that payment of the former was not, and of the latter was, directed. His decision was reversed by the Court of Appeal. Lord Hanworth M.R. said:[F83]

"The learned Judge seems to have read the will as providing for the payment of the legacies first and to have thought that the residue was not to be ascertained until after they had been paid. But the provisions of the statute indicate that unless there is some provision in the will which negatives the prescribed order of administration, that order of administration must apply both to legacies and to debts. The learned Judge seems to have thought that because of the specific reference to legacies in the will there was an indication of an intention that the statutory order of administration should not apply to them. But, after all, if legacies are given by a will, there must be a specific reference to them, and I do not see how that can be sufficient to alter the statutory order of administration."

Lawrence L.J. said:[F84]

"It was contended for the respondent that the gift of 'the residue of my estate' operated as showing an intention to effect such a variation. In my opinion that contention is not well founded. The will contains no direction as to how the executor is to administer the estate and no direction indicating

an intention that the legacies should be paid otherwise than in the statutory order of administration."

He then expressed his agreement with what Romer L.J. had said in Tong's Case[F85] about the use of the word "remainder," and the absence of assistance from such words. Romer L.J. said:[F86]

"All I find is a gift of legacies and a gift of residue, and there is no direction given to the executor as to how, as between persons ultimately found to be interested in the estate, the debts, expenses and legacies are to be paid. I see no reason for departing from anything I said in In re Tong."[F87]

The observations of all three learned Judges suggest that language in the will, which does no more than express what is undeniable in any case, that residue must be arrived at after the deduction of prior charges, does not override the statutory order. I confess that I feel a difficulty in understanding why a different result should be produced by a specific direction to pay out of the fund which, after all prior deductions are made, constitutes residue.

The declaration of the Full Court now under appeal is based upon the view that the will provided how the debts and other charges and the legacies should be borne, and so displaced the statutory declaration which would have thrown them upon the property of the deceased undisposed of by will. The declaration, however, does not really solve the difficulty which has arisen. It declares that the legacies and charges are payable out of specific property which it describes as "not specifically bequeathed in or by the said will." But this means that, subject to the charge of debts and other outgoings and legacies, which the declaration imposes thereon, that very property forms a component part of the residue. Now the whole question relates to residue.

The invalidity of the specific bequest for the establishment of a Catholic daily newspaper caused the specific property so bequeathed to fall into residue. Thus the question is whether the equal half share of the residue invalidly bequeathed to establish a Catholic daily newspaper should bear debts, charges, and legacies in priority to or ratably with the other half share of residue, the disposition of which is valid. Why should the fact, that specific assets forming part of residue are made the primary source for the payment of debts and other charges and legacies, affect the priority between the beneficiaries upon whom the shares devolve into which residue is divided? The division is of the beneficial property in the conglomerate mass of assets in which the specific assets required to answer debts, charges and legacies are contained, at any rate after and subject to that requirement. The effect of the will may have been considered to be to withhold from that mass so much of the specific assets or their proceeds as is applied in payment of legacies, debts and charges so as to produce the result described by Lord Russell in the passage already quoted from Kempthorne's Case,[F88] namely, that the only estate as to which the testator has died intestate is a share of what remains after expenses, debts and legacies have in fact been paid thereout. But the declaration does not cover the adoption of that answer to the question in the summons.

However the testator express himself, it appears to me that an intestacy as to a share of true residue is always of such a character. In the present case, the property of the deceased not specifically disposed of comprised land, money on current account and fixed deposit, shares in companies conducting commercial and industrial undertakings, and a large amount of Government stock and bonds. He bequeathed pecuniary legacies amounting to a considerable sum. The provision in the will upon which the Full Court relied is very difficult to understand. The will contains no reservation of bonds and stock for probate or any liability of the deceased. It does not, however, specifically dispose of any Government bonds or stock, and the testator may have considered his abstaining from any such specific bequest tantamount to a reservation. Commonwealth stock is accepted at par and Treasury bonds at face value in payment of Federal estate duty (s. 52 (c) of Commonwealth

Inscribed Stock Act 1911-1932), and this may have been a reason with the testator for such a "reservation." But the chief difficulty in the sentence lies, not in the condition, but in the principal clause.

What is intended by the words "the more readily saleable (advantageously realizable)"? The bonds and stock are assumed to be exhausted, and, in any case, are marketable securities all equally "readily saleable." Probably some other kind of property not specifically disposed of was intended to be specified; perhaps some class of shares. I am unable to supply the omission, or find a satisfactory meaning for this part of the clause. But the conditional statement "if the bonds and stock reserved for Probate and any liability of mine, are insufficient for the purpose, and all the cash bequests mentioned" does imply that he intended or supposed that some bonds and stock would be utilized to meet debts, probate duty and legacies. What bonds and stock he intended to refer to must be in some degree uncertain, but, on the whole, I think it should be taken to mean those not specifically disposed of, of which he died possessed. But, in my opinion, the implication that such bonds and stock are to be resorted to for debts and legacies, the reference to "the remainder of my estate shares etc., not mentioned or bequeathed," and the direction to divide this residue or balance, are not separately or in combination enough to displace the statutory rules for the application of assets. These matters evidence no intention to saddle any interest or property disposed of otherwise than as residue with legacies, debts and charges, nor any intention that residue should be considered as a net fund relieved from the incidence of these charges. Much less is there any intention disclosed inconsistent with a lapsed share of residue bearing the payments in priority to the share effectively given.

I think that funeral, testamentary and administration expenses and pecuniary legacies fall primarily on the property undisposed of by will consisting of the share of residue invalidly bequeathed to establish the newspaper.

(2) Victorian probate duty: The incidence of this duty is governed by s. 163 of the Administration and Probate Act 1928, which provides:

> **"Unless a contrary intention appears in the will the executor or administrator of the estate of any deceased person shall (subject to the provisions of the last preceding section) pay any duty payable on the whole or any part thereof under the provisions of this Part out of the residue of such estate."**

By sub-s. 4 "residue" is defined for the purposes of the section as including unbequeathed personalty and any undevised realty. The considerations and views, which I have already set out, would lead to the conclusion that no "contrary intention appears." But, in any event, the definition of residue covers property as to which there is an intestacy, including lapsed shares of residue.

(3) Federal estate duty: No separate consideration seems to have been given to this duty in the Supreme Court, and little or no argument was directed to it before us.

By s. 35 of the Estate Duty Act 1914-1928, subject to any different disposition contained in the will, the duty is apportioned among the beneficiaries in proportion to their interests, certain charitable gifts excepted. The will does contain a different disposition, if, but only if, in the clause in question, the word "probate" includes Federal estate duty and the reference to "the bonds and stock reserved" is held to be sufficiently certain, and to refer to the Government stock and bonds not specifically disposed of by the will. No argument was directed to the first of these questions, and the second question was not discussed with reference to estate duty.

In these circumstances we should be justified in refusing to deal with the question in this Court. But I have already expressed my opinion that the clause should be taken to refer to stock and bonds not specifically disposed of. The question whether the testator, by his lay use of the word "probate," meant to include estate duty, is not susceptible of much

argument. Estate duty is expressly mentioned in the originating summons. It is, I think, on the whole, better that we should decide the point. In my opinion, the testator did mean to include Federal estate duty under the word "probate." Accordingly, I think there is a different disposition, namely, a provision that estate duty shall be paid out of so much of the residue as consists of Government bonds and stock not specifically bequeathed.

I think the appeal from the declaration in answer to the tenth question in the summons should be allowed, and, except as to probate, estate and succession duty, the question should be answered: According to the order of the application of assets set out in Part II. of the Second Schedule of the Administration and Probate Act 1928, and primarily out of the invalidly disposed of share of residue. As to probate duty, it should be answered: Out of the shares of residue ratably. As to estate duty, for myself, I would answer the question: Out of so much of the residue as consists of Government stock and bonds, and as between the shares of residue ratably.

END QUOTE

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For decades I have used a personal Dutch language Bible whenever having to swear an oath and no judge ever prevented me from doing so because the oath itself is not relevant as to how it is used as long as it constitutes to be an oath where a person doesn't desire to do an Affirmation.

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http://www.law.berkeley.edu/faculty/sklansky/evidence/evidence/cases/Cases%20for%20TOA/Ward,%20United%20States%20v.htm

QUOTE

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

WALLACE WARD, DEFENDANT-APPELLANT

No. 91-10293

United States Court of Appeals, Ninth Circuit

Argued and Submitted May 11, 1992

Decided August 19, 1992

As Amended; No Petition for Rehearing Entertained April 1, 1993

989 F.2d 1015 (9th Cir. 1992)

Wallace Ward, in pro per.

Robert Bork, Asst. U.S. Atty., Las Vegas, NV, for plaintiff-appellee.

Appeal from the United States District Court for the District f Nevada.

Before FLETCHER, POOLE and T.G. NELSON, Circuit Judges.

FLETCHER, Circuit Judge:

Wallace Ward appeals his conviction of three counts of attempt to evade income tax in violation of 26 U.S.C. 7201 and three counts of failure to file income taxes in violation of 26 U.S.C. 7203. Ward argues that a new trial is necessary because the district court

did not allow him to swear to an oath of his own creation, thereby precluding him from testifying in his own defense. We reverse and remand for a new trial.

BACKGROUND

Ward is the president of I & O Publishing Company, a mail-order house and publisher located in Boulder City, Nevada. The prosecution presented evidence at trial that despite having substantial income, neither I & O nor Ward filed tax returns or paid income taxes for the years 1983, 1984 and 1985.

On March 29, 1990 a grand jury indicted Ward on three counts each of tax evasion and failure to file income tax returns. Ward chose to represent himself at trial. On July 9, 1990, Ward filed a "Motion to Challenge the Oath," which proposed an alternative oath that replaced the word "truth" with the phrase "fully integrated Honesty." The oath would read, "Do you affirm to speak with fully integrated Honesty, only with fully integrated Honesty and nothing but fully integrated Honesty?" For reasons we will not attempt to explain, Ward believes that honesty is superior to truth. Magistrate Lawrence R. Leavitt ruled on August 2, 1990 that "the oath or affirmation which has been administered in courts of law throughout the United States to millions of witnesses for hundreds of years should not be required to give way to the defendant's idiosyncratic distinctions between truth and honesty." The district court overruled Ward's objections to the magistrate's order on August 28, 1990, and again on October 8, 1990. Ward pursued an interlocutory appeal on the issue, which was dismissed for lack of jurisdiction. *United States v. Ward,* No. 90-10534 (9th Cir. April 24, 1991).

A three-day trial commenced on February 11, 1991. Ward made a lengthy opening statement and actively cross-examined government witnesses. At a sidebar during the second day of trial, Ward offered to take both the standard oath and his oath. The prosecutor was amenable to the compromise, but the district court refused to allow it. "This is an oath that has been used for a very long time," the district court said, "And I'm not going to establish a precedent where someone can come in and require the court to address that matter differently." At the close of the government's case on the third day of trial, Ward asked once again to testify under his oath. The judge again refused, saying "[T]he oath has been used for a very long time. . . . That's the oath that will be administered." Ward did not testify and presented no witnesses. The jury convicted Ward of all counts after an hour's deliberation.

Ward now appeals. He argues that the district court's insistence on an oath that violated his beliefs abridged his First Amendment right to free exercise of religion and his Fifth Amendment right to testify in his own defense.

DISCUSSION

Questions of trial management are ordinarily reviewed for abuse of discretion. *United States v. Goode,* 814 F.2d 1353, 1354 (9th Cir. 1987). However, this case turns on the defendant's First and Fifth Amendment rights. We review questions of constitutional law *de novo. United States v. McConney,* 728 F.2d 1195, 1203 (9th Cir.) (en banc), *cert. denied,* 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984).

Judges may not determine the truth or falsity of matters of faith. Even so, we must determine as a threshold matter whether Ward's beliefs are within the ambit of the First Amendment. In order for Ward to invoke "the protection of the Religion Clauses, [his] claims must be rooted in religious belief." *Wisconsin v. Yoder,* 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972).

But what is a religious belief? That is the question. In describing "the richness and variety of spiritual life in our country," the Supreme Court has noted that some of the more than 250 sects in the United States "believe in a purely personal God, some in a supernatural deity; others think of religion as a way of life envisioning as its ultimate goal the day when all men can live together in perfect understanding and peace." *United States v. Seeger,* 380 U.S. 163, 174, 85 S.Ct. 850, 858, 13 L.Ed.2d 733 (1965). "There are those," the Court continued, "who think of God as the depth of our being; others, such as the Buddhists, strive for a state of lasting rest through self-denial and inner purification; in Hindu philosophy, the Supreme Being is the transcendental reality which is truth, knowledge and bliss." *Id.* at 174-75, 85 S.Ct. at 858. In short, the religious fabric of this country is one of a "vast panoply of beliefs." *Id.* at 175, 85 S.Ct. at 859.

In determining whether Ward's own peculiar notions[1] are protected as religious beliefs, "[the] task is to decide whether the beliefs professed . . . are sincerely held and whether they are, in [Ward's] own scheme of things, religious." *Id.* at 185, 85 S.Ct. at 863; *see also Welsh v. United States,* 398 U.S. 333, 339, 90 S.Ct. 1792, 1796, 26 L.Ed.2d 308 (1970) (quoting same language in *Seeger*). "Religious" beliefs, then, are those that stem from a person's "moral, ethical, or religious beliefs about what is right and wrong" and are "held with the strength of traditional religious convictions." *Welsh,* 398 U.S. at 340, 90 S.Ct. at 1796.[2] While there can be no question that a "purely secular philosophical concern[]," *Callahan v. Woods,* 658 F.2d 679, 683 (9th Cir. 1981), is not encompassed by the free exercise clause, we conclude that the "generous functional (and even idiosyncratic) definition [of religion and religious beliefs in the] free exercise [context]," *Grove v. Mead School District,* 753 F.2d 1528, 1537 (9th Cir.) (Canby, J., concurring), *cert. denied,* 474 U.S. 826, 106 S.Ct. 85, 88 L.Ed.2d 70 (1985), includes Ward's system of principles.[3]

To the extent that the free exercise clause does not protect "so-called religions which . . . are obviously shams and absurdities and whose members are patently devoid of religious sincerity," *Callahan,* 658 F.2d at 683 (internal quotation marks omitted), the focus of the judicial inquiry is not definitional, but rather devotional. *Id.* That is, is Ward sincere? Are his beliefs held with the strength of traditional religious convictions? Ward does not describe his beliefs in terms ordinarily used in discussions of theology or cosmology (although he at one point uses the term "atheistic"), but he clearly attempts to express a moral or ethical sense of right and wrong. Ward's actions are evidence of the strength of his beliefs. He strongly professes innocence of the crimes charged, yet he preferred to risk conviction and incarceration rather than abandon his version of the oath. Compelling him to testify under the "truth" oath would, he says, "profoundly violate" his "freedom of belief" and run counter to the "convictions that are the central theme of all his published books and writings for the past 22 years." This is the sincerity of true religious conviction. We conclude that Ward professes beliefs that are protected by the First Amendment.

The court's interest in administering its precise form of oath must yield to Ward's First Amendment rights. To begin with, there is no constitutionally or statutorily required form of oath. Federal Rule of Evidence 603 requires only that a witness "declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so." The advisory committee notes to Rule 603 explain that "the rule is designed to afford the flexibility required in dealing with religious adults, atheists, conscientious objectors, mental defectives, and children. Affirmation is simply a solemn undertaking to tell the truth; no special verbal formula is required." This rule represents no break with the common law,

which recognized that the oath's efficacy may depend upon both the general name and nature of the witness' faith and the formula of words or ceremonies which he considers as binding, i.e., as subjecting him to the risk of punishment.

But it cannot matter what tenets of theological belief or what ecclesiastical organization he adheres to, provided the above essentials are fulfilled, and it *cannot matter what words or ceremonies are used* in imposing the oath, provided he recognizes them as binding by his belief.

6 Wigmore, Evidence 1818 (Chadbourne rev. 1976) (original emphasis).

Our cases have routinely held that it is reversible error for a district court to prevent a party from testifying solely on the basis of the party's religiously-based objections to the form of the oath. In *Gordon v. State of Idaho,* 778 F.2d 1397 (9th Cir. 1985), a plaintiff in a 1983 action professed religious objections to oath or affirmation, offering instead to say "I understand that I must tell the truth. I agree to testify under penalty of perjury." Using First Amendment analysis requiring that government use the "least restrictive means" to its ends when free exercise is at stake, we held that it was an abuse of discretion for the district court to insist upon the standard oath and to dismiss plaintiff's case for failure to present evidence. *See also Ferguson v. C.I.R.,* 921 F.2d 588 (5th Cir. 1991) (tax court proceeding, similar facts). Criminal trials additionally implicate the defendant's Fifth Amendment right to testify.

All that the common law requires is a form or statement which impresses upon the mind and conscience of a witness the necessity for telling the truth. Thus, defendant's privilege to testify may not be denied him solely because he would not accede to a form of oath or affirmation not required by the common law. . . . [A]ll the district judge need do is to make inquiry as to what form of oath or affirmation would not offend defendant's religious beliefs but would give rise to a duty to speak the truth.

United States v. Looper, 419 F.2d 1405, 1407 (4th Cir. 1969). *See also Moore v. United States,* 348 U.S. 966, 75 S.Ct. 530, 99 L.Ed. 753 (1955) (per curiam) (criminal defendant with religious objections to the word "solemnly" in the oath must be allowed to testify).

Neither the magistrate nor the district court cited to any of these authorities, relying instead on their perception that the standard oath had not changed "for hundreds of years." While oaths including the familiar "truth, whole truth, and nothing but the truth" formulation date back at least to the seventeenth century, *see* 6 Wigmore, Evidence 1818(2) (Chadbourne rev. 1976), the principle that the form of the oath must be crafted in a way that is meaningful to the witness also predates our constitution. In *Omichund v. Barker,* 1 Atk. 22, 45 (1744), Lord Chief Judge Willes wrote, "It would be absurd for [a non-Christian witness] to swear according to the Christian oath, which he does not believe; and therefore, out of necessity, he must be allowed to swear according to his own notion of an oath." *See also Atcheson v. Everitt,* 1 Cowp. 382, 389 (1776) (Mansfield, L.C.J.) ("[A]s the purpose of [the oath] is to bind his conscience, every man of every religion should be bound by that form which he himself thinks will bind his own conscience most").

This case has an odd twist in that the defendant offered to take the traditional "truth" oath, but only if he were permitted to also take his "fully integrated honesty" oath. In Ward's view, as best we can state it, only his oath expressed a commitment to the abstract purity of absolute "fully integrated honesty" that must be extracted from anyone before that person's word can be relied upon. The standard "truth" oath was so much surplusage distasteful, wrong, but not necessarily a mortal sin to take.

His own oath superimposed on the traditional one would have taken nothing away from the commitment to tell the truth under penalties of perjury and, indeed, in the defendant's mind imposed upon him a higher duty.[4] Under these circumstances the district court clearly abused its discretion in refusing the oath and preventing the defendant's testimony. We do not have a case where the witness offers to swear only to a cleverly worded oath that creates loopholes for falsehood or attempts to create a safe harbor for perjury as in *United States v. Fowler,* 605 F.2d 181, 185 (5th Cir. 1979), *cert. denied,* 445 U.S. 950, 100 S.Ct. 1599, 63 L.Ed.2d 785 (1980), where the court properly refused testimony from a defendant who would not say so much as "I state that I will tell the truth in my testimony," and was willing to say only "I am a truthful man" or "I would not tell a lie to stay out of jail." Ward's "attempt[] to express a moral or ethical sense of right and wrong," *Welsh,* 398 U.S. at 340, 90 S.Ct. at 1796, coupled with the de rigueur fervor, brings his beliefs squarely within those safeguarded by the free exercise clause.

Ward also seeks to vindicate what he perceives to be his right to have all his witnesses sworn to his oath. This he cannot do. Ward has no standing to assert the First or Fifth Amendment rights of others. *Hong Kong Supermarket v. Kizer,* 830 F.2d 1078, 1081 (9th Cir. 1987). Ward also alleges numerous trial errors which we need not consider in light of our grant of a new trial.

REVERSED and REMANDED.

POOLE, Circuit Judge, dissenting:

The majority seizes upon the defendant's semantic objection to the word "truth" and concomitant preference for the term "honesty" to reverse a conviction, but this result is not commanded by the Free Exercise Clause and runs afoul of the rule that any oath taken must convince the court that a witness is committed to truthful testimony and is aware of the cost of dishonesty on the stand. I would hold that the district court did not abuse its discretion in failing to provide a customized oath for Ward.

It is axiomatic that even the most sincere of beliefs is not entitled to the protection of the Free Exercise clause unless it is rooted in religion. *See, e.g., Thomas v. Review Board,* 450 U.S. 707, 713, 101 S.Ct. 1425, 1429, 67 L.Ed.2d 624 (1981); *Wisconsin v. Yoder,* 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972). We do not require a belief in God, but we do require a belief to "occup[y] a place in the life of its possessor parallel to that filled by the orthodox belief in God." *Mason v. General Brown Central School Dist.,* 851 F.2d 47, 51 (2d Cir. 1988). A "purely secular philosophical concern" is not enough to override the state's interest in uniform regulation. *Callahan v. Woods,* 658 F.2d 679, 683 (9th Cir. 1981); *see also Johnson v. Moore,* 948 F.2d 517, 520 (9th Cir. 1991).

I believe that Ward's objection to the oath ordinarily required of witnesses by Fed.R.Evid. 603 amounts to nothing more than a philosophical predilection. Ward does not tell us how his concerns about the misuse of the word "truth" affects his ability to cope with the pressures and challenges of his daily life. He does not enlighten us as to how habitual application of the term "honesty" provides him spiritual growth, relates to his understanding of life's purpose and meaning, or guides his daily routine. He does tell us that "honesty" means that all of the world's problems will disappear because then we will all know people are not lying, but I fail to see how this prediction satisfies the requirement that Ward's preference for a particular word be as important, or even as relevant, as religion is in the lives of many people.

Even were I to give Ward the benefit of the doubt and ascribe religious significance to his "ultimate concern" with the merits of the word "honesty," I would still decline to require

the district court to accommodate his objection. The district court must modify the oath to reflect genuinely held objections to it, but the court must also satisfy itself that the witness has committed himself to speak the truth. It is not enough that the witness says he knows of his obligation to do so; there must be a promise based on the awareness that failure to be honest is punishable under our law. *See United States v. Looper,* 419 F.2d 1405, 1407 (4th Cir. 1969); *Wilcoxon v. United States,* 231 F.2d 384, 387 (10th Cir. 1956), *cert. denied,* 351 U.S. 943, 76 S.Ct. 834, 100 L.Ed. 1469 (1957); *Gordon v. State of Idaho,* 778 F.2d 1397, 1401 n. 2 (9th Cir. 1985) (Weigel, J., dissenting). Ward's proposed alternative oath does not contain an acknowledgment of the *duty* to speak truthfully and does not ensure that the defendant is aware of the cost of dishonesty.

The majority's accommodation of Ward's "purely secular philosophical concerns," *Callahan,* 658 F.2d at 683, will result not in protection of a valuable Constitutional right but in numerous wasteful and time-consuming attacks on the oath mandated as a means of guaranteeing truth and of expediting the administration of justice. I dissent.

END QUOTE

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Some 35 pages are reproduced below in regard of the meaning of "**British subject**" which are quotations of statements of the Framers of the Constitution about this.

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Shaw v Minister for Immigration and Multicultural Affairs

HYPERLINK "http://www.austlii.edu.au/au/cases/cth/high_ct/2003/72.html" [2003] HCA 72

9 December 2003

B99/2002

QUOTE

10. However, contrary to the submissions for the applicant, the result of such a consideration of his position is his classification as an alien for the purposes of HYPERLINK "http://www.austlii.edu.au/au/legis/cth/num_act/c167/s51.html" s 51 (xix) of the Constitution. Much of the applicant's argument proceeded from the premise that, because the expression "British subject" could be applied to him, he was not an alien. That premise is flawed. **First, "British subject" is not a constitutional expression**; it is a statutory expression. Secondly, and more fundamentally, if "**British subject**" was being used as a synonym for "subject of the Queen", an expression which is found in the Constitution, that usage would assume that there was at the time of federation, and there remains today, a constitutional and political unity between the UK and Australia which 100 years of history denies.

END QUOTE

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Again, this has been canvassed below extensively also, that to the contrary the Framers of the Constitution very much considered this term "British subjects"

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The Commonwealth of Australia Constitution Act 1900 (UK)

QUOTE

(ii) taxation; but so as not to discriminate between States or parts of States;

END QUOTE

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The Commonwealth of Australia Constitution Act 1900 (UK)

QUOTE

114 States may not raise forces. Taxation of property of

Commonwealth or State

A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

END QUOTE

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While this means that neither the State can raise tax on Commonwealth property and the Commonwealth can neither raise tax on State property it doesn't mean that neither can apply a tax onto each other, it simply means that neither can tax the "property" but anything else they can.

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* What is the difference between property and "anything else"?

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Well, a "property" is an item that you can say see with your eyes. Even if this is underground and later is mined but "anything else" is where for example the Commonwealth as proprietor obtains a title of a property within State boundaries but did not become the sovereign of the property as in having total control over the property then all State laws are and remain applicable other then taxation on the property and any law which might be inferior to Commonwealth law.

(See also the status of **PROPRIETOR** above (page 11))

Say, a property is used for telecommunication and the Commonwealth built a gigantic tower on the property beyond State planning laws. If the commonwealth used this tower for telecommunication then it is not bound by State laws. However if it uses the telecommunication tower for some private company to rent the property then it is not for Commonwealth purposes and then State laws do apply. Also, if the Commonwealth rent out the facilities then for the part it rents out the property it is bound to pay taxes, as otherwise it could undermine the collection of taxes by the State.

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QUOTE

Mr. O'CONNOR: In a case of that kind the reversion which is in the Crown would not be taxed, but the letting value would be taxed.

END QUOTE

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Hansard *8-4-1891* Constitution Convention Debates

QUOTE

Mr. HENRY: I would like to raise a question as to the right of the Commonwealth to tax materials for State purposes. In the event of a colony **importing rails**, machinery, engines, &c., for State purposes, I would like to know whether such exports are to be free from Customs duties. Will the Federal Parliament have a right to levy duties on materials imported for State purposes?

Mr. BARTON: This is a matter that was discussed very fully in the Constitutional Committee, and I think my hon. friend Sir George Turner will remember that I consulted the members of the Finance Committee upon it, intimating to them the opinion of the Constitutional Committee on the point. The words:

Impose any tax on property

do not refer to the importation of goods at all, and any amendment to except the Customs would be unnecessary. This clause states that a State shall not, without the consent of the Parliament of the Commonwealth, impose taxation on property of any kind belonging to

the Commonwealth, meaning by that property of any kind which is in hand, such as land within the Commonwealth. **That has no reference to Customs duties.**

Sir GEORGE TURNER: Will articles imported by the States Governments come in free?

Mr. BARTON: The question then arises whether articles imported by the States Governments are to come in free, but this section has nothing to do with that. Under this Bill and in the measure of 1891 I believe duties would have been collectable upon imports by any State, and after the consultation which I had with the hon. member and his colleagues on the Finance Committee the Constitutional Committee decided **not to make any exemption in the case of any State.**

END QUOTE

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Hansard *8-4-1891* Constitution Convention Debates

QUOTE

Clause 14. A state shall not, without the consent of the parliament of the commonwealth, impose any duty of tonnage, or raise or maintain any military or naval force, or impose any tax on any land or other property belonging to the commonwealth.

Sir SAMUEL GRIFFITH: My attention has been called by one of my colleagues to the fact that there are no corresponding words in the bill prohibiting the commonwealth from taxing state lands. In order to remove that objection, I move:

That the following words be added to the clause:-"nor shall the commonwealth impose any tax on any land or property belonging to a state."

Mr. GILLIES: Is it contemplated that in the case of Crown land belonging to the states, that land may be taxed?

Sir SAMUEL GRIFFITH: It will prevent that being done.

Amendment agreed to; clause, as amended, agreed to.

END QUOTE

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Now lets consider what Barton J (as he then was), and others, stated ***in Attorney-General of New South Wales v Collector of Customs*** (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908) regarding duties on imported rails by the NSW Government;

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Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE Griffith C.J.

The point raised under sec. 114 is a more difficult one. That section provides that "A State shall not ... impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State." The Attorney-General says that the rails in question are property of the State of New South Wales, that duties of Customs are a tax on property, and that the rails are therefore exempt. The defendant answers that duties of Customs are not a tax imposed on property in the sense in which those words are used in that section, and, further, that the section applies only to property already within the limits of the Commonwealth, and not to goods in process of coming within those limits.

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE

There are, however, difficulties in the way of implying any such limitation upon the terms of sec. 114, just as there are (as was pointed out in the *Federated Amalgamated Government Railway and Tramway Service Association v. New South Wales Railway Traffic Employés Association*[3]) in the way of saying that any function which a Sovereign Government assumes to exercise within the limits of its powers is not an ordinary function of government. But, even with this limitation, the prohibition of the section would extend to duties upon goods imported for the purposes of government departments, such as the Public Works and Education Departments, the Printing Office, Gaols, Police, Asylums, and many others, and this, whether the goods were directly imported into the State itself or through another State, as for instance, through Port Pirie in South Australia in transit to Broken Hill in New South Wales, or through Brisbane in Queensland in transit to the Northern Districts of New South Wales.

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE

Are then the words of sec. 114 capable of two constructions? There is no doubt that in some contexts the words "**impose any tax**" might be capable of application to duties of Customs. Nor is there any doubt that the word "taxation" in sec. 51 (II.) includes the levying of duties of Customs. But these duties are nowhere in the Constitution described as a "tax," unless the use of the word "taxation" in sec. 51 (I.) is such a description of them; nor is the levying of them ever spoken of as the imposition of a tax on property. Sec. 86 speaks of "the collection and control of duties of Customs and of Excise." Secs. 88, 89, 90, 92, 93, 94, 95, all speak of the "imposition" of duties of Customs. Such duties are imposed in respect of "goods" and in one sense, no doubt, "upon" goods, which is only another way of saying that the word "upon" is sometimes used as synonymous with "in respect of." In the same way the word "upon" or "on" is used colloquially in speaking of stamp duties, succession duties, and other forms of indirect taxation, as taxes on deeds, &c., or on real and personal property. Yet it is recognized that these forms of taxation are not really taxation upon property but upon operations or movements of property.

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE

So far there seems no reason to suppose that the word "tax" was used, inexactly, in sec. 114 to denote duties of Customs.

The distinction between direct and indirect taxation is well enough known. Direct taxation is taxation by way of pecuniary payments directly imposed in respect of persons or things subject to the jurisdiction of the taxing authority, and the burden of which is designed to fall upon the taxpayer himself. Such taxes in respect of things are frequently, and not inaccurately, called property taxes, or taxes "on" property. Common instances are land tax and municipal rates. Similar taxes levied *ad valorem* upon the value of personal property were for many years imposed in New Zealand and in many of the States of the American Union.

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE

> Again, the words "property belonging to the Commonwealth," "property belonging to a State," seem, *primâ facie*, to import property lying and being within the Commonwealth. Neither the Commonwealth nor a State can impose a tax upon property which is not within the geographical limits of its jurisdiction. Even if they can impose a tax upon a resident in respect of property situated elsewhere, such a tax is a personal tax, and cannot be properly regarded as a tax upon his property. It was contended, however, that duties of Customs are a tax upon property within the Commonwealth, since the goods must have been imported before the liability to duty can arise. But this, although true in one sense, is not true in any relevant sense. The payment of the Customs duty is an obligation or condition which must be fulfilled before the goods can lawfully form part of the stock or mass of goods in the country, although for convenience they are allowed to be retained in bond in a King's warehouse until payment. Adapting the words of Chief Justice *Taney*, cited in *Perkin's Case*[10], I say that a Customs law from this point of view is nothing more than an exercise of the power the Commonwealth possesses of regulating the manner and terms on which goods may be brought into the Commonwealth.
>
> For these reasons I am of opinion that the levying of duties of Customs on importation is not the imposition of a tax upon property within the primary and literal meaning of sec. 114, standing alone. I am further of opinion that, even if it is an imposition of a tax on property within the primary and literal meaning of that section, yet that meaning is not the only or the necessary meaning, and that, for the reasons already given, it must be rejected as being inconsistent with other plain provisions of the Constitution. I think, therefore, that sec. 114 does not apply to duties of Customs. This was the view taken by *Stephen* Acting C.J. in the case of *Attorney-General v. Collector of Customs*[11].

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE

> **It was contended that the importation of railway material from beyond the Commonwealth is, or may be (as to which the State is the sole judge), necessary for the efficient construction and carrying on of State railways, and that the imposition of duties of Customs upon such importation is consequently a control of, or interference with, a State function. This argument, if valid, applies, as already pointed out, to all goods which any State may think fit to import into any part of the Commonwealth for the purposes of any department of the State.**
>
> The doctrine relied upon is, as has several times been pointed out by this Court, a rule of construction founded upon necessity. In one aspect it is analogous to the rule that the Crown is not bound by a Statute unless it appears on the face of the Statute that it was intended that the Crown should be bound. The word "expressly," as used in the rule, does not, of course, mean that the power to be interfered with must be mentioned *eo nomine.* **If a power conferred upon the Commonwealth in express terms is of such a nature that its effective exercise manifestly involves a control of some operation of a State Government the doctrine has no application to that operation.** Sec. 51 of the *Constitution* confers upon the Parliament many powers of this nature, *e.g.*, the power to control quarantine (*ix.*), weights and measures (*xv.*), immigration (*xxvii.*). The power to make laws respecting trade and commerce with other countries and among the States (*i.*) is of the same kind, and necessarily involves the power to interfere with the operations of the State Governments so far as to make effectual any condition or prohibition imposed by the Commonwealth upon importation. Taxation by means of Customs duties is in law, as well

as in fact, a mode of regulating trade with other countries. It follows that it was the intention of the legislature that the right of State Governments to import goods should be subject to the control of the Commonwealth, so that the rule in *D'Emden v. Pedder*[15] has no application.

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE Barton J

With what approach to uniformity or consistency—the very objects of their existence—could the express and exclusive powers of the Australian union be exercised?

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE Barton J

The following words in the judgment of the Supreme Court of the United States, spoken by *Brewer* J., exactly apply. In a dual system of government, **"There are certain matters over which the national government has absolute control, and no action of the State can interfere therewith, and there are others in which the State is supreme, and in respect to them the national government is powerless":** *South Carolina v. United States*[20]. Where a grant of power is made, this leading principle dictates its scope. If the grant is exclusive the control is absolute. Any action by the State, such as the attempted importation of goods, without observance of the condition which the grantee of the absolute control has imposed, is itself an interference with the exercise of the control. In this case the condition is the payment of the duty prescribed.

Further, I am of opinion that the State has not made out its claim to have these rails considered an instrument of its governing functions. It cannot be contended that the Government of New South Wales has any extra-territorial powers.

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE Barton J

Now as to sec. 114 of the *Constitution*. I must first guard myself against being supposed to agree with Mr. *Pilcher* that the prohibition applies only to property of Commonwealth or State which is a means or agency of Government as ordinarily understood**. That position may be correct. On the other hand, it may be that the framers of the** Constitution **intended to protect all such property as either power might have or acquire, whether used or not in the ordinary essential functions of Government.** There is this difficulty in the way of that construction. As their respective Constitutions stand it is open to the States to acquire and hold property for purposes without number.

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE Barton J

Although the Customs duty may be in fact imposed "on" the article itself, as contended on an elaborate analysis of the judgment of *Marshall* C.J. in *Brown v. Maryland*[21], and although the goods which pass the Customs after entry may be "property," **yet it is not usual to call a duty of Customs a tax on property, or indeed to call a tax on property a**

duty of Customs, when one finds either term standing by itself in a document. But when one finds the two terms in the same document he is the less likely to use them interchangeably, unless indeed he finds them so used in the context, or unless the context supplies some other good reason for inferring a looseness of expression.

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE O'Connor J

But before the principle can be applied we must ascertain by a consideration of the Constitution as a whole the extent of the Commonwealth power to impose duties on importation. In this connection must be borne in mind the maxim referred to in the judgment in *D'Emden v. Pedder*[29]:— "It is only necessary to mention the maxim, quando lex aliquid concedit, concedere videtur et illud sine quo res ipsa valere non potest. **In other words, where any power or control is expressly granted, there is included in the grant, to the full extent of the capacity of the grantor, and without special mention, every power and every control the denial of which would render the grant itself ineffective."** The power to levy duties of Customs is conferred by two sub-sections of sec. 51 of the *Constitution*. It is included in the word "Taxation" in sub-sec. (II.), construing that word in its widest sense. It is also an exercise of the power to make laws relating to trade and commerce with other countries (sub-sec. (I.)). The language of these sub-sections is certainly wide enough to cover the imposition of duties on the property of a State even on property necessary for the carrying out of the governmental functions of a State.

END QUOTE

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No need to quote further parts as to merely make clear that the Hansard transcript itself made clear that Section 114 “Barton J;, “**has no reference to Customs duties.**”.

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We have however also to consider the statement;

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QUOTE

With what approach to uniformity or consistency—the very objects of their existence—could the express and exclusive powers of the Australian union be exercised?

END QUOTE

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As the Court made clear, and so did the Framers of the Constitution, there must be a consistency of law. It must be uniform. And as the Court expressed also, to allow the States to import would undermine the Commonwealth powers of Trade and commerce as the States then could do it in a cheaper manner to obtain items from overseas avoiding Customs duties.

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Hansard *20-4-1897* Constitution Convention Debates

QUOTE

Mr. GLYNN: I think the last few words of this clause are too comprehensive in their meaning. In South Australia there is a lot of land which is leased with the right of purchase, and I can see that under the latter portion of this clause there is considerable danger of defeating the effect of direct taxation.

Mr. O'CONNOR: In a case of that kind the reversion which is in the Crown would not be taxed, but the letting value would be taxed.

END QUOTE

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The Commonwealth may very well as some stage exercise its taxation powers to provide uniform land taxes throughout the Commonwealth and then while it could not tax land held by a State for Government purposes, as made clear land leased out could be taxed!

Likewise the reverse is applicable that the Commonwealth cannot as "sovereign" of State land use it for non Commonwealth purposes and then by this undermine the state in their taxes regarding commercial properties. Hence, Section 114 can only be applied regarding the raises of taxes involving "properties" (meaning land) that are held in right of "sovereign" by either the Commonwealth or a State and only where it is being used for the purpose of Government functions.

Hence "Australian Post offices" that have been leased out for private enterprise to subcontract the running of Australian Post therefore no longer can be deemed tax exempt as they are not pure Commonwealth properties, regardless if they are held as "sovereign" by the Commonwealth as they are used for commercial purposes.

What we have however is that the Commonwealth has made a mixture of usage of its land holdings to use it for Commonwealth purposes and other purposes and I view Section 114 only was intended to apply for land holdings that were strictly used for Commonwealth purposes.

More over, the Commonwealth can't exclude State Governments from any form of taxation other then tax on properties (Section 114) as it must have a uniform legislation.

Where there is a mixed usage then as long as the commonwealth is the "**PROPRIETOR**" and not the "**SOVEREIGN**" then to the extend the property is leased it can be taxed. As such, if the commonwealth were to use say 40% of the time the property and 60% of the time has it leased out to private companies then it can be taxed for the 60%. Likewise if the commonwealth were to lease out say 75% percent of the property then 75% of the property can be taxed.

It means that unless GST is applicable to State Governments and their Departments also the GST is for this also unconstitutional.

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As was made clear by Barton J,

QUOTE

"**. On the other hand, it may be that the framers of the** Constitution **intended**"

END QUOTE

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And as was made clear by O'Connor J.

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE O'Connor J

> The control of trade and commerce with other countries, the imposition of Customs duties, immigration, quarantine, and external affairs, are all different aspects of Australia's relations with other countries. The manifold and varied activities which are recognized as functions of the State in Australia were well known to **the framers of the** Constitution, and it cannot be supposed that it was intended that the Commonwealth control of Australia's relations with other countries should be subject to the exception that it should have no operation in so far as State Governments in the exercise of their governmental functions were concerned.

END QUOTE

And. stated;

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE Isaacs J.

> This would not merely leave to the several States the same power over the introduction of goods into Australia, which they had before Federation, but would vastly increase it, because the owners of goods never previously had the right which they now have of crossing State lines with their merchandise free of duty. This is a result certainly not to be

courted, and is in clear antagonism to the primary intention of the Constitution gathered from the grant of exclusive powers over foreign commerce, and over that class of taxation which is inseparable from its effectual regulation. It could scarcely have been the object of **the framers of the** Constitution to render it so easily and mortally vulnerable.

END QUOTE.

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Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE Higgins J

The case for the State has been well put and forcibly, mainly on the grounds (1) that, according to the principles laid down by this Court in *D'Emden v. Pedder*[39] and in subsequent cases, the State agencies and functions are exempt from federal taxation; and[40] that by sec. 114 of the *Constitution* *the Commonwealth* is forbidden to tax the property of the State.

The first ground may be put into something like a syllogism:—The Commonwealth cannot tax a State Government function; *D'Emden v. Pedder*[41]; *Railway Traffic Employés Association Case*[42]; *South Carolina v. United States*[43]. The railways are a State Government function; *Railway Traffic Employés Association Case*[44]. Therefore, the Commonwealth cannot tax the railways.

These steel rails were the property of the New South Wales Government, and were being imported for the purposes of the New South Wales government railways.

As to this first ground, the argument for the plaintiff is wholly founded on certain doctrines adopted, and certain expressions used, by this Court in previous decisions. But for these doctrines and expressions I should not, personally, feel any difficulty with regard to the first ground. If it were open to me to do so, I confess I should like to reconsider the doctrine, or the limits of the doctrine, that there is to be implied from the Constitution any such prohibition of taxation as is asserted in *D'Emden v. Pedder*[45] and in the subsequent cases; and I should also like to reconsider the doctrine that the railways are a State governmental function—I mean, a strictly governmental function, in the same sense as the legislature, the executive and the judiciary are governmental functions. I am emboldened to express my doubt as to these doctrines because the Privy Council by its Judicial Committee has condemned the former doctrine. But I bow to the opinion of the majority of my learned colleagues, both as to these doctrines themselves, and as to the further doctrine that the Privy Council is in an appeal from the High Court "bound to accept and follow" the decision of the High Court with regard to a constitutional point of the nature referred to in sec. 74 of the *Constitution*: see *Baxter v. Commissioners of Taxation (N.S.W.)*[46]. My judgment in this case, therefore, must assume that these doctrines are, in their application hitherto, unimpeachable. But the doctrine as to the exemption of State agencies from Commonwealth taxation has never yet been applied to Customs taxation, taxation of the act of importation, as distinguished from internal taxation. It has never yet been applied so as to make an exception to the exclusive and paramount power of the Commonwealth Parliament to make laws with respect to trade and commerce with other countries, and with respect to Customs taxation (sec. 51 (I.) (II.); sec. 90). For the reasons which I have stated in *The King v. Sutton*[47] I regard the doctrine as to the King not being bound save by express words, as being inapplicable as between the States and the Commonwealth, at all events in the exercise of an exclusive power of the Commonwealth; and I regard State laws and State powers in respect of the railways as subordinated to the Commonwealth powers with regard to trade and commerce, and with regard to Customs taxation.

But the interpretation of sec. 114 of the *Constitution* raises another difficulty. The section itself mixes up two distinct subjects. It forbids a State to raise a naval or military force without the consent of the Commonwealth Parliament; and it forbids a State to impose a tax on property of any kind belonging to the Commonwealth. Then, apparently, it occurred to

the draughtsman that a similar prohibition should be inserted against the Commonwealth taxing State property. The prohibition as to State taxation was, no doubt, suggested by the *British North America Act*, sec. 125. But by substituting the word "property" for "**lands or property**," the intention—if it was the intention—to confine the prohibition to what are known as "property taxes" has been somewhat obscured. Property is, by the Constitution, subject to be taxed at the instance of the State as well as of the Commonwealth; Customs taxation is solely a matter for the Commonwealth (sec. 90). Taxes of retaliation, as between the States and the Commonwealth, are possible as to property taxes; but are impossible as to Customs taxes. But whatever may have been the motive which led to this express prohibition, in addition to the prohibition which this Court has held to be implied from the nature of the Constitution as to the taxation of State or Commonwealth agents, the phraseology is such as to point to taxation of property *as property* as being the subject of this express prohibition. "A State shall not, without the consent of the Parliament or the Commonwealth, ... impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State." But is a Customs tax a tax on property *as such*?

END QUOTE

And

Attorney-General of New South Wales v Collector of Customs (NSW) [1908] HCA 28; (1908) 5 CLR 818 (23 May 1908)

QUOTE Higgins J.

However, the fact that sec. 114 uses the mere word "tax"—not "tax of any kind," although it speaks of "property of any kind"—strengthens the view that **the framers of the section** could not have had Customs duties in their minds at the time. They lay the emphasis on the thought on ownership—"property of any kind belonging," &c.

I have based my reasoning on the words and the scheme of our own *Australian Constitution*.

END QUOTE

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When we look back then we see the following;

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Hansard *20-4-1897* Constitution Convention Debates

QUOTE

Clause 106.-A State shall not, without the consent of the Parliament of the Commonwealth, impose tonnage dues or raise or maintain any military or naval force, or impose any tax on property of any kind belonging to the Commonwealth; nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

Mr. HENRY: I would like to ask Mr. Barton what effect this would have on several Marine Boards and Harbor Trusts of the colonies which are dependent for their revenues on tonnage rates. This clause, I see, provides that no tonnage duty should be imposed except by Commonwealth. What position, I would like to know, would the various Harbor Trusts and Marine Boards, which are dependent for a portion of their revenue on these tonnage dues, occupy till the Federal Commonwealth has had time to legislate upon this matter.

Mr. BARTON: If the tonnage dues are not an infringement upon the principles of intercolonial freetrade, I take it that they would remain in force after the establishment of the Commonwealth; but if the State proposed to take in hand legislation on the subject, it would not be permitted to legislate on that subject without the consent of the Parliament of the Commonwealth.

Mr. HIGGINS: If it were only an amendment?

Mr. BARTON: Possibly the only trouble there would be, that a period of six months would elapse before the Commonwealth Parliament was called together after it is established. So far as the tonnage dues, mentioned by Mr. Henry, did not infringe upon the principles of intercolonial freedom of trade, there would be no difficulty.

Mr. GLYNN: I think the last few words of this clause are too comprehensive in their meaning. In South Australia there is a lot of land which is leased with the right of purchase, and I can see that under the latter portion of this clause there is considerable danger of defeating the effect of direct taxation.

Mr. O'CONNOR: In a case of that kind the reversion which is in the Crown would not be taxed, but the letting value would be taxed.

Mr. BARTON: I might mention that the property of the Commonwealth in that land is the reversion upon the lease. The reversion upon the lease would not be [start page 1002] taxable, but the interest of the lessee in the property would be taxable.

Mr. GLYNN: I am only pointing out a difficulty that might arise.

Mr. HENRY: I would like to raise a question as to the right of the Commonwealth to tax materials for State purposes. In the event of a colony importing rails, machinery, engines, &c., for State purposes, I would like to know whether such exports are to be free from Customs duties. Will the Federal Parliament have a right to levy duties on materials imported for State purposes?

Mr. BARTON: This is a matter that was discussed very fully in the Constitutional Committee, and I think my hon. friend Sir George Turner will remember that I consulted the members of the Finance Committee upon it, intimating to them the opinion of the Constitutional Committee on the point. The words:

Impose any tax on property

do not refer to the importation of goods at all, and any amendment to except the Customs would be unnecessary. This clause states that a State shall not, without the consent of the Parliament of the Commonwealth, impose taxation on property of any kind belonging to the Commonwealth, meaning by that property of any kind which is in hand, such as land within the Commonwealth. That has no reference to Customs duties.

Sir GEORGE TURNER: Will articles imported by the States Governments come in free?

Mr. BARTON: The question then arises whether articles imported by the States Governments are to come in free, but this section has nothing to do with that. Under this Bill and in the measure of 1891 I believe duties would have been collectable upon imports by any State, and after the consultation which I had with the hon. member and his colleagues on the Finance Committee the Constitutional Committee decided not to make any exemption in the case of any State.

The CHAIRMAN: I would ask hon. members to confine themselves to the discussion of this clause.

Sir GEORGE TURNER: I propose to carry out your desire, Sir, to restrict my remarks to this particular clause. In Victoria, as I mentioned the other day, we have an independent body called a Harbor Trust, which collects a large amount of money and, as far as I can recollect, does it in the way of tonnage dues. If we pass this clause, and we deprive this

body of its revenue, they will simply have to fall back upon the Government of the State. What is the meaning of the phrase:

Impose tonnage dues?

According to the way I read the clause it means that it is not to pass any law which would put on any fresh dues.

Mr. MCMILLAN: I suppose the States gave these rights to the harbor trust.

Sir GEORGE TURNER: The State passes a law constituting a Harbor Trust and gives over to them the right to collect these various revenues. What I desire is to preserve that right, whatever it may be. I am in great difficulty as how this particular clause will affect that body, as well as similar bodies in other colonies which collect small sums. I would be glad if my hon. friend Mr. Barton can give me any assistance with regard to this matter, and tell us if this clause will or will not interfere with this existing body. If that be so I shall be prepared to let the clause pass, and then, before the adjourned Convention is held, we shall have an opportunity in the different colonies of ascertaining how these dues and rates are collected, and how this clause will affect them, and whether we should make this amendment. In the meantime I should like Mr. Barton to give me the real meaning of the clause.

Mr. BARTON: As far as I can gather from this clause and the clause of 1891, it seems to me to refer to any future legislation on the subject:

The State shall not impose tonnage dues.

[start page 1003]

The question of whether existing legislation would be invalidated would depend, first, upon whether the dues were an infringement of the equality of trade throughout the Commonwealth, and next upon whether the Commonwealth passed a law which-if it were in the province of the Commonwealth to past; it-was in conflict with the law of the State, in which case, to the extent of the difference between the laws, the law of the Commonwealth would prevail if section 98 were passed. It deals only with future legislation, I think. but these tonnage dues may incur a prohibition if we find that they are a system of taxation, because the Parliament of the Commonwealth has power to raise funds by any method of taxation. If the method of carrying out that power were found to be in conflict with the law of the State, the law of the Commonwealth would prevail. We have no provision for the Commonwealth taking over harbors or harbor works, and it may be a question for consideration whether the Commonwealth, as it has power to legislate on other subjects relating to the regulation of commerce and trade and so on, should not take over harbor works too. That is what, on the face of it, seems to me to be the effect of the clause.

Mr. MCMILLAN: I think these tonnage dues must be excepted if the Parliament is to take over harbors. Tonnage dues are simply payment for services rendered, and they do not practically come under the system of taxation at all. They are levied for something done. If they are not excepted great trouble will ensue, especially in regard to corporations. Is that System referred to by Sir George Turner administered by a Minister of the Crown?

Sir GEORGE TURNER: No.

Mr. MCMILLAN: Does it apply then? These. are dues paid by the State as a State, but the case mentioned is one of a corporation, in which there is a payment for services

rendered. Tolls are exacted for the services, call them dues or wharfage rates or whatever you like; they are the same in essence.

Sir GEORGE TURNER: If we do not guard against it corporate bodies may evade the Act, and the State may appoint corporations to do work so as to evade it.

Mr. MCMILLAN: Something will have to be done or great trouble may ensue.

Mr. BARTON: With reference to the question of wharfage rates, members will recollect that the United States Constitution contains a prohibition against the State levying tonnage duties without the consent of Congress. It has been decided in the case of the Packet Company *v.* Catlettsburg, 105 U.S., 559:

A city or town on a navigable river may exact a reasonable compensation for the use of the wharf which it owns without infringing the constitutional provisions concerning tonnage taxes or regulations of commerce.

That would appear to be rather in favor of the exemption of the harbor trust.

Mr. HENRY: It is within my own knowledge that there are Marine Boards in Australia, at all events in Tasmania, worked as State departments. They are nominee bodies with a Minister practically at their head.

Mr. HIGGINS: Who gets the money?

Mr. HENRY: The Customs officers collect the wharfage and tonnage dues, and they pass into the hands of the Government. I would like to ask Mr. Barton how it would operate in cases where the tonnage rates vary at different ports in Australia? We might have one harbor with a particular rate and another with double or treble that rate, so that we would not have an equality of trade. This is one of the difficulties which Mr. Barton. and others, in considering this matter, should have placed before them. In this clause we are going to hand to the Federal Government the right to legislate with regard to tonnage dues, and it is desirable that we should know precisely what we [start page 1004] are doing and how it is going to affect the various harbor trusts and marine boards.

Mr. BARTON: On considering the matter, I think that the tonnage dues mentioned here- we have altered the word "duties" into "dues," and they seem to me like the word "tonnage dues" that used to prevail in the the old country, such as tonnage dues on wines. We find the word referred to in Acts 9 Anne, and 10 George IV. They were tonnage dues granted to the Queen, and I think those referred to here were the same in the United States Constitution. Whether that be so or not, the tonnage dues referred to in the clause seem to be charges for services performed. For instance, a Harbor Trust is formed and carries out improvements and as a means of recouping themselves the harbor authorities charge dues. Wharfage dues are for the use of a wharf and have they not a similar meaning in the modern acceptation of the term? One is an impost for the use of a wharf, the other for the use of a harbor on which money has been spent for the purpose of rendering it more adapted for shipping. If that is so the words may be left out, and if they are left out any tonnage due which is not a charge for services performed would be an impost interfering with the freedom of trade and intercourse, and would come under section 86; that is to say, as soon as uniform duties have been imposed, trade and intercourse shall be absolutely free, If they interfere they could only do so so far as they are of the nature of taxes. If they are only charges for services performed, as I explained in connection with clause 83, then there can be no objection to them. because charges for use of a wharf are much in the same

position as charges of the post office authorities for the carriage of letters; they are payments for services. If that view is taken I shall offer no objection to it.

Sir GEORGE TURNER: Why not for post and telegraphs?

Mr. BARTON: Any mere service that the Commonwealth does not take over is still in the hands of the State. Clause 86 can only be infringed by something which means an interference with the freedom of trade and intercourse. Anything that is fairly construable as a payment for services performed is not handed over-the mere service can be charged for as before, because it is not an interference with trade and intercourse. In such cases as that, mere service can be charged for as before, because it is not an interference with trade or intercourse. I think we may well accept that view and leave out the words:

Impose tonnage dues or.

I move that they be left out.

Sir GEORGE TURNER: I am glad that my hon. friend, after consideration, has taken this view, because it is very difficult indeed to understand what these words refer to and what effect they would have upon harbor trusts and similar bodies. But, as the other clauses appears to be sufficient to prevent any injustice being done, and in order to remove any doubt as to what the words really mean, it will be well to strike these out.

Amendment agreed to.

END QUOTE

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Now what is well overdue is that the Commonwealth start raising taxes in a **uniform** manner and not let its own former politicians and others off the hook by having tax free incomes as by doing so it does invalidate it own taxation legislation. It must be uniform!

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HANSARD *21-1-1898* Constitution Convention Debates

QUOTE **Mr. REID.-**

But do not let us forget that under the state arrangement of such matters there are scores of systems which can be carried out, but under the federal jurisdiction the source of the revenue for these old-age pensions will be strictly limited to Customs or direct taxation. There is no power in the Federal Parliament to carry out ideas which have been suggested with great force in the different colonies that these pensions should be derived by a certain system of licences on places of popular entertainment-taxes on admissions to theatres and race-courses.

END QUOTE

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Hansard *14-4-1897* Constitution Convention Debates

QUOTE

Clause 54.-**It shall not be lawful for the States Assembly or the House of Representatives to pass any vote, resolution, or law for the appropriation of any part of the public revenue, or of the produce of any tax or impost, to any purpose which has not been first recommended to that House by message of the Governor-General in the Session in which the vote, resolution, or law is proposed.**

Mr. REID: I think we should make it quite clear if it is really to be provided that Money Bills, Bills appropriating revenue, or the produce of any tax or impost, are to be introduced in the Senate.

Mr. BARTON: Perhaps my hon. friend will allow me to explain this clause. This was inserted in consequence of the carriage of an amendment in the Constitutional Committee, as you will no doubt remember, sir. Instead of the clause relating to Bills appropriating public money, it was altered so as to refer to Bills having for their main object the appropriation of public money. The result was that, as a different class of Bills would be introduced into the Senate, it was thought necessary that a message must also be addressed to the Senate. It is desirable that these words should be retained; otherwise it would be possible for the Senate, or any members of the Senate, to initiate Bills dealing in a very large measure with the financial policy of the Government, notwithstanding that they might deal first with matters of policy, and incidentally only with matters of appropriation. It would be possible for them to deal with them without any message, and to my mind it is necessary that there should be a conservation of the powers of the Executive in this matter, and therefore it should rest with the Executive alone to bring down a message. For that reason I am quite sure hon. members will agree that this provision should be retained.

Mr. KINGSTON: Would it not be well to alter this section to make it correspond with section 52 in its altered form Clause 52 we have extended **to apply to the appropriation of public money from whatever source derived, including loan funds.** I think that a similar extension should be made in the provisions of section 54, so as to harmonise the two. As one section has been extended I suggest that the other should be extended.

Mr. ISAACS: I would draw hon. members' attention to that and one or two other things in connection with this clause. The insertion of the word "moneys" has occurred since we have been sitting in this Committee. I would [start page 612] like to call attention to the necessity of making the language uniform throughout these sections. In clause 52 undoubtedly it will be public revenue or moneys, but it does not add the expression "or of the produce of any tax or impost." While that is being done I would also draw attention to clause 79. The expression there is "**one consolidated revenue fund**." Now that seems to be the term which is most in consonance with our colonial Constitutions, and Mr. Barton might consider the advisability of having one uniform expression which would comprehend the necessary term in all these clauses.

END QUOTE

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Constitution

QUOTE

81 Consolidated Revenue Fund

All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

82 Expenditure charged thereon

The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

83 Money to be appropriated by law

No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the

maintenance of any department transferred to the Commonwealth
and for the holding of the first elections for the Parliament.

END QUOTE

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We find however that child support, a Debt to the Commonwealth nevertheless somehow is not held to be part of Consolidated Revenue, despite it being a public policy matter. Yet, overdue charges applied to child support payments that are overdue is part of Consolidated Revenue.

We also seem to have all kinds of funds created, including the 2 billion dollars Telstra funds, this even so there is only "one Consolidated Revenue" fund. We seem to have some "**FUTURE FUND**" even so again there should only be one Consolidated Revenue fund.

We also find that tax concessions are given as some form of "payment" to people and this to me is a "de facto Appropriation Bill" and cannot be accepted as being constitutionally permissible. Neither can the payment of monies through tax deductions for religious enterprises be deemed constitutionally permissible. Yet, the former Treasurer Peter Costello opened the flood gates by providing about 2½ million dollars for the restoration of a Church and this means that if in time Muslims or other religious bodies were to take over the running of the Commonwealth then they can build whatever religious building they desire at tax payers expenses throughout the commonwealth because the High Court of Australia (Wilson J) in its 1981 ill conceived judgment seemed then already to approve this kind of unconstitutional conduct.

No doubt the so called Christian religions may then complain about this but they should keep in mind that they rorted the tax system for so long and if then some other religion use their system then who are they to complain?

If it were to be held that the payment to the Queen can be deemed a purported Queen of Australia, then why not any of the queens walking down the streets in the Mardi Grass parade in Sydney's annual festival?

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Because the constitution is part of ***The Commonwealth of Australia Constitution Act 1900*** (UK) the reference to "Queen" therefore relates to the Monarch referred to in this ***The Commonwealth of Australia Constitution Act 1900*** (UK) and no other.

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Any Minister and/or Governor-General who therefore is taking and/or accepting a salary directly from the Consolidated Revenue in my view is a criminal who is robbing the tax payers as there is no constitutional powers for this as only the queen as provided for in ***The Commonwealth of Australia Constitution Act 1900*** (UK) can be deemed to be the appropriate person to provide for salaries. Hence all the so called fringe benefits former federal politicians/ministers and ex-Governor-Generals are obtaining I view is unconstitutional and should be demanded to be repaid. Likewise so the unconstitutional superannuation scheme operating within the Commonwealth.

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Again; **EITHER WE HAVE A CONSTITUTION OR WE DON'T!**

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Those in Government/Parliament must understand they cannot have the cake and eat it. If they seek to exercise power by virtue of constitutional rights then they can only do so if they themselves first of all abide by constitutional provisions and limitations.

As I have so often stated what we need is an **OFFICE OF THE GUARDIAN**, a constitutional council, that advises the Government, the People, the Parliament and the Courts as to constitutional powers and limitations without any political bias.

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QUOTE

15.20 In Canada prices are given as the amount `plus GST' with the total transaction broken into these components, given on the receipt. **This allows consumers to understand the effects of the GST on the price they pay, and to calculate the tax burden they are incurring.** The UK system is more arbitrary, with some large chains giving a price breakdown receipt to travellers.

END QUOTE

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Clearly the last statement relates to the end user paying it and not to a “supply” charge for businesses, which varies pending what they claim and so can artificially alter the GST they have to pay to the ATO, regardless of how much they themselves actually collected in GST.
The following media publication is a clear example how the system can be manipulated.

QUOTE

http://au.news.yahoo.com/071019/2/14pxk.html

NSW man accused of $200,000 GST scam

Friday October 19, 07:37 PM

NSW man accused of $200,000 GST scam

A Sydney man used 21 Australian business numbers to scam more than $200,000 from the government in less than a year, the Australian Federal Police (AFP) say.
The Rockdale man, 31, is also alleged to have attempted to obtain a further $195,033 in goods and services tax refunds.
Police said he was arrested after an investigation revealed the theft of $200,584 from the commonwealth through fraudulent goods and services tax refund claims.
False claims submitted to the Australian tax office began in January this year, they said.
"The charges come after an extensive operation requiring high-level cooperation between the state and commonwealth agencies," AFP agent Warren Gray said.

END QUOTE

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QUOTE

15.14 On the other hand, the Road Transport Forum claims in its submission, that the Australian road transport industry is highly competitive **and believes that there can be little doubt that cost savings attributable to the GST Package will be passed on.** The Road Transport Forum has every confidence that with the reforms in the tax package, the same pattern will emerge as with the Iraqi oil crisis when road transport costs first rose very quickly as international fuel prices rose, and then fell equally quickly when international fuel prices settled down again.

15.15 ACA submits that while higher prices may be influenced in part by transportation costs, the extent to which the Government's proposal to reduce fuel taxes **could lead to savings on food by consumers in remote areas is a matter of great debate.** ACA also expressed concerns that savings will not be passed onto consumers, especially in remote areas where there is little competition between transport companies.

END QUOTE

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Again, we see that it relates to “consumers” and that the GST can or cannot be passed on in totality. Meaning that there is no control upon how much any business were to charge on GST. Letting businesses decide how much taxation they will or will not charge means that they and not the ATO enforces taxation laws, as they please. And, therefore if a business actually inflated the price by more then 10% without applying any reduction in cost then it will be shown that in the end the “consumer” has no avail to get redress as the ATO already is refusing (in my case) to refund over charged GST! It means that overcharged GST either did or didn’t make it into the Consolidated Revenue and then who on earth is responsible to pay back overcharged GST?
The ATO in its correspondence has acknowledged it has no records of what a person pay on GST, and therefore the question then ought to be raised who has the overcharged GST? If for example a customer seeks a refund for faulty goods, after the business already has just completed its taxation material for the ATO and has paid whatever GST was deemed payable then where is

the refund of GST coming from? Surely the business has no Constitutional Powers to take it out of Consolidated Revenue and neither can the business refund GST already paid on to the ATO. Neither can the business deduct GST from GST liabilities it later incurs as it is a separate matter. As such the GST system or better to state the non-system is full of pitfalls that still has not been appropriately attended to.

QUOTE

Chapter 15

Other Issues

Pricing and Profit Margins

15.1 The Government asserts that the tax reform package is expected to deliver substantial long-term improvements in the operation of the economy, to the benefit of all Australians. In the short-term, the package might be expected to have transitional effects upon both demand (particularly its pattern) and prices.

15.2 The pattern of demand in the economy is likely to change in the period immediately preceding and following the introduction of the tax reform package. The Government argues that the overall effects on economic activity during this period are likely to be small and dominated by the fiscal stimulus inherent in the package.

15.3 The Government asserts that on average across the economy as a whole the price level is expected to be broadly unchanged with a one-off rise in the overall prices of investment and export goods and services. The ANTS package argues that these relative price changes must be allowed to occur to bring about the more efficient allocation of resources flowing from the indirect tax system. On this basis the Government argues that the introduction of a GST is unlikely to lead to an increase in inflationary expectations and on-going inflation. [1]

Prices and the Tax Package

15.4 Shop, Distributive & Allied Employees' Association (SDA) contends that a number of assumptions were made in the government's ANTS document which are highly questionable. These assumptions are :

- The estimate "……assume(s) that the abolition of the wholesale sales tax would be passed through fully to consumers in the form of lower prices.
- "Similarly, it is assumed that lower transport costs due to cheaper diesel for road and rail transport are passed through in lower prices for consumers. [2]

15.5 SDA quoted Colin Hargreaves, the Director of the Economic Modelling Bureau of Australia, writing in the Financial Review on 7 December 1998 as saying:

…from our discussions with companies, it is clear that many of the cost reductions will not be passed on to the consumer but the GST will, by its nature. This leads to a temporary increase in corporate saving and a concomitant reduction in final demand.

With 50 per cent "pass on", the fiscal stimulus to demand from the package becomes an equally large contraction in final demand.

15.6 The Committee heard evidence from representatives of the Australian Council of Social Services (ACOSS) whose concerns were on the likely effects of the GST on low income households that mainly rely on government benefits for their income. Members of the Committee queried as to whether the Melbourne Institute estimates, which ACOSS had

relied upon in their submission, assumed that 100% of the tax savings arising from abolition of existing taxes on consumption would be passed on to consumers.

15.7 ACOSS in answer to this question on notice, noted that the Melbourne Institute estimates assume that 100% of the reductions in tax due to the abolition of existing consumption taxes are passed on to consumers. Notwithstanding this, calculations made by ACOSS indicate that at least one million households would be worse off during at least the first year of introduction of the GST. In reality as the full 100% in tax savings is unlikely to be passed on to consumers, ACOSS envisaged that low income household will face even higher average price increases, especially in the first few years.

15.8 Arthur Andersen, as an adviser to many businesses (including government owned businesses) with varied and diverse interests, submit that the legislative framework for tax reform must seek to achieve the highest level of integrity and its implementation should be equitable and practical for business and the wider community.

15.9 Arthur Andersen expressed concern that the Government's expectations, enforced through the new powers proposed for the Australian Competition and Consumer Commission ("ACCC"), will put business in a position where it is artificially forced to reduce prices (before the GST effect) without any commercial justification.

15.10 Arthur Andersen submitted :

We support and encourage the Government's attempts to ensure that realised cost reductions from tax reform are, in fact, passed on as price reductions for goods and services, but we are concerned that penalty measures may be applied in circumstances where those cost reductions are not in fact forthcoming or where business simply cannot identify, and quantify those reductions. In circumstances other than blatant price exploitation, we submit it is not appropriate to penalise business by directly or indirectly enforcing unsupported price reductions. This aspect of the transition process is, we feel, underestimated. The impact of GST on regulated prices, the timing of realisation, recognition and quantification of cost reductions along with the recognition of the additional costs flowing from the implementation of the GST will put business under severe strain in coming years. [3]

15.11 Australian Consumers' Association (ACA), an independent not-for-profit, non-party-political organisation established to provide consumers with information and advice on goods, services, health and personal finances, believes that the major goal for any tax system is to redistribute wealth in a way that is equitable, sustainable and efficient. ACA noted that the greatest strength of the proposed tax package is its ability to deliver improved simplicity within the system. However, ACA submits :

By removing the multi-levelled WST which currently varies from state to state and replacing this with a flat rate of GST, structural and compliance efficiencies are easily addressed. Unfortunately, failing to require the disclosure of GST at the point of sale or per transaction means that the government has not addressed the issue of transparency. [4]

15.12 ACA acknowledged that it is difficult to predict the change in our inflation rate due solely to the introduction of a GST. ACA also expressed serious concerns about the effects on pricing of the new package. These concerns are based on a serious lack of competition in some areas of the economy.

The failure of the government model to consider transaction costs further complicates the prediction of the effect on prices. In order to determine the amount of GST to be paid,

businesses will have additional costs such as record keeping, staff training and the possible addition of new software. These initial and ongoing costs will be passed onto consumers, increasing the price impact of the GST. [5]

The effect of competition

15.13 Minimising the impact of the GST on prices requires highly competitive markets to ensure the costs involved are not inflated or unnecessarily passed on to consumers. Under the government's assumptions all markets are perfectly competitive, thus the price impact is minimal. Unfortunately not all markets are perfectly competitive. Throughout its research, ACA is repeatedly encountering markets where competition is lacking. In these markets, ACA noted that the price impact will be higher because competition will not ensure that costs are absorbed.

15.14 On the other hand, the Road Transport Forum claims in its submission, that the Australian road transport industry is highly competitive and believes that there can be little doubt that cost savings attributable to the GST Package will be passed on. The Road Transport Forum has every confidence that with the reforms in the tax package, the same pattern will emerge as with the Iraqi oil crisis when road transport costs first rose very quickly as international fuel prices rose, and then fell equally quickly when international fuel prices settled down again.

15.15 ACA submits that while higher prices may be influenced in part by transportation costs, the extent to which the Government's proposal to reduce fuel taxes could lead to savings on food by consumers in remote areas is a matter of great debate. ACA also expressed concerns that savings will not be passed onto consumers, especially in remote areas where there is little competition between transport companies.

15.16 The results of a recent supermarket survey commissioned by Life. Be In It were also quoted by ACA as an area of concern especially with regard to higher food prices in areas with less competition. The Centre for Media Research and Community Opinion found in August/September 1998 a 9% cost difference on grocery items between markets where a discount supermarket was present and where it was not. Further, there was a 16% cost difference for fresh produce on the same basis. The difference between stores within a supermarket chain was found to be as high as 31%. [6]

15.17 In assessing these results, ACA is of the view that inequity in pricing is going to be further compounded by a GST on food. It suggests that not only are there areas with less competition where consumers are paying more for food items, but they are also paying more tax.

The `cascade effect'.

15.18 The government has argued that the current system for collecting indirect taxation revenue is structurally inefficient. The wholesale nature of indirect taxation tends to increase prices by more than the amount of tax collected. This is sometimes described as a `cascade effect'. ACA fears that not only will a 'cascade effect' of this type continue to occur under the new tax regime, because of the use of a value added tax to implement a goods and services tax, but that price adjustments will be made on the inflated retail price, rather than the wholesale cost.

15.19 ACA encourages the government to :

- Adopt consumer education campaigns and introduce easy access to complaints mechanisms as part of the ACCC's role in formal retail price monitoring. The inflationary effect of the new tax system is the subject of much debate, and there will

be some areas that require additional surveillance where competition is lacking. ACA's recommendations for particular areas with unique competition concerns are :

a) monitoring of both aggressive competition in some areas and monopolistic practices in other areas of the retail food industry.

b) a price monitoring role for the Commonwealth Department of Health and Family Services in the health area, for example using Medicare statistics already calculated.

- The inclusion of the GST at any point of price disclosure to ensure greater understanding of the individual consumers' tax burden. Full disclosure of the GST also helps to counter cascading prices that can occur as a result of a value added method of tax collection. ACA has urged the government to improve the level of disclosure by legislating that prices must be given with the GST `on top'. This will improve the transparency of the tax and make price monitoring simpler.

- Replace the value added system with a retail only consumption tax.

15.20 In Canada prices are given as the amount `plus GST' with the total transaction broken into these components, given on the receipt. This allows consumers to understand the effects of the GST on the price they pay, and to calculate the tax burden they are incurring. The UK system is more arbitrary, with some large chains giving a price breakdown receipt to travellers.

15.21 The Committee heard evidence from ACCC in relation to its role in price surveillance for the GST to ensure that the anticipated net reduction in price is passed on to consumers. It would appear that pending the passage of the legislation that is currently in the House, ACCC is positioning itself to preparing guidelines for industry, with industry, and to educate industry as to its compliance obligations under the new regime.

15.22 The Committee also heard evidence about the limited legislated powers and resources which ACCC currently has to contend with in conducting its operations. ACCC advised that it relies on policy instruments such as :

- the Trade Practices Act which prohibits a number of forms of behaviour such as collusion;

- the Prices Surveillance Act which has limited application in most industries; and

- various guidelines which have status in court

in monitoring prices set in the marketplace. ACCC has argued that the very presence of the powers of the ACCC and the fact that ACCC exists and that people are aware of ACCC's powers, is inducement enough for people to do the right thing in relation to pricing.

15.23 The point was made clear to the Committee that further work is imperative to ensure that the ACCC is empowered according to the proposed legislation, to monitor the behaviour and behaviour patterns of industries with the introduction of the GST. The Committee expressed some reservation with relying on the notion of market forces ensuring that perfect competition will result to ensure a 100% pass on of price reductions to all consumers.

Cost of ATO Administration

15.24 The Commissioner of Taxation, Mr Michael Carmody, appeared before the Committee on 26 March 1999. When he was questioned regarding the likely administration costs for the GST, the following exchange took place:

Senator Gibson - In the *Age* on 11 February your Mr Rick Matthews is quoted with regard to compliance costs. He said that the tax office expects it will cost 0.88 per cent of revenue, about $300 million, to collect the GST. This compares with 1.47 per cent in New Zealand and 2.55 per cent in Canada. Would you care to expand on why you believe our costs will be lower than in New Zealand and Canada, and are those estimates correct?

Mr Carmody - You need to be careful with revenue, because rates vary and change the amount of revenue. I point out that, in preparing for our administration, we have obviously had the benefit of implementations around the world. We are doing it at a time when electronic service delivery is much more viable. We are aiming to be the best at administering that. Inevitably, for example, in the UK, which has a very complex set of exemptions - not only zero rating but variations - their costs are significantly higher because of that. Whether that is a universal rule, it comes down to that question of what level of compliance and intrusiveness do you accept. [7]

Computer Leasing

15.25 Hitachi Data Systems Australia Pty Ltd (HDSA) is extremely concerned that certain provisions of the Transition Bill as it currently stands, will have a highly detrimental impact on HDSA and other companies in the computer leasing industry. HDSA's submission calls on the Senate Select Committee to address the lack of adequate transitional provisions in the GST Bills.

15.26 Computers and other goods that are currently subject to WST at the rate of 22% will be significantly cheaper, particularly for businesses, once GST is implemented. This is due to the fact that WST will be eliminated, and those businesses will be able to effectively purchase the goods GST free by claiming an input credit in relation to the GST embedded in the price of the goods.

15.27 HDSA is concerned that demand for IT equipment such as computers will fall sharply prior to 1 July 2000, due to the significant incentive of savings on tax. These savings, suggests HDSA, will compel buyers to defer purchases until after the GST comes into effect. This would clearly disrupt trade in the lead up to the introduction of the GST.

15.28 HDSA propose two alternative methods of providing transitional relief to encourage businesses not to delay purchases of capital equipment till after 1/7/2000:

- Reduce the sales tax payable on capital goods from 22% to 12% from 1 July 1999. This simple idea has been implemented for the brown goods industry (i.e. television, stereo and video industry), whereby the Government has announced a reduction in the rate of sales tax from 32% to 22% effective from the date when the GST Bill receives Royal Assent.
- Allow business input credits for the sales tax paid on equipment purchased prior to the introduction of GST. The credit could be calculated on the basis of the proportion of the useful life of the item that falls within the GST period. [8]

Joint Ventures

15.29 Ernst & Young provided evidence to the Committee on the impact of the proposed GST on issues regarding the nature of joint ventures. The proposed GST makes allowance for the joint registration of companies involved in a joint venture in limited circumstances. The restrictive circumstances under which joint registration will be allowed under the proposed GST, will result in many companies being precluded from benefiting from joint registration and therefore face significant compliance costs associated with the GST. Ernst and Young submit that all joint venture purposes be included within the GST joint registration provisions from the commencement of the proposed GST.

15.30 Ernst & Young (EY), on behalf of their clients in joint ventures, noted that the Australian economy benefits greatly when the expertise and resources of companies can be pooled together in a joint venture. Division 51 of the GST Bill provides for joint registration as a *GST Joint Venture* for some companies that are participating in joint ventures for the exploration or exploitation of mineral deposits. Companies within a joint venture but do not satisfy the registration requirement for a *GST joint venture*, must apportion taxable supplies and creditable acquisitions and account for them individually. EY submit that this is an unnecessary and unreasonable burden upon joint ventures.

15.31 A joint venture is not a separate legal person. However, EY recommends that it makes more sense and reduces greatly the cost of compliance to the companies involved in the joint venture, if for the purposes of GST Joint Venture registration, and for GST compliance that the joint venture be treated under the new tax system as a separate and individual taxpayer.

15.32 EY recommends that by treating a joint venture as a single taxpayer under the proposed GST legislation, the total amount of GST payable to the Commissioner for Taxation is not reduced, that the legislation as a package is not complicated or compromised in any way and that the compliance costs, for the joint venturers individually and for the joint venture as a whole, is greatly reduced.

15.33 EY indicated too that there should not be any discrimination of purpose when granting registration as a GST Joint Venture to companies participating in joint ventures. The same considerations that apply to joint ventures formed for the purpose of exploration or exploitation of mineral deposits should be applied equally to all joint ventures.

15.34 The Committee heard evidence that foreign companies are precluded from being members of joint ventures in Australia under the GST provisions, nor do the provisions allow a joint venture participant to be a member of another GST group. EY asked the Senate, through the Committee, to amend the registration requirements of the GST legislation to allow more joint venture participants to be able to register as a group, to remove the restriction on foreign entities.

Legal Services

15.35 The Law Council of Australia raised some of the more important aspects of the goods and services tax that impact on the provision of legal services. The Council submit that consideration should be given to the GST being recognised explicitly as an addition to fees – rather than treated as a deduction from fees rendered. The major costs involved in the provision of legal services are labour costs. Although the GST does not have direct implications for PAYE salaries and wages, these costs will be affected in the legal profession if the full cost of GST collected on legal fees cannot be passed on to purchases of legal services. [9]

15.36 The GST is more easily viewed as applicable in the manufacturing sector where value is added as goods pass through progressive stages of manufacture. In the professional services sector (which includes lawyers, accountants and consultants), value is created almost entirely by owners and employees using their knowledge, skills and experience in the "production process". Given the low level of non-labour input, the amount of GST that most law firms will be able to offset from input tax credits will be very limited.

15.37 In the Council's view it is therefore necessary for legal firms to try to pass on most, if not all, of the cost of the GST in the form of increased fees. However, there are a number of factors that will limit the capacity of law firms to pass on the impact of the GST to purchasers of legal services. These relate to fixed fee structure and fixed price contracts.

Legal practitioners undertake work for legal aid commissions, courts and other clients where fees are fixed by regulation, determination and agreement. Unless governments, courts and tribunals can be persuaded to accept charging of GST on top of fixed fee formulas, legal practitioners will be disadvantaged by having to effectively bear the cost of the tax from their own incomes.

Where fees are regulated by governments, courts and tribunals, specific action will be necessary to increase fees to ensure that legal practitioners do not carry the burden of the GST and that the incidence of the tax is passed on to the user. [10]

15.38 The Council also noted that unless the GST collected on legal services can be fully passed through in increased fees, the tax will effectively reduce the incomes of owners and staff of law firms. In this respect, the GST will amount to an additional income tax.

15.39 Some law firms rely for a significant amount of work on fixed price contracts with certain "threshold" limits. For example, government contracts in NSW have a threshold of $50,000 before public advertisement is required. Unless purchasers are prepared to increase base contract prices, law firms will be disadvantaged as a result of :

- Reduced returns – having to pay the GST which was not previously payable
- Additional work to win tenders in a more competitive environment if thresholds are not increased.

15.40 The Council recommends that government departments and agencies will need to examine and increase contract thresholds to reflect the impact of the GST on the cost of professional services, or specify the threshold exclusive of GST.

15.41 The Council is also concerned that the ACCC and other price surveillance authorities may not be comfortable with the price of goods and services increasing by a full 10 per cent on top of current prices – due to their lack of understanding of the cost structure of legal (and other) professional service practices. It recommends that consideration should be given to explicitly recognising the GST as an *addition* to the price of services rather than a *deduction* from it.

15.42 Freehill Hollingdale & Page noted an instance whereby an offer was made by a third party purchaser, but is only able to be accepted by the vendor during the period 1 January 2002 to 30 September 2002. The terms of the offer for sale of the property were agreed at the time of the offer and no variation is possible without the express consent of the offeror. In particular, the offer price is fixed and does not include any taxes which may be payable. In the event that Freehill's client does not accept the offer during the agreed period, the client is bound to enter into a long-term lease of the property with the offeror, the terms of

which have already been agreed and which are particularly unfavourable to the client. That is, there is a deliberate commercial bias towards Freehill's client accepting the offer to sell.

15.43 Freehill submits that the Transition Bill will not apply in these circumstances as there is only an offer, rather than a written contract, in existence prior to 1 July 2000. Therefore, in accordance with the Main Bill, if the offer is accepted and the sale of the property takes place, the vendor (client) will be required to remit GST of one eleventh of the consideration received, ie in the order of $9 million.

15.44 Freehill notes that this is a result that was not intended by the parties at the time they entered the arrangement. GST was not publicly contemplated by the Government at that time. As the Draft GST legislation currently stands, the client would not be able to pass the GST liability on to the purchaser, thereby resulting in a reduced sales proceeds to the client of almost $9 million.

15.45 Freehill submits that greater flexibility is needed in the transitional provisions for GST to remove unintended consequences such as those outlined above, and request the Committee to revisit the transitional provisions for GST and give serious consideration to recommending amendments to these provisions.

Senator Peter Cook

Chairman

END QUOTE

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QUOTE

Remember the GST was finally going to fix the TAX system?

The truth is that fixing the TAX system is far easier then politician are willing to admit to. After all, if they were representing us they did not need 9 years to talk about it and end up – despite the GST- to make it worse.

No good to blame people getting older as becoming a liability. After all, they paid their taxes for old age!

Lets have a look at politicians; They spend 12 years in Parliament and have the rest of their life superannuation, even if leaving Parliament at age 30!
Now, their payments are a lot more then that of the average pensioner. Just that Federal Politicians actually haven't got any constitutional entitlement to their form of superannuation! After all, they are only allowed to get an "allowance" for the time they are called away from their normal daily job to attend to the parliament, as a compensation for lost income. Actually, the Governor-General neither is entitled to the superannuation arrangement, or for that past Governor-General's or any federal minister of the Crown, as they were/are employed by the Monarch (the Queen) and it is the Monarch who is to pay their superannuation, if the Monarch desires to do so!
You see, we could save a lot of taxes being collected, just by doing things appropriately within constitutional limits!

Now, if you consider matters what is appropriately constitutionally, and get rid of all unconstitutional Federal parliamentarians superanuation payouts, then we may save billions!

See also my website http://www.schorel-hlavka.com for more constitutional issues. (Just it takes time to download the page because of the volume of material on it.)

It doesn't matter which political party is in power they all push the same con-job argument to make it better for us, just that in the end they rob us more then the one before!

END QUOTE

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SENATE **WEDNESDAY, 17 AUGUST 2005**

QUOTE ds170805-GST-ADVERTISING.pdf **Senator WONG** (South Australia) (11.13 am)—

We have seen the 'Unchain my heart' ads for the GST—which were not about information but about arguing for a GST—which cost around $119 million. Then, just before the last election, who could forget the Medicare ads? How many millions of dollars were spent on the Medicare ads telling Australians how wonderful the government was going to make the Medicare system? When the government was asked about this, what was its response? The Prime Minister and various other ministers said that people were entitled to know what their new entitlements were going to be under the changes. We now know that the rock solid guarantee that was given in relation to Medicare is no longer rock solid; in fact, it represents one of the most significant broken promises we have seen since the election—

Senator Allison—Like 'no advertising'.

Senator WONG—I was about to say that, Senator Allison. That broken promise has clearly changed the entitlements of the Australian consumers under Medicare. Do we see a similar advertising campaign from the government saying: 'By the way, you are not entitled to as much as we told you'? Where is the campaign on that, Minister? We are not going to see it, because it does not suit your political purposes. It is okay before an election to spend a lot of taxpayers' money on telling people what you are going to do for them. Then, when you decide you are not going to do it for them, you do not spend any money telling them that. You could at least be consistent. If your principle is to tell people what they are entitled to, why aren't you telling them what they are no longer entitled to because you have broken a promise? The extent to which this government is prepared to raid taxpayers' funds for its own propaganda campaigns in a whole range of areas is a new low in Australian political history.

END QUOTE ds170805-GST-ADVERTISING.pdf

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* Isn't that what you always have been saying about the advertising cost?

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Yes it is but also it is not within the Appropriation bills for ordinary annual revenue and therefore I view cannot be paid for other then by Appropriation bills specifically for purpose of advertising.

As with the GST that there "never ever" would be a GST we may consider also the following;

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QUOTE dr080905-GST-TELSTRA.pdf **Mr KATTER** (Kennedy) (11.02 am)—

Before us is that we will replace a situation in which the Australian people, in the Constitution, placed upon the government of Australia the responsibility to provide communication networks between Australians. That is what the Australian people said, and they are saying it today.

END QUOTE dr080905-GST-TELSTRA.pdf

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QUOTE dr080905-GST-TELSTRA.pdf

Ms HALL (Shortland) (11.02 am)—I was very pleased to hear the member for Fisher guarantee that Australia Post would not be sold. He was prepared to make a rock solid, ironclad guarantee based on the fact that the Prime Minister said that that was the case. I

would like to remind the member for Fisher that maybe he should have been a little hesitant about agreeing to that rock solid, ironclad guarantee. The Prime Minister also promised that there would not be a GST, and that has changed. I hope, for the sake of Australia and for the sake of Australia Post, that the rock solid, ironclad guarantee that the member for Fisher was prepared to give earlier, based on the Prime Minister's word, is actually observed.

END QUOTE dr080905-GST-TELSTRA.pdf

And

QUOTE dr080905-GST-TELSTRA.pdf **Ms HALL** (Shortland) (11.02 am)—

It is also interesting that the question that the member for Fisher asked the member for Oxley concerned whether he could list the countries that have privatised their postal service. To me, that demonstrates an underlying interest by the government in privatising Australia Post. He wants to look at overseas examples—maybe he will go away to his office and work at modelling what could happen in Australia based on what has happened overseas. Once he has done his modelling, he can send it off to the Prime Minister and say, 'Hey, Prime Minister, maybe I gave a rock-solid, ironclad guarantee in the Main Committee on 8 September 2005; maybe in question time you said Australia Post would not be sold; and maybe you do not see that there are any double standards with Australia Post's only shareholder being the regulator and that being all right, and Telstra's major shareholder being a regulator and that being a problem. But how about we sit down and look at these overseas examples. I am sure that, as with the GST and all the other areas where we have given rock-solid, ironclad guarantees in the past, we can revisit it and we can sell off Australia Post.' My advice to Australians is: be very, very careful; what the government says today is not what it does tomorrow.

END QUOTE dr080905-GST-TELSTRA.pdf **Ms HALL** (Shortland) (11.02 am)—

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The following statement places beyond doubt that "Taxation Bills" and "Appropriation Bills" must be passed together through the Houses of Parliament, this as was made clear in what Mr. Barton stated that there must be embodied in both bills a reduction as one cannot spend more then is being allowed to be collected by taxation. This also underlines my long held view and so often expressed that taxation laws only can be legislated for one particular financial year and then seize to have any further powers unless the parliament specifically extend the legislation each time Appropriation Bills for a following financial year are due and presented to the Parliament.

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Hansard *14-4-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**) (Chapter 33 of the CD)

QUOTE

Mr. BARTON: Supposing that with the raising of £300,000 of taxation the Government will be enabled to make ends meet for certain items of expenditure by the Commonwealth, **and supposing that they cannot get a Bill providing for that taxation through the Senate,** but that the amount is cut down by £100,000, **that must mean a corresponding reduction in the expenditure embodied in the Appropriation Bill**. **One hinges upon the other.** It may be subtle enough for some of our friends to say they do not claim the right to amend the Appropriation Bill, but they really want the right to do so without saying a word about it. **They may say "We will take your Appropriation Bill with its provision for so much expenditure," and leave you in the lurch to find some means of taxation to make that amount up**. That makes them masters of the situation. It is not like the right of veto, because in exercising that right and taking the extreme course of vetoing such a measure right out, a House takes on itself the whole responsibility. If, however, it is merely a question of amendment, that House can say, "Oh, it is merely a matter of arrangement."

END QUOTE

.

The statement "**One hinges upon the other.**"underlines you cannot have some Taxation law enacted in 1936 and continue its merry round regardless of what is required for Appropriation Bills. Clearly this wanton collection of taxation is unconstitutional and the legislation is **ULTRA VIRES** and so without legal force.

.

As I have also attended to in the past, considering also Section 57 of the Constitution **BOTH** Taxation Bills and Appropriation Bills must be presented to the Parliament before the period required by the Constitution to apply expires. As such, considering the readings required (which the Framers of the Constitution made clear cannot be done within the same session) and any dispute about the bills is resolved by way of **DOUBLE DISSOLUTION**, a joint sitting, and if still failing then another (revised) bill presented to the Parliament the so called "Budget night" in may just prior to the new financial year commencing on 1 July following is totally insufficient for this constitutional process to take place.

QUOTE

57 Disagreement between the Houses

If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

END QUOTE

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Below considering some of the quoted "**Terms of reference for the inquiry:**" it is clear that the GST was not considered to be some "supply" tax as the Court in the ***O"Meara*** case purported to claim but that in fact it was for all purposes and intent to be a tax upon the consumers.

Ironically while the GST is unconstitutional in its form under Commonwealth constitutional provisions it might not at all have been unconstitutional for the States to impose their own kind of GST as they are not bound by the same restrictions as is in the (Federal) Constitution!

Also, Appropriation Bills for ordinary annual services of the Government clearly never could have included the hundred fifty or more million dollars spend on WorkChoices advertising! This, as it is not an ordinary annual expenditure!

QUOTE

54 Appropriation Bills

The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

55 Tax Bill

Laws imposing taxation shall deal **only with the imposition of taxation**, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, **shall deal with one subject of taxation only**; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

56 Recommendation of money votes

A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

END QUOTE

.

Check out the following statements, and keep in mind it relates to "**laws**" not "**proposed laws**" meaning that it relates to the final legislation as in place, regardless if amendments were made referring to a singular item but the final legislation deals with more then one item then the legislation is unconstitutional, the same if the legislation deals with other items **other then** taxation.

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QUOTE

Hansard *14-4-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**) (Chapter 33 of the CD)

Mr. HIGGINS:

What is meant by one subject of taxation? Suppose a land tax is imposed, you tax **posts** and **rails**. That may be argued not to be a law dealing with one subject.

END QUOTE

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QUOTE

Mr. BARTON: Of course in one sense every clause in an Act is a law, because it is a distinct enactment; and if the hon. member will refer to the Statute Book in reference to old Acts he will find each clause beginning with "and be it further enacted," and every clause is therefore an enactment, and in that case it is a law. In this case, however, the meaning is clear. It is this: that the Bill, afterwards becoming a law imposing [start page 576] taxation, shall deal with the imposition of taxation only; that means, of course, shall contain such provisions as are necessary for carrying the taxation into effect.

END QUOTE

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QUOTE 080306-ATO-PC CORRESPONDENCE

As shown also below that Framers of the Constitution also stated that land tax could not include both rail and post. It must be obvious that a **rail** on a property and a **post** on a

property may be part of the landscape or the property but a land tax is on the land as to be considered the bare land of unimproved value and not of improved value.

.

A post can be simply placed on a property as part of a fence, or for other security issues and a rail may be to guide the training of horses or to guide a person along a property to avoid them to fall into some ditch on a property, etc, and as such may be essentials to the safety and security of a property apart of being non-essential improvements as for luxury.

.

What therefore is important is as to if the Framers of the Constitution would have allowed the "supply" of beer and the "supply" of tobacco to have been placed in the one excise Bill or final legislation if the excise provisions had been subjected to the same strict constitutional embargo as taxation legislation was made to be.

.

It should be clear that the product concerned is the target and not the "supply" of the product. For the ordinary person it would be absurd to contemplate that a person would go to a store and purchase beer and is not then supplied with the beer so purchased. As such, the "supply" is an core part of the contract of purchase. If the product purchased is not provided then the "contact" never was fulfilled. The Courts would not argue if the tobacconist were to have the tobacco and placed it on the counter but denied the customer to take possession of it after having paid for it, but rather if the customer was entitled to the product for which a contact was made by the payment. Likewise, if a person steals an item from a store the Courts are not considering if the tobacconist had on easy display his wares to be stolen to allow the thief to take it as if this then was a "supply" but rather if in fact there was a contract of sale".

Legislators may desire to device whatever backdoor manner to invent a way to circumvent legislative prohibitions of the Constitution but ultimately the issue is if the purpose of the legislation complies with constitutional provisions or exceeds it.

END QUOTE 080306-ATO-PC CORRESPONDENCE

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QUOTE

So far as the expression "laws" or "Acts" is concerned, that deals with the law when it is passed, and such an expression to my mind clearly means that even after that which is a Bill has become law. if it deals with anything more than the imposition of taxation, it will be unconstitutional, and the Federal High Court can decide that it is unconstitutional and void; so when an Act affecting to deal with more than taxation, and yet is a Tax Bill, happens to be carried through both Houses and assented to in contravention of this provision, that would be an unconstitutional and therefore a void Act.

END QUOTE

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HANSARD *31-1-1898* Constitution Convention Debates

QUOTE

Mr. SOLOMON.- We shall not only look to the Federal Judiciary for the protection of our interests, but also for the just interpretation of the Constitution:

END QUOTE

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HANSARD *8-2-1898* Constitution Convention Debates

QUOTE

Mr. HIGGINS.-I did not say that it took place under this clause, and the honorable member is quite right in saying that it took place under the next clause; **but I am trying to point out that laws would be valid if they had one motive, while they would be invalid if they had another motive.**

END QUOTE

.

HANSARD *17-2-1898* **Constitution Convention Debates**

QUOTE **Mr. OCONNOR.-**

We must remember that in any legislation of the Commonwealth we are dealing with the Constitution. Our own Parliaments do as they think fit almost within any limits. **In this case the Constitution will be above Parliament, and Parliament will have to conform to it.**

END QUOTE

.

HANSARD *1-3-1898* **Constitution Convention Debates**

QUOTE

Mr. GORDON.- The court may say-"**It is a good law, but as it technically infringes on the Constitution we will have to wipe it out.**"

END QUOTE

And

Mr. BARTON.- **The position with regard to this Constitution is that it has no legislative power, except that which is actually given to it in express terms or which is necessary or incidental to a power given.**

END QUOTE

.

HANSARD *9-2-1898* **Constitution Convention Debates**

QUOTE

Mr. HIGGINS.-**No, because the Constitution is not passed by the Parliament.**

END QUOTE

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Therefore, where the intentions of the Parliament was to replace the wholesale tax and to tax people on consumption, and this war born out by the public dispute about the introduction of the GST and how it should exclude certain essential basic groceries then it clearly never was intended to be some business tax on turn over and the fact that this may be argued now by the Court in the O'Meara case as being a tax on :"supply" is simply not applicable nor can be accepted in line of what the terms of reference of inquiry was about, which clearly did not at all limit itself to business turnover and neither that people would have to pay 10% GST and then the businesses can keep if not all most of it pending the ATO (Australian Taxation Office) rating, and even after deducting its own good it purchases.

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Hansard 28 January 1999.

QUOTE

Terms of reference for the inquiry:

(1) That a select committee, to be known as the Select Committee on a New Tax System, be established to inquire into and report, on or before 18 February 1999, on the economic theories, assumptions, calculations, projections, estimates and modelling which underpinned the Government's proposals for taxation reform, contained in *Tax reform: not a new tax, a new tax system*.

(2) That, in conducting its inquiry, the committee examine the following matters:

(a) the estimated levels of revenue to be generated or foregone due to the proposed changes, including the estimated level of revenue to be generated by imposing a goods and services tax (GST) on the basic necessities of life (such as food, clothing, shelter and essential services) and books;

(b) the effects of the proposed changes on:

(i) national Gross Domestic Product,

(ii) national export performance and national debt,

(iii) the national Consumer Price Index, and

(iv) the distribution of wealth in the Australian community;
(c) the effects of the package on future federal budget revenues, expenditures and surpluses, including a critical assessment of the economic assumptions underpinning the Treasury's projections in this regard;
(d) the effects of the taxation and compensation package on disposable income and household spending power for a range of 'cameo profiles', including but not limited to those presented in the proposals, under the following scenarios:
(i) a GST extended to the necessities of life (such as food, clothing, shelter and essential services), and
(ii) a GST not extended to the necessities of life (such as food, clothing, shelter and essential services);
(e) with the aim of identifying families and groups who may be disadvantaged by the Government's proposals, focusing on lower and fixed income individuals, families with dependent children or adult members, groups and organisations, and those with special needs, such as people with disabilities;
(f) the assumptions made as to consumption and saving patterns and the cost of living for the various 'cameo profiles';
(g) whether the stated objectives of the package can be met by using an alternative and fairer approach; and
(h) such other matters as the committee considers fall within the scope of this inquiry.
(3) That the committee also inquire into and report, on or before 19 April 1999, on the broad economic effects of the Government's taxation reform legislation proposals with regard to the fairness of the tax system, the living standards of Australian households (especially those on low incomes), the efficiency of the economy, and future public revenues, including:
(a) the effects on equity, efficiency and compliance costs of including, or not including, food or other necessities of life in the GST, together with any related adjustments to the package if food or other necessities of life were GST zero-rated;
(b) the effectiveness of the package in easing the poverty traps facing people on low incomes, and reforming and streamlining tax and income support for families with children, taking into account the static and life-cycle impacts on families with children;
(c) options for amending the income tax schedule to make it more equitable;
(d) the findings of the Tax Consultative Committee chaired by David Vos;
(e) options for improving the effectiveness and fairness of the tax system and reducing inequitable or unreasonable tax avoidance and minimisation, including consideration of alternative areas for tax generation, either where there are current tax concessions or where Australia's taxation system does not address major tax potential, and without limiting the foregoing, the consideration of taxation of foreign companies operating in Australia, including the relative merits of resource rent taxes, royalties or land taxes as compared to company tax in securing a fair compensation to Australia for use of its resources, whether the 150% tax concession for research and development should be restored and whether small companies should be allowed to be taxed as partnerships.
(f) the potential for tax avoidance and evasion, including an examination of the effects on the cash economy, and the potential impact of electronic commerce on the future viability of a GST;
(g) the effects on compliance costs;
(h) the potential for reducing payroll tax, including by providing incentives to create long-term employment and by replacing payroll tax with a carbon tax;
(i) whether there are other means available for rebating or reducing the indirect taxes or excessive user charges embedded in exporters costs;
(j) excises, including those on fuel, tobacco and alcohol - identifying the industries which benefit, and to what extent, from the proposed changes to taxes on fuels;
(k) the effects on interest rates;
(l) the effects on investment, in both physical and human capital formation;
(m) the effects on small business;
(n) the effects on the non-profit sector, including the total amounts of money contributed by the sector, administrative costs, impacts on the viability of the organisations, and the consequent effects on the wellbeing of the community;

(o) the effects of the GST on particular industries, including:
(i) key service industries such as tourism,
(ii) the Australian automobile and related industries, having particular regard to the effects of changes to fuel excises,
(iii) other 'invisible' export industries, such as education and financial services, and
(iv) the international competitiveness generally of Australian industries;
(p) the implications of not requiring that the GST component of goods and services be itemised on receipts;
(q) the effects of the taxation reform legislation proposals on rural and regional stakeholders, including:
(i) the effects on particular regions,
(ii) the effects on rural and regional communities of different tax regimes on fuel - especially the cost of transport of goods to rural communities,
(iii) the effects on primary industry of replacing the current sales tax exemption on agricultural machinery with a GST, and
(iv) the effects of imposing a GST on food and other necessities of life on remote communities, including Aboriginal and Islander communities;
(r) the effects of the Government's taxation reform legislation proposals on state and local government administration, including:
(i) the effects of the package on future federal-state financial relations and the capacities of state and local governments to adequately finance their respective responsibilities in both the short-term and the long-term, including the effects of the proposed transfer of responsibility for local government financial assistance to the states, and whether it discriminates between states,
(ii) the implications for specific purpose programs,
(iii) mechanisms required to lock in commitments made by federal and state governments with regard to the new arrangements,
(iv) the implications for future federal-state financial relations of not extending the GST to the necessities of life (such as food, clothing, shelter and essential services) and books, and any adjustments to the proposed arrangements which would be required to federal-state financial relations,
(v) the implications of the package for the quality and affordability of public utility services and for the public utility concessions for social security recipients,
(vi) the effects of application of the GST, and of changes to tax status, on local government and its activities, particularly commercial activities,
(vii) the implications for the delivery of Commonwealth Government services, including employment services, welfare and other social and cultural services, and
(viii) the extent to which the proposed compensation arrangements are secure from change to below adequate levels;
(s) the adequacy of measures to ensure that consumers fully benefit from the abolition of existing taxes;
(t) the effects of the taxation reform legislation proposals on legal and constitutional matters, including:
(i) the constitutionality of the proposed mechanism for future changes to the GST, including whether such changes would present a significant hurdle to future increases, or reductions if deemed necessary to stimulate the economy,
(ii) the constitutionality of the proposed reorganisation of federal-state tax arrangements and whether the powers and functions of states and territories are materially affected by this reorganisation, and
(iii) the effects of the proposals on the cost of access to justice; and

END QUOTE

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QUOTE

Committee Matters for Inquiry

Community
Affairs

The impacts of the Government's taxation reform legislation **proposals on the living standards of Australian households** (especially those on low incomes), including:

(a) the scope and effectiveness of the proposed arrangements on charities, child care services, aged care services, welfare services, local government human services and all not-for-profit organisations in maintaining the quality and affordability of essential community services, including the implications for the public funding of these services and the implications for the commercial activities of these organisations, and whether unconditional GST-free status should apply to *bona fide* charities;

(b) a detailed examination of the zero-rating of health services, including an examination of which services should be zero-rated;

(c) the effects on community sector organisations of changes to their tax exempt status, and of the compliance costs of the proposed tax arrangements;

(d) the effects of the proposed private health insurance rebate;

(e) the effects on people with disabilities;

(f) the effects on public, community and private housing, including the levels of rents; and

(g) options for amendments to improve the fairness or efficiency of the proposed legislation.

Employment, Workplace Relations, Small Business and Education

The employment incentive and education impacts of the Government's taxation reform legislation proposals, including:

(a) the scope and effectiveness of the proposed zerorating arrangements for education in maintaining its quality, accessibility and affordability;

(b) the effects on employment;

(c) the effects of the proposed GST treatment on the quality, accessibility and affordability of employment services;

(d) the effects on education of imposing a GST on, or zero-rating or exempting books and associated education resources;

(e) the effects on education of imposing a GST on ancillary resources, services and commercial activities, including the effects on overseas students;

(f) the effects of the proposed changes to the tax system on employment;

(g) the effects on wage costs, particularly if the basic necessities of life are taxed;

(h) the scope and effectiveness of changing the unemployment benefits, pensions and Newstart

Allowance 'tapers';
(i) the effects of the proposed changes to the tax system on training and adult education; and
(j) options for amendments to improve the fairness or efficiency of the proposed legislation.

Environment, Communications, Information Technology and the Arts

The broad effects of the Government's taxation reform legislation proposals on the environment, the arts and information technology, including:
(a) the environmental effects, and likely impacts of changes to fuel excises, particularly but not only diesel, and the replacement of WST with GST on vehicles and other transport services including:
(i) possible increases in greenhouse gas emissions,
(ii) increases by amount and type of air pollution,
(iii) the effects on public and rail transport,
(iv) the effects on alternative energy use in transport including, but not limited to, compressed natural gas,
(v) the changed effects on native forests of logging or woodchipping due to the tax package, and
(vi) the changed effects of mining in environmentally sensitive areas due to the tax package;
(b) the environmental effects of the replacement of Wholesale Sales Tax by the GST and associated changes in fuel excises on electricity and natural gas;
(c) the impacts of the proposed tax changes on the prices and existing and potential use of renewable energy particularly but not only solar energy technology and energy efficiency equipment;
(d) the environmental effects of any changes to taxes on exports;
(e) the consistency or otherwise of the proposed changes in taxation and excise arrangements with Australia's international treaty obligations, including its obligations under the Framework Convention on Climate Change;
(f) options for a tax system which better achieve environmental objectives,including incentives for fuel efficiency and alternative energy sources, such as measures which promote both environmental protection and employment generation;
(g) the extent to which environmental impacts were considered in the drafting and final copy of the Government's tax package;

(h) the scope of any consultation on environmental matters with experts in Environment Australia or any other Government departments other than the Treasury and Finance departments;
(i) the impact of a GST on ticket sales for the performing arts;
(j) the effects of a GST on the transfer of grant monies for arts projects;
(k) the effects of the tax proposals on sponsorship provided by the private sector to individual artists and arts organisations;
(l) the extent to which the package will block consideration and introduction of 'ecotaxes';
(m) the effects of a GST on not-for-profit conservation and arts organisations; and

END QUOTE

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Albeit I had no formal education in the English language and neither is it my native language, I found that this rather was often to my benefit, as I would question the meaning of words more then those who had grown up with the English language.

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QUOTE

We cannot frame the same sort of constitution as we would frame if it were a constitution for a unified Australia.

END QUOTE

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While the states may have a certain liberty to frame their taxation legislation the Commonwealth of Australia does not have this in the same manner but is bound by the specific prohibitions applied or implied by the Framers of the Constitution which are if not specifically stated in the Constitution itself are **embedded** in the Constitution.

.

As a "**CONSTITUTIONALIST**" I consider matters as to how the Framers of the Constitution would have applied their intentions, and the references to tobacco, beer, post and rail may underline how they would never have accepted a GST kind of taxation structure to be applicable.

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This document has taken a considerable number of hours to produce, and seeks to quote relevant parts of the Hansard and at times long quotations as to show in which context certain statements were made, as to give the Reader a more appropriate set out.

.

It is not relevant how anyone on a contemporary view may seek to justify the application of the GST legislation but what actually is constitutionally permissible as to the intentions of the Framers of the Constitution. They were creating a "**federation**" and not a "**confederation**" and this must be kept in mind that GST and any other kind of Consumer Tax that may be within constitutional provisions of certain countries would have no place within the "**POLITICAL UNION**" created by the federation.

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I MAY BRIEFLY REFER TO THE FOLLOWING

CAMBRIDGE University Press
978-0-521-85112-1- Value Added Tax a Comparative Approach
Alan chenk and Oliver Oldman
Front matter

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QUOTE

Value Added Tax

This book integrates legal, economic, and administrative materials about value added tax. Its principal purpose is to provide comprehensive teaching tools – laws, cases, analytical exercises, and questions drawn from the experience of countries and organizations around the world. It also serves as a resource for tax practitioners and government officials that must grapple with issues under their VAT or their prospective VAT. The comparative presentation of this volume offers an analysis of policy issues relating to tax structure and tax base as well as insights into how cases arising out ofVAT disputes have been resolved. In the new edition, the authors have expanded the coverage to include new VAT-related developments in Europe, Asia, Africa, and Australia. A new chapter on financial services has been added as well as an analysis of significant new cases.

END QUOTE

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QUOTE

Contents

END QUOTE

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From just reading the layout of this book it is apparent that the **Value Added Tax** is also referred to as being the GST and it also refers to the ***O'Meara*** decision. It may be deemed to be a "**consumption**" tax but it would as has been set out below still offend the intentions of the framers of the Constitution as it is a tax that relates to more then one taxable item.

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The ***O'Meara*** decision in my view is an absolute disgraceful judgment as it never even bothered to place the GST provisions in the proper context of the intentions of the Framers of the Constitution as I have done so far as set out to some extend below.

There are countless people who have paid for services and/or goods and were charged GST and then never getting the goods and/or services paid for. Now, while the business may have gone broke (out of business), have been taken over by liquidators, are crooks, or whatever in the end the customer was forced to pay GST for "supply" of goods and/or services never rendered and the ATO as such must be accountable for monies that were charged as GST to be repayable to those people. After all it is the ATO and not private businesses who are on behalf of the crown enforcing legislation. It must be clear, besides other constitutional arguments, that any real tax on the "supply" of goods and/or services could only be applied when the "supply" actually materialised, and not being subject to a contact but may never eventuate.

.

A supply doesn't exist until the goods/service is supplied and if there is no supply/service eventuating then clearly the business that collected the taxation on behalf of the Commonwealth has by acting under authority of the Government (regardless lawful or not) placed the government under an obligation to return any GST so charged. However, as the ATO made known to me it has no record keeping of how much, where and when each person pays GST we have this absurd situation where tax collecting no longer is reliable.

.

It should be understood that the right to charge taxation is a right in sovereign by the Crown and so Ministers acting on behalf of the Crown. No citizen (ordinary business enterprise) can assume powers to charge taxes upon other citizens. Only the official Crown Department especially set up for this would have such a powers. Hence, the collection of taxes in the name of the "sovereign" (the Crown) can only be raised by or on behalf of the Crown's agents. The moment this is delegated to any person, including "aliens" as de facto tax collectors then the crown has conceded its powers to raise taxes to the ordinary person and no longer can be deemed to hold this power of taxation.

.

Hence, it is not for a business to pay, to the ATO, GST on the basis of "actual sales and business inputs" while uncontrolled charging customers GST, regardless if this is lawfully permissible or not as the Crown has a **DUTY OF CARE** towards the subjects that it is not , so to say, bleed dry, to pay taxes to some private individual, and indeed an "alien" that may advance the riches of some enemy, and for this all and any taxes collected can only be duly authorised to be done by those employed in Her Majesty's services for this. The abrogation of sole right by the Crown (sovereign) to charge taxes would be obliterated if any taxation powers were to be given to private business, which appears the GST legislation has accomplished.

.

Because the GST is applicable to the, according to the 29 February 2008 correspondence os "calculated on the basis of their actual sales and business inputs" and as such it is open for any business proprietor to charge a customer 10% GST but in the end not having to pay this 10% because his business sales may be found to be less then what was otherwise expected. If for example a customer fails to pay his/her bill then the GST collected from other customers will be compensating for this to so extend. Now, say for example that I claim to have sold 100 CD's and collected on them $300.00 GST. The point however is that if the CD's were sold for $30.00 each then this would be a total of $300.00 but if in fact I sold the CD's for $50.00 each then the collected GST would be $500.00. No accountability exist to the ATO to prove for how much I actually sold the CD's merely that I claim how much business sales I made. As such, the GST is on the business sales and not on the items themselves. I am by this allowed to set my own taxation upon customers and charge whatever I deem appropriate, and there would be no records for the ATO (by its own admission) to verify if a customer having paid a certain GST this money actually made it into Consolidated Revenue or it simply was used by me, to perhaps gamble it away and so no records would exist of the whereabouts of the moneys collected in GST. If a customer then desires to get a refund of GST I simply make clear that I paid the moneys into the ATO and then it is up to the ATO to refund the GST from what I have already paid in previously, even so it may not at all be the GST paid by that customer.

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Where the amount of GST is calculated on "sales" turnover then it means the Business owner can charge GST upon customers and then deduct his own consumption of goods as spoiled goods and make them tax deductible and so he will have to pay far less GST then that which was actually collected from customers.

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I have therefore created my own sovereign powers to collect taxes as I please without any real accountability to anyone.

Again

It cannot be argued that a business is liable to refund GST, because many businesses are going broke without even having paid the GST they collected to the ATO and so who is the consumer to turn too one may ask to get a refund of the GST paid for goods/services but never having been provided? After all the GST is on the "supply" of goods and services and if no "supply" eventuated it cannot be held that the GST nevertheless was payable.

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The GST neither can be some kind "**business turnover tax**" because then private citizens who do not run a business per se may not be obligated to pay certain taxes.

.

It should be understood that most Members of Parliament never even may have read the Hansard records of the Constitution Convention Debates and likely neither most judges who are dealing with constitutional matters, as such it basically is the blind leading the blind. While the Attorney-General is to certify to the Governor-General that certain proposed legislation passed through both houses is constitutionally valid, the truth is that the Attorney-General may not have a clue what really is constitutionally valid. There is no test upon the competence of any person to become Attorney-General or for that matter a judge of a Court as to constitutional competence and as such for the lay-lawyer who never even researched constitutional issues it may appear that everything is above board, so to say, whereas when I read the same judgment it is nothing more but sheer and utter nonsense.

How little Members of Parliament may understand about constitutional issues can be shown by the huge flare-up about some Members of Parliament having taken up work assignments for companies. What they do not seem to understand is that Members of Parliament are not employed by the Commonwealth and the Constitution only allows them an "allowance" as a compensation for loss of earning of their normal form of employment. As such there is absolutely nothing wrong for a Member of Parliament to be involved in other work as in fact if the Member of Parliament were not to do so then this Member of Parliament would be unemployed! It is only that the Member of Parliament doesn't engage in a form of employment that might be a conflict of interest with his representation in the Parliament.

We had that candidates who successfully were elected in the federal election were being paid "allowance" even so they were not employed at all in the Parliament and not having taken up their seat until the first day of sitting then they were simply not entitled to collect any monies as if they were Members of Parliament. It only shows how little constitutional understanding and perception Members of Parliament really have and yet many are making clear they are lawyers! If therefore they do not even grasp their constitutional position and entitlements then how on earth can they do better in understanding constitutional powers and limitations as to Bills before the parliament to be voted upon, but, such as WorkChoices, never even had a copy to know what on earth they were voting for.

.

I would consider it to be an insult to my person to be called a "lawyer" as it is to me that I would be more then likely brainwashed during formative years at law studies. I would be ashamed to have been a judge handing down a decision such as the ***O'Meara*** case, as it is a disgraceful decision, that does not reflect any competence in constitutional matters to be shown in the judgment. This is also why it is so essential that there is an **OFFICE OF THE GUARDIAN**, a constitutional; council that advises the Government, the People, the parliament and the Courts so that despite any ignorance to legal reality they still can at least obtain appropriate advice.

.

Hansard *13-4-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**) (Chapter 33 of the CD)

QUOTE

> **Mr. HIGGINS:** It is simply this, be cause the practice as to the rights of the two Houses has become so settled, so stereotyped, that there have been less conflicts about Money Bills than formerly. But although my friend, Mr. Wise, says the main questions which divide the people to-day are social questions-although that is quite true-still you cannot dissever the Money Bills from the policy upon which the money is spent. **You cannot dissever Taxation Bills from Appropriation Bills.**
>
> **Sir JOSEPH ABBOTT:** Hear, hear.

Mr. HIGGINS: **The whole power of appropriation is based upon taxation, and you cannot draw the line between them in that arbitrary way.**

END QUOTE

.

Hence, taxation Bills can only apply to the relevant appropriation Bills for that particular financial year.

.

Below some quotations also of my 071207 correspondence;

QUOTE

A law is unconstitutional if it deals, as a Tax Bill, with more than one subject of taxation unless it is a Customs Bill, or with any question except the imposition of taxation and the necessary machinery therefor.

.

Mr. O'CONNOR: It is not excepted in the way which I will point out now, by making an infringement of this Act a penalty, that is to say, a penalty that the Act which infringes shall be of no validity. It is only in that way that you can ensure compliance with these provisions, **or if you make it so obligatory that if they are not complied with the Act shall be void.**

END QUOTE

And

QUOTE

Mr. BARTON: My own opinion is distinctly that in the form in which this and the preceding sub-section, and probably the fourth sub-section, stand, they involve that protection which must be given under a Federal Commonwealth by leaving to the supreme arbiter of the Commonwealth-that is to say, to the High Court-the determination whether substantial infractions of constitutional law have taken place. To put it in another way: If the hon. member will compare this with the 52nd clause, that the hon. member will see deals with "**proposed laws**," and not with "**enacted laws**." **"Laws" means "enacted laws." "Proposed" laws are to originate in the House of Representatives.** It is not intended, as of course he sees from the form of the section, that the High Court of the Commonwealth should have under review such a question as whether a Bill originated in one House or another if passed into law. That is a question for the Houses to settle between themselves. **But the question whether a law on the face of it exceeds the constitutional power as dealing with more than the imposition of taxation, dealing with more than the laying on of a tax and the machinery necessary for it, or whether it deals with two subjects of taxation at once, unless it is a Customs law, that question, and also the question whether the annual Appropriation Act deals with more than the ordinary annual services of the year, seem to me to be deeply rooted in the Constitution, and depend not merely upon the questions of relations of the Houses *inter se*, but on much larger considerations.** For that reason, the word used has been "laws," so that the Federal High Court may deal with them, and if they [start page 577] infringe those principles, declare them unconstitutional.

END QUOTE

Again;

QUOTE

"**or whether it deals with two subjects of taxation at once**"

END QUOTE.

And

QUOTE

Mr. BARTON: Do I understand the hon. member to refer to the use of the words "**proposed laws**"? If so, "proposed laws," I may say, is an expression used in other parts in regard to "Bills," while "**laws**" covers the expression "**Acts**." If the hon. member will refer

to the Bill he will find that the words "**proposed laws**" relate to **Bills**. With regard to "**Bills**," the provisions of the sections will be left to be carried out by the House, that is, by the President or Speaker. **So far as the expression "laws" or "Acts" is concerned, that deals with the law when it is passed, and such an expression to my mind clearly means that even after that which is a Bill has become law. if it deals with anything more than the imposition of taxation, it will be unconstitutional, and the Federal High Court can decide that it is unconstitutional and void; so when an Act affecting to deal with more than taxation, and yet is a Tax Bill, happens to be carried through both Houses and assented to in contravention of this provision, that would be an unconstitutional and therefore a void Act.** I think that that is the point upon which my hon. friend wished for information.

QUOTE

.

Hence, a taxation law that allows tax credits/tax refunds is unconstitutional!

.

More over the consider the wording;

QUOTE.

So far as the expression "laws" or "Acts" is concerned, that deals with the law when it is passed, and such an expression to my mind clearly means that even after that which is a Bill has become law.

END QUOTE.

.

Now consider the following part of the Constitutional Convention Debates

QUOTE.

Mr. BARTON: I do not think it is the practice in New South Wales to go into Committee of Ways and Means, both for Customs and excise, at the one, time; I think that is the Flame in South Australia. It may mean a very important question to both Houses whether the Customs duties should be in one Bill, and the duties on excise in another, or whether they should both be in one Bill, and it is a question after all whether we should depart from the arrangement here. I will put this case. It is easy to balance the duties on Customs and duties on excise in one Bill if you do not regard certain contingencies which may arise, but if you have another House to deal with and you have regard to the policy of taxation, then, in a House to which you have conceded the right of veto, it is a different matter. **If you include several subjects in one Bill you will find the Senate ready to grant an excise on beer, but not on tobacco, and it will not have the power to provide for that excise on beer, without assenting to that on tobacco, inasmuch as the power of amendment is taken from it. It would not have an opportunity of declaring itself on this, inasmuch as these were placed in a sort of balance.** So it remains a question whether these [start page 597] duties of excise should not be in one Bill and Customs in another, and also whether-

END QUOTE.

Again;

QUOTE

If you include several subjects in one Bill you will find the Senate ready to grant an excise on beer, but not on tobacco, and it will not have the power to provide for that excise on beer, without assenting to that on tobacco, inasmuch as the power of amendment is taken from it. It would not have an opportunity of declaring itself on this, inasmuch as these were placed in a sort of balance.

QUOTE

.

Here, the Framers of the Constitution were referring to excise on **beer** and **tobacco** and while in the end excise is not subjected to the same regime as taxation legislation is the debate that presented itself is that the issues related to “items” being it “goods” or “services” being

"tobacco" and "beer". The line of the debates by the Framers of the Constitution is not that of excise on the "supply of the beer" or the "supply of the tobacco" as this would be a mere gimmick in wording which would be to seek to undermine or sidestep a constitutional prohibition and as such would fail.

O'MEARA v FC of T, 2003 ATC 4406

Judges: Hely J Court: Federal Court MEDIA NEUTRAL CITATION: [2003] FCA 217

QUOTE

``(2) Without limiting subsection (1), **supply** includes any of these:

(a) a supply of goods;

(b) a supply of services;

(c) a provision of advice or information;

(d) a grant, assignment or surrender of real property;

(e) a creation, grant, transfer, assignment or surrender of any right;

(f) a financial supply;

(g) an entry into, or release from, an obligation:

(i) to do anything; or

(ii) to refrain from an act; or

(iii) to tolerate an act or situation;

(h) any combination of any 2 or more of the matters referred to in paragraphs (a) to (g)."

END QUOTE

.

What this means is that under the GST provisions the sale of tobacco and beer would be taxable, this,, even so if the excise had also been subjected to the provisions of the Taxation legislative limitations then no excise legislation could provide excise for both beer and tobacco.

.

On that consideration it clearly cannot be deemed right that the Framers of the Constitution deemed that beer and tobacco (as then was) could not be put in the one Bill (or final legislation) but it can be done under a GST legislation, if it was considered that such GST legislation had to exist at the time of the framing of the Constitution.

.

As shown also below that Framers of the Constitution also stated that land tax could not include both rail and post. It must be obvious that a rail on a property and a post on a property may be part of the landscape or the property but a land tax is on the land as to be considered the bare land of unimproved value and not of improved value.

.

A post can be simply placed on a property as part of a fence, or for other security issues and a rail may be to guide the training of horses or to guide a person along a property to avoid them to fall into some ditch on a property, etc, and as such may be essentials to the safety and security of a property apart of being non-essential improvements as for luxury.

.

What therefore is important is as to if the Framers of the Constitution would have allowed the "supply" of beer and the "supply" of tobacco to have been placed in the one excise Bill or final

legislation if the excise provisions had been subjected to the same strict constitutional embargo as taxation legislation was made to be.

.

It should be clear that the product concerned is the target and not the "supply" of the product. For the ordinary person it would be absurd to contemplate that a person would go to a store and purchase beer and is not then supplied with the beer so purchased. As such, the "supply" is a core part of the contract of purchase. If the product purchased is not provided then the "contact" never was fulfilled. The Courts would not argue if the tobacconist were to have the tobacco and placed it on the counter but denied the customer to take possession of it after having paid for it, but rather if the customer was entitled to the product for which a contact was made by the payment. Likewise, if a person steals an item from a store the Courts are not considering if the tobacconist had on easy display his wares to be stolen to allow the thief to take it as if this then was a "supply" but rather if in fact there was a contract of sale".

Legislators may desire to device whatever backdoor manner to invent a way to circumvent legislative prohibitions of the Constitution but ultimately the issue is if the purpose of the legislation complies with constitutional provisions or exceeds it.

.

By checking the intentions of the Framers of the Constitution as to what they were stating one then would have to ask would the Framers of the Constitution, if a GST then had been proposed been willing to accept that such a form of legislation would be constitutionally valid. In my view, as a "**CONSTITUTIONALIST**" the Framers of the Constitution specifically refused this kind of usage of taxation law, as demonstrated that their concern was that an excise on beer and tobacco may be unconstitutional if the draft constitution was not amended to allow excise to be in one Bill or legislation for both beer and tobacco.

.

It must be clear also that the true intention of the GST legislation is not to tax the supply of items regardless if there is no direct or indirect financial benefit to the "end consumer" but that it relates to the "end consumer". How then the scheme is set up/devices as to try to circumvent constitutional limitations is immaterial. If the GST is not applicable where a store provides me with a free item then it can clearly not be for the "supply" of the item.

For example, if one attends to McDonalds Family Restaurant and are a person using a Senior Card then you can have the "**supply**" of a cup of coffee "**free of charge**". As such the "**supply**" takes place but no payment is made and as such no GST is either charged. Yet, if I attend to McDonalds Family Restaurant and do not make known I am entitled to a free cup of coffee then I am still "**supplied**" with a cup of coffee only being it that I am charged the ordinary price of it and so including GST.

.

As such, it is not the "supply" of the cup of coffee that is GST taxable but the "sale" of the cup of coffee". Now the "sale" of the cup of coffee" can be held to be the "supply" of the cup of coffee but ultimately it is a tax on the "**sale**" of the cup of coffee".

.

Where I assist Pro Bono" people in their litigation then no GST can be applied because there is no "contract" that is the client of "supply" that is GST taxable. However, if afterwards a person were to give me a payment or other services in return then it can be deemed that this is an exchange of services that directly or indirectly has provided both a financial benefit and as such GST may be applicable.

.

As such, the "exchange" of goods and/or services" will be deemed to be a "supply".

.

The concern should be then about the implications of;

(i) to do anything; or

(ii) to refrain from an act; or

.

I recall once that a person offered me monies in return for me not to disclose to the Court certain details/information I had become aware of that would be critical against his case and assist the other party.

.

I refused to do so. Actually, I stepped out of his case altogether. However, by the terms of the legislation GST would have been applicable upon my silence had I accepted his offer as I would have refrained "to do anything" or "to refrain from an act" (such as reporting this matter) that would be GST taxable.

Now, what is the value of my silence to be taxable? If then two people mutually agree not to disclose something about each other, without any financial exchanges then how would anyone possibly assess how much GST would be applicable? The silence to one person may be wroth everything the person owns and so for the other person likewise, just that one may be a pauper and the other a multi millionaire. Is then GST applicable to different financial circumstances? Surely this is utter and sheer nonsense.

.

What it really comes to is that the Government of the Day pursued to introduce a GST but was hamstrung by the constitutional limitations and so while arguing that it can be done in other jurisdictions it too should be able to implement the same and simply a device was to be created to circumvent constitutional prohibitions. Hence the reference to "supply".

However, GST or Consumption Tax may be within certain jurisdictions lawful but because of the unique jurisdiction involving the Commonwealth of Australia it is a totally different matter, and calling it a "supply" does not alter the fact that essentially it is a tax on the consumption of the goods itself by the end user.

.

A problem is that again as an Attorney, I purchase blank CD's and in the case of the Queen v Josepha van Rooy produced CD's with all Authorities and other legal matters that the Court had directed the Defendant Ms Van Rooy to place before the Court. Now, this was in compliance with a Court order to present this material, and clearly I was not the "end user" but rather the Court was. Yet, nevertheless I am charged GST for something of which I provided "Pro Bono" to Ms van Rooy! (The case resulted in the Jury being directed to return a **NOT GUILTY** charge)

.

Now, if I had charged Ms van Rooy for the production of the CD then perhaps it may be argued that I attracted GST (apart of the argument I have already set out that GST is unconstitutional) but where I provide a free "service" I am ending up being charged GST on top of the cost of the blank CD's and this for my willingness as a good citizen to assist others in need. Yet, if instead of donating my services to some not-for-profit organisation then no GST would be applicable. If this organisation were to supply with the blank CD's I could still perform the same service but at no direct financial cost to me.

.

The real issue is if there can be a GST applicable if no direct or indirect contract existed for the "sale" or "supply" of goods. In my view GST is dependable on the "contract of sale of beer" and even if ultimately the liqueur store may not "supply" me with the required products in the mean time I still had to pay for the GST. As such, it is not a tax on "supply" but on the "sale" of goods, irrespective if they are supplied or not.

When I went to a builder to purchase 600 pavers that had been advertised for sale I discovered afterwards that the were in excess of 600 pavers. Now, if the GST was to apply not to the sale price of the 600 pavers but to the "supply" of the pavers then clearly the would have been a different GST applicable. This as I was "supplied" in excess of 600 pavers.

.

Now, as a so to say “bargain hunter” I go to s store and make a bargain deal with the store. For example a store had boxes of blots and nuts and nails and I offered $200.00 for the lot. It was then assembled onto a pallet and it was a pallet full. Yet, ordinary a box would sell on its own for about $50.00 or $60.00. As such, what I ended up paying no where near represented the real sales price of the articles if someone else had purchased the same items. Now, the question then if the GST was on the “supply” of the products and not on the sales price then how can the be a stark difference in GST applicable pending who pays what for the same item? As such, it underlines that it is not the “supply” of the item but the purchase price and as such 10% GST is added to the purchase price of the item. Therefore this establish that the GST is not a tax on “supply” but on the direct or indirect financial contract. If no direct or indirect financial contract exist then no GST can be deemed payable in regard of items that otherwise might be subject to GST.

.

There is another issue as to administration of the taxation legislation.

As I indicated previously I was overcharged by Bunnings and I quote from my 7-12-2007 correspondence;

.

QUOTE 7-12-2007 E-MAIL TO BUNNINGS

Date: Fri, 7 Dec 2007 12:39:13 +1100 (EST)

From: "Gerrit H. Schorel-Hlavka" <inspector_rikati@yahoo.com.au>
Yahoo! DomainKeys has confirmed that this message was sent by yahoo.com.au.

Subject: Ref; COMPLAINT 7-12-2007

To: Northland@bunnings.com.au

CC: inspector_rikati@yahoo.com.au

Northland <Northland@bunnings.com.au

.

Ref; COMPLAINT 7-12-2007

.

Sir/Madam,

.

As you may recall (see e-mail 7 March 2007 below) I had an issue with prices of Bunnings v Mitre 10, after the manager at Bunnings Northland had stated it were the lowest prices before I purchased items only to subsequently discover that items were much cheaper at Mitre 10.

.

Relevant Bunnings store receipt details are;

.

27/02/2005 13:12:04 R4 P408 S6306 C165366 #C400058391(original purchase).

.

02/03/2005 16:24:00 R8 P431 S6308 C131436 #0800068724 (refund).

.

The 02/03/2005 refund receipt shows no separate added 15% refund as the manager gave me the understanding that he had already included this. However, checking back with the Mitre 10 receipt and then the prices he had re-charged it is clear he charged me for the refund policy rather then what should have been Bunnings paying me as is and was the advertised policy

.

Upon return to the store on 2-3-2005 the manager then conceded that the receipts I produced from Mitre10 of items identical to those of Bunnings I was advised that he would refund me the overcharge plus the 15% refund policy, as then applicable.

.

Now seeking to work out how much GST I ended up paying, I discovered that the manager instead of refunding me the over charge and then adding 15% refund policy he in fact charged me the 15% minus the 10% GST making it 13.5%.

.

The difference being that I was still overcharged $21.70, as set out below!

.

It must be clear that had the manager not included the 15% refund policy (actually turning out to be about 13.5%) then I would have been refunded $ 149.05 - $ 82.05 = $ 67.00! However with the 15% refund policy I ended up getting only $55.35!

.

Now, why on earth should a customer be worse of and loosing 15%?

.

I consider this a very serious issue because if this occurred in my case then I wonder how many other customers are actually being charge the now again 10% rather then being paid to them as the store policy is! Indeed, the fact that the 15% is reduced to 13.5 % also is a cause of concern as there could be no GST payable on the 15% refund policy, at least that is my view as it is neither for goods or services but due to an overcharge.

.

I now set out calculations

.

I recall an incident where I purchased goods from a Bunning store after having asked the manager if the prices were lower then anywhere else, and he confirmed this. I then spend $149.05 purchasing certain items. Subsequently I attended to Mitre 10 store and purchased simular items. I then returned to the Bunning Store and the manager shown the prices I had paid at Mitre 10 store at a considerable lower price then refunded about $55.35 to me, this including the then 15% promised refund addition.

.

Purchase Bunnings 27-2-2005 (item no. 4771720) 3 sewerage pipes @ $30.87 each = $ 92.61
Purchase Bunnings 27-2-2005 (item no. 4771762) 3 rainwater pipes @ $18.82 each = $ 56.46

Originally charged Paid $ 149.05

.

At Mitre 10 price (same as item no. 4771720) 3 sewerage pipes @ $19.95 each = $ 59.85
At Mitre 10 price (same as item no. 4771762) 3 rainwater pipes @ $ 7.40 each = $ 22.20

Should have been a charge of Total $ 82.05

.

Amount overcharged (including GST) **$ 149.05** minus **$ 82.05** = **$ 67.00**
GST component in $67.00 = $67.00 - ($67.00 : 1.1) = $67.00 - $60.91 = **$ 6.09**

.

Add 15% refund police as then applicable, total refund entitled upon;
Due payable to customer including overcharge; $67.00 + 15% = $67.00 x 1.15% = **$ 77.05**

.

Did charge by adding incorrectly the 15% for me to pay rather then the store to pay me;

.

Purchase Bunnings 27-2-2005 (item no. 4771720) 3 sewerage pipes @ $30.87 each = $ 92.61

Purchase Bunnings 27-2-2005 (item no. 4771762) 3 rainwater pipes @ $18.82 each = $ 56.46

Paid $ 149.05

.

At Mitre 10 price (same as item no. 4771720)
3 sewerage pipes @ $19.95 + (15% - 15%:10%) each = 3 x $ 22.82 = 68.46
At Mitre 10 price (same as item no. 4771762)
3 rainwater pipes @ $ 7.40 + (15% - 15%:10%) each = 3 x $ 8.41 = 25.25

Total $ 93.71

.

GST paid in $ 149.05 = $ 149.05 - $ 149.05 : 1.1 = $ 149.05 – $ 135.50 = **$ 13.55**

.

GST that should have been paid $ 82.05 - $82.05 : 1.1 = $ 82.05 - $ 74.60 = **$ 7.45**

.

GST originally overcharged; $13.55 - $ 7.45 = **$ 6.10**

.

Store did actually charge $ 93.71 : 1.1 = $ 93.71 – $ 85.19 = **$ 8.52**

.

On face value overpaid GST; $ 8.52 - $ 7.45 = **$ 1.07**

.

Incorrect calculation due to store manager seeking to reduce 15% of refund policy with 10% GST component as to reduce the 15% to 13.5% and by this adding the amount instead of subtracting this meaning that the total is twice the 13.5% =

.

Actual amount that should have been paid by Bunning to me; **$ 77.05**
Actual amount of refund paid out to me (as per receipt) **$ 55.35**

Under paid in refund $ 21.70

.

What however is shown is that on 20 February 2005 charged **$13.55** on GST, and as such assumed it paid this to the ATO.

.

On 2 March 2005 it refunded me $13.55 - $ 8.52 = **$ 5.03** GST**!**
And, to try to outsmart me as a customer to avoid paying GST on the refund policy of then 15%, in its error overcharged me **$ 1.07** in GST as well as overcharged me another **$ 20.63** making it a total of **$ 21.70**

.

I urge you to refund the overcharge and also to ensure that store managers and personal do have a proper grip as to how to pay out the (now) 10% refund policy and not to charge customers instead!

.

Awaiting your response

.

Mr. G. H. Schorel-Hlavka
Date: Mon, 7 Mar 2005 12:12:51 +0800
From: Northland <Northland@bunnings.com.au>
To: Sean Hegarty <SHegarty@bunnings.com.au>
Cc: schorel-hlavka@schorel-hlavka.com

Sean,

Following the information I sent you on March 1st, Gary, the customer questioning the prices of plumbing products, would like to talk to you regarding this.

His contact information is as follows :

Gary Schorel-Hlavka
107 Graham Road
Viewbank
Ph. : 9457 7209

Regards

ANTHONY CARNOVALE
BUILDERS CO-ORDINATOR
BUNNINGS WAREHOUSE - NORTHLAND
Cnr Murray Road & Chifley Drive
PRESTON VIC 3072
* (03) 9416 8288
* (03) 9484 7024
* northland@bunnings.com.au

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Mr. G. H. Schorel-Hlavka MAY JUSTICE ALWAYS PREVAIL® 107 Graham Road Viewbank, 3084, Victoria, Australia Ph/Fax 03-94577209 International 61394577209 .

END QUOTE 7-12-2007 E-MAIL TO BUNNINGS

.

Now, as to date the ATO has not refunded the over charge of the GST to me.

.

I now have to recall an incident of some decades ago as to clarify a matter.

.

I had a service station claiming that they knew how to fix my motor vehicle and so I left in with them for repair. The replaced the motor-pulley and charged me accordingly. After I collected my motor vehicle I broke down and another service station owner explained to me that the pulley had absolutely nothing to do with what was wrong with the needle and seat of my motor vehicle and so he repair it.

Because I had already paid the repair by the first service station owner but still had my petrol account with him I decided to deduct the bogus repair from the petrol account. Well, he took me to Court and the magistrate made clear that he sympathised with me but that legally it was not for

me to deduct the cost of the bogus repair from the petrol bill as I should have done it with the original petrol bill that had the repair cost included. Once I paid the bill my only alternative was to sue the service station owner for the refund of the moneys. As such, the Court ordered me to pay the monies of the repair and indicated I could now sue the service station for the refund of the moneys of the bogus repair. I didn't bother to sue.

However, what is therefore clear is that Bunnings under legislation having paid the GST of the goods purchased then clearly had paid in by now the GST to the ATO. As such it is not for Bunnings to refund me monies of an overcharge as technically it has already paid this monies to the ATO and cannot reduce any subsequent GST bill to the ATO with a refund. The ATO in its 29 February 2008 correspondence however stated;

QUOTE

> **Your other concern appears to be the fact that, because of the scheme of the Goods and Services Tax regime, the Tax Office is unable to tell you exactly how much GST has been collected from you as a customer. That is correct.**

END QUOTE

.

This then brings the problem that the ATO is in no position to authorise any refund not knowing how much GST I paid.

.

Bunnings is in no legal position to deduct from current GST payments any refund, as it is not the ATO and as such is not entitled to provide any form of tax refund.

.

This even more makes the O'Meara decision a mockery as we are talking about GST charged not for "supply" of anything but having been an overcharge where **Bunnings** instead of adding 10% GST deducted it to the price of goods returned. And by this I was a total of $21.70 out of pocket. It means because untrained de facto tax collectors are involved I ended up with a loss of $21.70.

.

Perhaps under the O'Meara decision I could be charged GST for the service of having been robbed $21.70?

.

As yet, I have not perused the hundreds of pages, if not thousands of pages of GST debates in the Parliament, the submissions made, etc, as this can be also mountains of work, but I recall that at the time of the GST debate the then Senator Meg Less was claiming to get certain items, such as bread to be excluded from GST. I do not recall that any argument was about excluding the "supply" of bread from GST, etc.

.

As such, the conception of the population, when they subsequently were required to vote fin a federal election was one that GST was applicable to items such as petrol but not bread and no issue as to that the "supply" of some items were GST charitable and the "supply" of other items were not.

.

It must be obvious that the "supply" of items purchased are an interracial part of a purchase. No one in his right mind goes to a store and pays for items knowing he is not going to be supplied with them. It is simply part of the "**contract of sale**" that by the customer paying for the items he is "supplied" with the items. No one can separate the "supply" of goods purchased from the purchase of the items as without the supply there can be no completion of the "contract".

.

For example, when I purchased a truck-load of Lilydale toppings, I had to pay for the product then, including for the delivery, albeit at that time no "supply" had eventuated. If therefore the GST was payable for the "supply" of the product and the delivery then the GST never could be charged in advance as no services had been rendered and may never be rendered.

.

I had this company, advertising about roof sealing and as my roof needed the work done I called the person in and was quoted more then $5,000.00 cost. I paid a deposit of $800.00 after he had calculated 20% discount of the total price already. After the person left I decided to check out my roof and count the tiles that were actually on the roof, as he had used this to calculate the price of the service to be provided and noticed that he had overcharged me by more then 30% and even allowing for the 20% discount I was still worse of then if no discount had been applied to the ordinary cost per tile to provide the service. After some time I had the deposit refunded as I made clear I didn't like to do business with crooks. Now, the question is if they had already paid the GST of the Deposit then how could they then refund the moneys to me? And how could any GST be applicable where the services were in the end never rendered?

.

I decided to call a local person and he did the roof for just over $1,100.00, and later he even came to repair, without charge, the damages caused by the electrician. .

What this indicates is that the ATO has simply no proper control over GST collected. Despite that the framers of the Constitution made clear that Consolidated Revenue only can be obtained by Appropriation Bills, I am not aware of any Appropriation Bill being presented for tax refunds, tax credits, or whatever. It seems that de facto tax collectors are simply making up their own mind how much GST is applicable, if any, and the ATO lacks any proper form of administration to account for the credibility of the charges applied.

While the correspondence did state in its 29 February 2008 correspondence;

QUOTE

> ", **the Tax Office is not concerned with the allocation of the GST collected back to end-users of the goods and services supplied.**"

END QUOTE

I can assure you as being the victim of this elaborated rip off I am concerned.

The ATO is responsible for the administration of taxation legislation and cannot therefore excuse itself not to be aware how much tax I was unconstitutionally or otherwise ripped off. I am entitled to being compensated for this as the ATO as the administrator of taxation legislation (constitutionally valid or not) by this has a "**DUTY OF CARE**" towards every member of the general community that the taxation provisions are not wrongly applied.

Clearly, as I have pointed out I am so to say in the middle of a rock and a stone that the stores charging GST blame the ATO, and the ATO shoves it off as not being their "concern".

.

As the ATO's 29 February 2008 correspondence also indicates;

QUOTE

> **In passing a number of acts which I shall refer to collectively for convenience as the 'GST legislation' Parliament has, according to "common understanding and general conceptions", imposed a tax on a single subject of taxation, namely on the final private consumption in Australia; O'Meara v FC of T [2003] FCA 217.**

END QUOTE

.

Therefore by this admission it is a legislation based on the contemporary perception rather then being determined on the intentions of the Framers of the Constitution.

While judge Hely in the O'Meara case may fancy himself/herself to be a "living constitutionalist" to somehow twist the constitutional applications to whatever may suit the judge in reality this is beyond constitutional powers and as such is NULL AND VOID and so without legal power.

QUOTE

> **that the Constitution shall not, nor shall any of its provisions, be twisted or perverted**

END QUOTE

.

Hansard *17-3-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE

We have provided for a Judiciary, which will determine questions arising under this Constitution, and with all other questions which should be dealt with by a Federal Judiciary and it will also be a High Court of Appeal for all courts in the states that choose to resort to it. In doing these things, have we not provided, first, that our Constitution shall be free: next, that its government shall be by the will of the people, which is the just result of their freedom: thirdly, **that the Constitution shall not, nor shall any of its provisions, be twisted or perverted,** inasmuch as a court appointed by their own Executive, but acting independently, is to decide what is a perversion of its provisions? We can have every faith in the constitution of that tribunal. It is appointed as the arbiter of the Constitution. **It is appointed not to be above the Constitution, for no citizen is above it, but under it; but it is appointed for the purpose of saying that those who are the instruments of the Constitution-the Government and the Parliament of the day-shall not become the masters of those whom, as to the Constitution, they are bound to serve. What I mean is this: That if you, after making a Constitution of this kind, enable any Government or any Parliament to twist or infringe its provisions, then by slow degrees you may have that Constitution-if not altered in terms-so whittled away in operation that the guarantees of freedom which it gives your people will not be maintained; and so, in the highest sense, the court you are creating here, which is to be the final interpreter of that Constitution, will be such a tribunal as will preserve the popular liberty in all these regards, and will prevent, under any pretext of constitutional action, the Commonwealth from dominating the states, or the states from usurping the sphere of the Commonwealth. Having provided for all these things, I think this Convention has done well.**

END QUOTE

.

Hansard *11-3-1898* Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE **Mr. CARRUTHERS**

My [start page 2313] honorable friend urges a very common argument against the continuance of this right of appeal to the Privy Council-an argument which only needs to be examined to be thoroughly demolished, namely, that we want to have, in the final Court of Appeal, a body of Judges who have colonial experience, who have colonial ideas, and who have colonial knowledge. Now, any man, especially an able member of the bar like-my honorable friend, ought to know that the worst tribunal you could have would be a tribunal that would decide, not on the sworn testimony submitted to the court, but on knowledge of the case, and in regard to the case and its surroundings, in the minds of the Judges-evidence of a character which cannot be shaken by cross-examination-evidence which is not known to the parties interested in the case at all. I venture to say that more mischief is done by cases being decided by some twist or turn in the minds of Judges than by any judicial interpretation of the evidence submitted to the court. Now, my great objection to establishing the final Court of Appeal in Australasia is because there is existing in the minds of the Judges that unconscious bias. I do not impute corruption; I would be very sorry to do or say anything which would tend to diminish the weight of the authority of our colonial benches; but without laying myself open to the charge of saying anything improper, I venture to repeat that that unconscious bias does exist, and will always exist, in small communities, especially where they are inhabiting large territories.

Sir JOSEPH ABBOTT.-I beg to call your attention, Mr. Chairman, to the fact that there is not a quorum present. Mr. Howe is not in the chamber, and probably would like to hear this.

A quorum having been formed,

Mr. CARRUTHERS (continuing) said-I was saying that this unconscious bias does exist, and always will exist, where there are small communities inhabiting large territories, because the circumstances of life in those communities must be totally dissimilar to the circumstances of life in populous centres such as exist in the United Kingdom; and there must grow up in connexion with such centres influences which will permeate the minds of all people in those places. I gave an instance, which has been cited over and over again, showing the value of the right of appeal to the Privy Council. The case in question was an important one decided in New South Wales, and the decision affected millions and millions of pounds worth in value. It affected the tenure of the whole of our Crown lands-the case of Burke and Allison, which was decided in one direction by the colonial Judges, largely because they knew all about colonial affairs and colonial life, and because they had had colonial experience. **The Privy Council decided that case in a totally different way. They decided it on the evidence, not on their knowledge of the circumstances, and the result of their decision has been to give a better security to the class of persons affected; and the Parliament which made the law which the Judges interpreted admitted, by a subsequent enactment, that the decision of the Privy Council was the truer interpreter of its intentions.**

END QUOTE

.

And this is very much the problem we face currently that judges are bias in their decisions and rather then to properly explore what the Constitution stands for present their own views. Hely J appears to me to be a clear example of how to twist the true application of the Constitution.
While the correspondence does state;

QUOTE

However, it is not the 'private final customer' or end user of the goods and services who is legally obligated to account to the Tax Office for GST. That burden is imposed on those businesses making 'taxable supplies' which are registered with the Tax Office for GST. As long as the GST for which they account has been correctly calculated on the basis of their actual sales and business inputs, the Tax Office is not concerned with the application of the GST collected back to the end-users of the goods and services supplied.

END QUOTE

.

The problem is that the Tax Office is passing the buck, so to say, not to account for administrative responsibilities. For example it never did provide me with any training as to how to calculate any GST, if applicable, to services rendered to persons as an attorney in the Courts. In my view the ATO should be concerned if people are charged GST and it never is paid to the ATO as this allows a black-market environment of businesses charging GST but now paying it into the Consolidated Revenue. Where I as an end-consumer am charged an additional 10% GST then I am entitled to be able to check if every cent of that monies paid as a tax is actually paid into Consolidate Revenue.
The legislation may impose the burden upon the business making "taxable supplies' but where the business itself would have no clue what are taxable supplies or the amount of it, as shown in my examples where even an overcharge of $150.00 occurred in one incident alone, then it is not the ATO who administer the taxation legislation but it is done by trail and error by businesses.
I am not aware any business ever offering me goods for sale with or without GST applied. Simply I am charged GST and the shopkeeper could not care less if I am the end-user or not.

Therefore there is no proper administration of taxation legislation (apart of the constitutional validity of it) and neither is it appropriate for any shopkeeper to ask my taxation status as this is a issue between me and the Tax Office, being of confidential nature.
As the 29 February 2008 correspondence makes very clear;

QUOTE

"**calculated on the basis of their actual sales and business inputs**"

END QUOTE

As such, a business may charge customers GST and in the end has by far overcharged the customers but by the actual sales and business inputs may only make a part payment of this collected GST to the ATO. As such, the end-consumer is ending up being charged "GST" that is a tax that may or may not be ending up in Consolidated Revenue". No wonder the treasure of the previous Government announced to have found billions of dollars as simply the Tax Office lacks any proper administration to account for how taxes are collected.
As a so called "end-consumer" I have every right to know if every cent that I am charged as "GST" in fact was so paid into Consolidated Revenue. The fact that the tax Office cannot ascertain this underlines there is a maladministration and a lack of proper administration of taxation legislation.

.

Some further quotes of the 7-12-2007 correspondence;.

And

QUOTE

. I think that although the word "uniform" has the meaning it was intended to have-"one in form" throughout the Commonwealth-still there might be a difficulty, and litigation might arise about it, and prolonged trouble might be occasioned with regard to the provision in case, for instance, an income tax or a land tax was imposed. **What is really wanted is to prevent a discrimination between citizens of the Commonwealth in the same circumstances.**

END QUOTE

And

QUOTE

I would point out that by introducing the words "proposed law," if you do not exactly limit the scope of the whole section you will not prevent that result, because if the High Court will have jurisdiction under secton 2 to declare an Act invalid which did not comply with that provision it would equally have the power to declare an Act invalid if a Bill upon which an Act was founded did not comply with that condition. It occurs to me that if you condemn a tree because the branches and fruit are bad, the tree is equally bad if the root fails in its strength. **So if your law is bad as being in conflict with the Constitution, it must be equally bad if the Bill upon which it is founded violates the Constitution.**

END QUOTE

And

QUOTE

Mr. REID: My object was such a simple one that I did not apprehend so much importance would be attached to it. At first blush I thought everyone would be as anxious as I was to prevent the possibility of such difficulties, but I see now that there is a great deal more importance attached to it than I thought. The importance, I think, disappears when we remember **that any member of the House of Representatives, upon calling the attention of the chair to the breach of the provisions, would kill the Bill there**, and any one senator, upon drawing attention to the same clause in the Upper House, could kill the Bill there too.

END QUOTE

.

The problem is that with WorkChoices many Members of the Parliament never even had a copy of the proposed legislation and unlikely of the existing legislation and as such not in any position to determine if the legislation was valid within constitutional provisions. Even so that was not a taxation Bill it underlines that one cannot rely upon Members of parliament to ensure Bills before the House are constitutionally valid.

Where then a Member of Parliament may not even be aware of the content of existing taxation legislation then any amendment to such existing legislation on its own may appear to be constitutionally valid but in the final format as part of the enacted legislation would cause the legislation to be in breach of constitutional limitations.

.

QUOTE **Mr. SYMON:**

> **Parliament, as far as constitutional questions are concerned, is under the law, and it must obey the law.**

END QUOTE

And

QUOTE

> **The populations of the States had a right to insist that no tax which was not uniform should be imposed.**

END QUOTE

And

QUOTE **Mr. SYMON:**

> Therefore it seems to me that, whilst undoubtedly inconveniences may arise, still these inconveniences do not militate against a very salutary power which as a Federation we propose to vest in the High Court of the Commonwealth. I will only add this-without going into the details applied in so masterly a way by my hon. friend Mr. O'Connor, when he pointed out the real safeguard in relation to these sections which the High Court might be at the instance of a suitor-that **we must remember if we seek to derogate from the power we vest in the High Court of dealing with all laws which any citizen of the Federation may claim to be unconstitutional,** we are not invading State rights, because it is not a question of small States or large States, but it is a question of the liberty and rights of every subject throughout Australia**. It is the subject that is concerned in this; it is not the body politic, but every taxpayer-every individual who may be assailed either in his liberty-**

END QUOTE

And

QUOTE

> Where there are matters not matters of procedure-where the effective rights of a [start page 585] component part of the Constitution are involved-**the Constitutional principle is that the arbiter of the Constitution-must be allowed to protect those rights. You have not it so in England because the Parliament there is Sovereign, but you have it in the Federal Constitution, because you have a Parliament that is only a part of the Constitution, and that Constitution must protect those provisions of the Constitution which are threatened with infringement. I shall resist all amendments in these respects because I consider the principles, which are altogether principles of justice, ought to protect Parliament in the exercise of its internal powers, and protect the people as to what is on the face of a law a breach of the Constitution**

END QUOTE

And

QUOTE

> **Mr. WISE:** As Sir John Downer says, away goes the Constitution. These are measures deliberately designed for the protection of every individual **citizen**, **and every citizen who votes for the Constitution is entitled to know what are the terms on which he will be**

liable to pay taxes. If the tax is imposed illegally there is no reason why the illegality should not be exposed by the Supreme Court of the Commonwealth just like any other illegal measure. No Government has a right to raise money illegally.

END QUOTE

.

Hansard *3-3-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE

Mr. ISAACS (Victoria).- **First, it is provided that all taxation shall be uniform throughout the Commonwealth. That means direct as well as indirect taxation, and the object I apprehend is that there shall be no discrimination between the states; that an income tax or land tax shall not be made higher in one state than in another.** I should like the Drafting Committee to consider whether saying the tax shall be uniform would not prevent a graduated tax of any kind? **A tax is said to be uniform that falls with the same weight on the same class of property, wherever it is found.** It affects all kinds of direct taxation. I am extremely afraid, that if we are not very careful, we shall get into a difficulty. **It might not touch the question of exemption; but any direct tax sought to be imposed might be held to be unconstitutional, or, in other words, illegal, if it were not absolutely uniform.**

Mr. BARTON.-**We were inclined to the opinion that "uniform" would not apply so as to prevent the graduating of a tax. I am glad to have the suggestion from the honorable member, because the committee will be going into the matter again.**

END QUOTE

.

Re Wakim; Ex parte McNally; Re Wakim; Ex parte Darvall; Re Brown; Ex parte Amann; Spi [1999] HCA 27 (17 June 1999)

QUOTE

For constitutional purposes, they are a nullity. ***No doctrine of res judicata or issue estoppel can prevail against the Constitution. Mr Gould*** *is entitled to disregard the orders made in Gould v Brown.* ***No doubt, as Latham CJ said of invalid legislation, "he will feel safer if he has a decision of a court in his favour". That is because those relying on the earlier decision may seek to enforce it against Mr Gould.***

END QUOTE

.

Uniform Tax \case, 1942 (65CLR 373 at 408)

QUOTE

"Common expressions such as: 'The Courts have declared a statute invalid'," says Chief Justice Latham, "sometimes lead to misunderstanding. A pretended law made in excess of power *is not* ***and*** *never has been* ***a law at all. Anybody in the country is entitled to disregard it. Naturally, he will feel safer if he has a decision of a court in his favor, but such a decision is not an element, which produces invalidity in any law. The law is not valid until a court pronounces against it - and thereafter invalid. If it is beyond power it is invalid ab initio."***

END QUOTE

.

In my view that ATO ought to pursue the creation of the **OFFICE OF THE GUARDIAN**, a constitutional council, that advises the Government, the People, the Parliament and the Courts as to constitutional powers and limitations. This “limited document” will indicate that too many **LEGAL FICTIONS** exist and judges far too often fail to deal with **LEGAL REALITIES**. Hence, the urgent need for an **OFFICE OF THE GUARDIAN**. This, so the ATO may finally have some independent source for advise not contaminated by political views of the Government of the day.

.

As an Attorney, not a lawyer, I have for decades assisted people in the Courts with their litigation and at times prepare their cases in such a manner that years later it still is useful. So, the party I assist fall back on what I had assisted with years earlier. As a matter of fact my nickname, by the Courts has been for decades "**TRAP DOOR SPIDER**". This, because I would cross-examine on a minute detail and explore it to great extend, etc.

.

Hansard *14-9-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**) (Chapter 33 of the CD)

QUOTE

> I should like further to revert to an observation of the hon. member, Mr. Dobson. He practically told us that we were wasting time in a discussion of this kind, because if we sat here with closed doors, making speeches of a minute's duration or a little more, we might quickly come to an agreement embodying a genuine scheme of federation which would be accepted by the people outside. I grant that if we sat with closed doors we could more quickly come to an arrangement on this subject than we can by the process of debating in public**, because some of us would not then need to make such long speeches**; but if we were to follow the process which the hon. member regards as so much superior to the present one, the difficulty would be that the constitution, which might be the most valuable one upon earth if once accepted, would be so much waste paper, because no population in any of these colonies would look at it, or approach it, except for the purpose of kicking it. **How is it to be expected that the free people of this country are to have** [start page 532] **the adjustment of a constitution made behind their backs, and without knowing what debates had taken place in the framing of it?** I grant that you can have select committees to set out formal propositions for the Convention: **but it will be the duty of the Convention to debate these propositions.** This debate must take place in the open light of day. If we did not debate the matter in this way, how absurd it would be for us, with our experience of public life, to think for a moment that we could induce any free people to accept our work.

END QUOTE

.

This underlines that the Constitution was not framed in some backroom in secrecy but in the light of day for people to be aware what was intended by the framers of the Constitution as expressed in their statements recorded in the Hansard.

.

While I have quoted certain parts of the Hansard, below, regarding citizenship, etc. it should be made clear that the ATO (Australian Taxation Office) represents the Crown and the EAC (Australian Electoral Commission)likewise represented the Crown against me and by this the legal principles of "Res Judicata", "Collateral Estoppel", "Direct Estoppel" applies.

In that the Crown, being it the ATO, the AEC or other Department acting for the "Crown", cannot re-litigate the same issues that already were the subject to final orders between myself and the Crown on 19 July 2006.

.

For example, Section 75(v) of the Constitution (*Commonwealth of Australia Constitution Act*)does not differentiate between an employee of the ATO or AEC or other Government Department but states;

.

QUOTE

> **75 Original jurisdiction of High Court**
>
> In all matters:
>
> (i) arising under any treaty;
>
> (ii) affecting consuls or other representatives of other countries;

(iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
(iv) between States, or between residents of different States, or between a State and a resident of another State;
(v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;
the High Court shall have original jurisdiction.

END QUOTE

.

Hereby the Commonwealth represents the Crown!

.

Despite my request on 19 July 2006 for a Reason of Judgment the Court albeit granting my appeals unreserved (meaning not restricting the success of the appeals to any specific issue) it did not hand down a reason of judgment setting out upon which specific constitutional and other legal issues the appeals were granted. By this, all constitutional issues an contained in the Section 78B **NOTICE OF CONSTITUTIONAL MATTERS** and other further constitutional and other legal issues raised in my further material are to be deemed to have been upheld. This in particular so because the crown at no time challenged anything whatsoever. It was the liberty of the Crown not to challenge any constitutional and/or legal issue I raised before the Courts but then having taken that liberty the Crown is bound by the decision of the Court that where there was a failure to challenge any of the constitutional and other legal issues then for purposes of litigation the Court as an impartial adjudicator must be deemed to have found on each and every issue in my favour. This in particular where the Court failed to provide a Reason of Judgment that were to narrow the appeals to being upheld upon a more narrow ground.

.

As the Crown did not challenge any of the constitutional and/or other legal issues raised by me then in law they are standing unchallenged and it is not the position of the Court to do the work for the Crown and somehow take issue with anything I placed before the Court where the Crown itself decided not to challenge anything. In particular where I had filed the Section 79B **NOTICE OF CONSTITUTIONAL MATTERS**, and none of the Attorney-Generals intervened, despite having the right to do so, also underlines that the Crown in the sovereign right of the States and or the Commonwealth never did exercise its constitutional right to challenge what I had placed before the Courts..

.

Hence, the State, in its sovereign rights, neither can pursue matters against me because it had the opportunity to do so and failed/refused to exercise this opportunity and therefore is bound by the decision of the Court on 19 July 2008.

.

One of the issues canvassed then before the Court was that not a single lawyer is validly appointed, and so neither any judge/magistrate because none hold the required “Australian citizenship” as a nationality, as there is no constitutional power for the Commonwealth to define/declare “citizenship” as a “political status” or as a “nationality” because the right of “nationality” unlike the legislative powers to “naturalise” an “alien” never was provided to the Commonwealth of Australia and neither so to declare/define if a person born in the Commonwealth of Australia is a “British subject” or not.

.

This correspondence also relied upon the material that was before the Courts at the time, of the about 5-year litigation, which came to an end in a successful judgment in my favour.

.

I have quoted some of the material freely available on the Internet, with the Website address, so the lawyers of the Crown can perhaps learn from there, if they do not understand the legal terminologies of **Res Judicata**, **Collateral Estoppel**, **Direct Estoppel**, etc

.
http://en.wikipedia.org/wiki/Res_judicata
QUOTE

Res judicata

From Wikipedia, the free encyclopedia

Jump to: navigation, search

Res judicata (Latin for "a matter [already] judged") is, in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal. The term is also used to refer to the doctrine meant to bar relitigation of such cases between the same parties, which is different between the two legal systems.

END QUOTE

.
http://en.wikipedia.org/wiki/Collateral_estoppel
QUOTE

Collateral estoppel

From Wikipedia, the free encyclopedia

Collateral estoppel, known in modern terminology as **issue preclusion**, is a common law estoppel doctrine that prevents a person from relitigating an issue. Simply put, "once a court has decided an issue of fact or law necessary to its judgment, that decision ... preclude[s] relitigation of the issue in a suit on a different cause of action involving a party to the first case."[1] This is for the prevention of legal harassment and to prevent the abuse of legal resources.

END QUOTE

.
http://en.wikipedia.org/wiki/Direct_estoppel
QUOTE

Direct estoppel

From Wikipedia, the free encyclopedia

The doctrine of **direct estoppel** prevents a party to litigation from relitigating an issue that was decided against it, under certain circumstances. Specifically, direct estoppel applies where the issue was decided as part of a larger claim which was finally decided, and estops the issue from being redecided in another claim of the same lawsuit. Contrast collateral estoppel, estops a claim from being redecided in *another* lawsuit.

END QUOTE

.
As I stated in previous correspondence;

.
Sorell v Smith (1925) Lord Dunedin in the House of Lords
QUOTE

In an action against a set person in combination, a conspiracy to injure, followed by actual injury, will give good cause for action, and motive or instant where the act itself is not illegal is of the essence of the conspiracy.

END QUOTE

.
Therefore, if the ATO or any of its employees pursues to harm me seeking to use purported legislation regardless that I challenged them as to their validity then the conduct is perceived by

me as a deliberate attempt to harm me. This includes any refusal to refund moneys to me which were unconstitutionally extracted from me as GST or otherwise, being by traders or otherwise acting for and/or on behalf of the ATO.

.

Hansard *14-4-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**) (Chapter 33 of the CD)

QUOTE

Mr. HIGGINS:

What is meant by one subject of taxation? Suppose a land tax is imposed, you tax **posts** and **rails**. That may be argued not to be a law dealing with one subject.

END QUOTE

.

While in the O'Meara case the Court argued about relating to "supply" reality is however that it relates to the "supply" of certain goods and/or services. A supply for "bread" may not be taxed with GST whereas a bar of chocolate might be. As such it is not the "supply" itself that determines if GST is applicable but rather the product being it bread, milk, an apple, a post on a land, a fence rail along the property, etc.

Indeed, during the GST debate the issue was that certain food should not be subjected to GST. It was not about certain "supply" was not to be subjected to GST!

.

Hansard *14-4-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**) (Chapter 33 of the CD)

QUOTE

Sir JOHN FORREST: Do you expect to have everything your own way?

Mr. BARTON: I am not saying that: I am saying the very contrary. I am not going largely into the practical conditions which may arise if the States Assembly or Senate is allowed the power to amend Tax Bills. I hold rather strongly that if we are to have two Houses, and intend to act upon the principles of responsible government, and conserve those principles, we ought not to put in the hands of one House the ability to utterly destroy the financial policy of the Government**. The expenditure depends upon the taxation, and if the taxation is so altered in its passage through a Second Chamber that the expenditure, which is perhaps sanctioned upon the Estimates, or about to be sanctioned upon the Estimates, proposed by the government is lessened, that right to amend the Taxation Bill practically means the right to cut down the Appropriation Bill, too.**

END QUOTE

.

What is clear is that taxation Bills are for the financial year for which the Appropriation Bills are applicable and not that somehow taxation Bills can go on forever. Hence, not a single taxation legislation is valid after the financial year for which it was enacted expires unless the parliament has subsequently legislated to apply it for the following financial year, on a yearly basis!

.

Extensive quotations of the Hansard has been provided for below as to give some "in context" reflection of what the Framers of the Constitution intended.

.

Hansard *1-3-1898* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**) (Chapter 33 of the CD)

QUOTE

Sir JOHN DOWNER.-

I think we might, on the attempt to found this great Commonwealth, just advance one step, not beyond the substance of the legislation, but beyond the form of the legislation, of the different colonies, and say that there shall be embedded in the Constitution the righteous principle that the Ministers of the Crown and their officials shall be liable for any arbitrary act or wrong they may do, in the same way as any private person would be.

END QUOTE

And

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. DOBSON (Tasmania).-**I am in sympathy with the clause, because I think, if we are to keep pace with the march of the times, the Constitution Bill ought to contain a direct declaration that the Commonwealth may be sued by a subject for a breach of contract, or for a wrong done by any of its officials.**

END QUOTE

And

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. OCONNOR.-I cannot say. **The procedure now in our colony applies, not only to contracts, but also, by judicial decisions, to wrongs.** In all the colonies there are provisions, wider or narrower, cutting down the prerogative right not to be sued. We must all agree that the Commonwealth should so proceed that in any case in which a man has a cause of action, whether on a wrong or a contract, his right should not be trampled upon by the state any more than by an individual. I quite admit that in dealing with this matter we are opening up a very large question indeed.

END QUOTE

And

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. HIGGINS.-**Suppose the sentry is asleep, or is in the swim with the other power?**

Mr. GORDON.-**There will be more than one sentry. In the case of a federal law, every member of a state Parliament will be a sentry, and, every constituent of a state Parliament will be a sentry. As regards a law passed by a state, every man in the Federal Parliament will be a sentry, and the whole constituency behind the Federal Parliament will be a sentry.**

END QUOTE

And

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. SYMON.-**It is not a law which is *ultra vires*.**

Mr. GORDON.-The honorable member will see that I am not declaring that any law which is *ultra vires* is not *ultra vires.* I am simply limiting the area of attack.

Mr. SYMON.-The man who is ruined by it is not to take that point.

Mr. GORDON.-**We must postulate of all our Parliaments that they will not pass laws which are ethically indefensible.**

END QUOTE

And

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. SYMON.-**It is not a law if it is *ultra vires*.**

Mr. GORDON.-**It would be law by acquiescence. It would remain a law until it was attacked.**

END QUOTE

And

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. GORDON.-Even that embraces a very large body of rights, and the principle is the same. We have to rely in many of our relations on the probity of the Attorney-General, on the probity of the Parliament, or, to go further down, on the probity of the community. Upon all these grounds I contend that the amendment is one that ought to be passed. It leaves the whole executive power open to attack. **Once a law is passed anybody can say that it is being improperly administered, and it leaves open the whole judicial power once the question of *ultra vires* is raised.** Under the clause, as I have amended it, it will not prevent the plea of *ultra vires* being raised where it is accompanied with the plea of a conflict of law. If there is a state law and a Commonwealth law on the same subject, every **citizen** is entitled to know which be should obey. **If he joins a plea of *ultra vires* with a plea of conflict of law, that ought to be heard.**

END QUOTE

And

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. WISE.-**If the honorable member had only moved this amendment when we first met in Adelaide, and had carried it we should have been saved many months of discussion. All that would have been necessary then would have been to frame a Constitution in about six clauses, declaring that there should be a Commonwealth Parliament, that the states Parliaments should remain, that the powers of the Commonwealth Parliament should be whatever the states Parliaments allowed them to be, and that the powers of the states Parliaments should be whatever the Federal Parliament allowed them to be. That would have been our Constitution.** The amendment, as it stands, provides that whatever law may be passed, taking the first branch [start page 1686] of it, by the Commonwealth, it is not to be declared *ultra vires* if the five Attorneys-General of the several states agree that for any reasons of state they will wink at any violation of the law, and allow any person affected injuriously by it to suffer.

END QUOTE

And

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. WISE.-If the Federal Parliament chose to legislate upon, say, **the education question**-and the Constitution gives it no power to legislate in regard to that question-the Ministers for the time being in each state might say-"We are favorable to this law, because we shall get £100,000 a year, or so much a year, from the Federal Government as a subsidy for our schools," **and thus they might wink at a violation of the Constitution**, while no one could complain. **If this is to be allowed, why should we have these elaborate provisions for the amendment of the Constitution? Why should we not say that the Constitution may be amended in any way that the Ministries of the several colonies may unanimously agree? Why have this provision for a referendum? Why consult the people at all? Why not leave this matter to the Ministers of the day? But the proposal**

has a more serious aspect, and for that reason only I will ask permission to occupy a few minutes in discussing it.

END QUOTE

.

As such, officials who fail to act appropriately (including taxation officers) could be personally liable if they are found to have acted in defiance of constitutional limitations, as further set out below also. After all, if a objection against legislation is made then the "official" cannot ignore this and proceed as if the objection doesn't exist, as the moment the objection is made the "official" is bound to act observing the rights of the objector.

Where the High Court of Australia itself indicated that Mr Gould could ignore unconstitutional court orders (see below) then the Court clearly indicates that any person can disregard compliance with any Court order that is unconstitutional. Likewise so as this document sets out is compliance with legislation. If the legislation is **ULTRA VIRES** then it is **"WITHOUT LEGAL FORCE**" and so a "**nullity**" and no taxation official can enforce it and neither any Court. This, as the Courts can only operate within constitutional powers and not beyond it.

.

HANSARD *17-3-1898* Constitution Convention Debates

QUOTE

Mr. SYMON (South Australia).-

We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new Magna Charta for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question upon which we are about to invite the peoples of Australia to vote. The Great Charter was wrung by the barons of England from a reluctant king. **This new charter is to be given by the people of Australia to themselves.**

END QUOTE

And

HANSARD *17-3-1898* Constitution Convention Debates

QUOTE

Mr. BARTON.-

We can have every faith in the constitution of that tribunal. It is appointed as the arbiter of the Constitution. . **It is appointed not to be above the Constitution, for no citizen is above it, but under it; but it is appointed for the purpose of saying that those who are the instruments of the Constitution-the Government and the Parliament of the day-shall not become the masters of those whom, as to the Constitution, they are bound to serve. What I mean is this: That if you, after making a Constitution of this kind, enable any Government or any Parliament to twist or infringe its provisions, then by slow degrees you may have that Constitution-if not altered in terms-so whittled away in operation that the guarantees of freedom which it gives your people will not be maintained;** and so, in the highest sense, the court you are creating here, which is to be the final interpreter of that Constitution, will be such a tribunal as **will preserve the popular liberty in all these regards, and will prevent, under any pretext of constitutional action**, the Commonwealth from dominating the states, or the states from usurping the sphere of the Commonwealth.

END QUOTE

.

HANSARD *26-3-1897* Constitution Convention Debates (**Official Record of the Debates of the National Australasian Convention**)

QUOTE **Mr. ISAACS:**

There is a line up to which concession may become at any moment a sacred duty, but to pass that line **would be treason**; and therefore, when we are asked solemnly and gravely to

abandon the principle of responsible government, when we are invited to surrender the latest-born, but, as I think, the noblest child of our constitutional system-a system which has not only nurtured and preserved, but has strengthened the liberties of our people-then,

END QUOTE

.

HANSARD *17-2-1898* **Constitution Convention Debates**

QUOTE **Mr. OCONNOR**.-

We must remember that in any legislation of the Commonwealth we are dealing with the Constitution. Our own Parliaments do as they think fit almost within any limits. **In this case the Constitution will be above Parliament, and Parliament will have to conform to it.**

END QUOTE

.

I noted that the 29 February 2008 correspondence referred to the ***O'Meara v FC of T [2003] FCA 217*** case, which I down loaded from the ATO website and I noticed with interest how the judge referred to the governments meaning instead of what the Framers of the Constitution intended! Likewise the judge referred to taxation matters of other countries and by this totally seems to ignore the fact that the Commonwealth of Australia is unlike any other legal entity in that it is not a dominion, country, etc, but a "**POLITICAL UNION**" and as such the application of taxation legislation that may be permissible in any country, including in the UK may not at all be possible in the "**POLITICAL UNION**" the Commonwealth of Australia.

.

The error of trying to translate what the "**common meaning**" is of the Government or the people is not relevant as what is relevant is what the meaning was of the Framers of the Constitution!

.

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. BARTON**.-

this Constitution is to be worked under a system of responsible government

END QUOTE

And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. BARTON**.-

We have simply said that the guarantee of the liberalism of **this Constitution** is responsible government, and that we decline to impair or to infect in any way that guarantee.

END QUOTE

And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. BARTON**.-

Of course it will be argued that this Constitution will have been made by the Parliament of the United Kingdom. That will be true in one sense, but not true in effect, because the provisions of this Constitution, the principles which it embodies, and the details of enactment by which those principles are enforced, will all have been the work of Australians.

END QUOTE

.

Now, take for example the issue of "citizenship" where the Commonwealth of Australia has legislated for "Australian citizenship" as some nationality.

It is unconstitutional because not what the Commonwealth of Australia purport to make from it but the true meaning as was intended by the Framers of the Constitution is relevant.

For example;

HANSARD *2-3-1898* **Constitution Convention Debates**

QUOTE

Mr. BARTON.-**I did not say that. I say that our real status is as subjects, and that we are all alike subjects of the British Crown.**

END QUOTE

And

Lets doe an English reading test as to the meaning of the following;

.

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE **Mr. TRENWITH** (Victoria).-

But we are at present creating a dual **citizenship**-retaining the rights of **citizenship** which the inhabitants already possess, and, in addition, conferring what I think most people will be even more proud of, the **citizenship** of the Commonwealth of Australia.

END QUOTE

And

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE

Mr. TRENWITH (Victoria).-

We know pretty clearly what constitutes a **citizen** of Great Britain. We know what constitutes a **citizen** of our various states. But we are at present creating a dual **citizenship**-retaining the rights of **citizenship** which the inhabitants already possess, and, in addition, conferring what I think most people will be even more proud of, the **citizenship** of the Commonwealth of Australia.

END QUOTE

And

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE **Mr. SYMON**.-

Dual **citizenship** exists, but it is not dual **citizenship** of persons, it is dual **citizenship** in each person. **There may be two men-Jones and Smith-in one state, both of whom are citizens of the state, but one only is a citizen of the Commonwealth. That would not be the dual citizenship meant. What is meant is a dual citizenship in Mr. Trenwith and myself. That is to say, I am a citizen of the state and I am also a citizen of the Commonwealth; that is the dual citizenship.**

END QUOTE

And

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE

Dr. QUICK (Victoria).-I understood that, under the Federal Constitution we are creating, we would have a dual **citizenship**, not only a **citizenship** of the states, but also a **citizenship** of the higher political organization-that of the Commonwealth. It seems now, from what the Hon. Mr. Barton has said, that we are not to have that dual **citizenship**; we are to have only a **citizenship** of the states.

Mr. BARTON.-I did not say that. I say that our real status is as subjects, and that we are all alike subjects of the British Crown.

END QUOTE

And

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE

Mr. SYMON.-The honorable and learned member is now dealing with another matter. Would not the provision which is now before us confer upon the Federal Parliament the power to take away a portion of this dual **citizenship**, with which the honorable and learned member (Dr. Quick) has so eloquently dealt? If that is the case, what this Convention is asked to do is to hand over to the Federal Parliament the power, whether exercised or not, of taking away from us that **citizenship** in the Commonwealth which we

acquire by joining the Union. I am not going to put that in the power of any one, and if it is put in the power of the Federal Parliament, then I should feel that it was a very serious blot on the Constitution, and a very strong reason why it should not be accepted. It is not a lawyers' question**; it is a question of whether any one of British blood who is entitled to become a citizen of the Commonwealth is to run the risk-it may be a small risk-of having that taken away or diminished by the Federal Parliament!** When we declare- "Trust the Parliament," I am willing to do it in everything which concerns the working out of this Constitution, but I am not prepared to trust the Federal Parliament or anybody to take away that which is a leading inducement for joining the Union.

Question-That the proposed new sub-section (31A) be inserted-put.

The committee divided-

Ayes 15

Noes 21

Majority against Dr. Quick's

.

Hansard *2-3-1898* Constitution Convention Debates;

QUOTE

Mr. BARTON.-I did not say that. **I say that our real status is as subjects, and that we are all alike subjects of the British Crown.**

END QUOTE

Again;

QUOTE

I say that our real status is as subjects, and that we are all alike subjects of the British Crown.

END QUOTE

.

And now when the Framers of the ***Constitution*** referred to citizenship in various forms, but meaning anything but "nationality", considering that a British subject includes an "alien" who resides in a territory under British control and by this is subject to British law applicable in that territory;

.

13-02-1890 Re; Australian citizen
10-03-1891 Re; British subject
13-03-1891 Re; Australian citizens
17-03-1891 Re; British subject
25-03-1897 Re; Australian citizens
Re; **dual citizenship**
26-03-1897 Re; citizen of the Commonwealth
29-03-1897 Re; **dual citizenship**
30-03-1897 Re; federal citizen
Re; **dual citizenship**
31-03-1891 Re; Australian citizen
Re; citizen of the Commonwealth
Re; **dual citizenship**
02-04-1891 Re; British subject
03-04-1891 Re; British subject
06-04-1891 Re; British subject
12-04-1897 Re; citizen of the Commonwealth
14-04-1897 Re; citizen of the Commonwealth
15-04-1897 Re; **dual citizenship**
15-04-1897 Re; British subject

20-04-1897 Re; British subject
15-09-1897 Re; citizen of the Commonwealth
Re; Commonwealth citizenship
Re; **dual citizenship**
Re; British subject
17-09-1897 Re; citizen of the Commonwealth
21-01-1898 Re; British subject
24-01-1898 Re; Australian citizen
27-01-1898 Re; British subject
28-01-1898 Re; Australian citizenship
Re; Commonwealth citizens
31-01-1898 Re; British subject
04-02-1898 Re; citizen of the Commonwealth
08-02-1898 Re; Australian citizenship
Re; Commonwealth citizenship
Re; citizen of the Commonwealth
Re; federal citizenship
Re; **dual citizenship**
Re; British subject
15-02-1898 Re; citizen of the Commonwealth
23-02-1898 Re; citizen of the Commonwealth
24-03-1898 Re; citizen of the Commonwealth
01-03-1898 Re; Australian citizens
Re; citizen of the Commonwealth
Re; British subject
02-03-1898 Re; citizen of the Commonwealth
Re; federal citizenship
Re; Commonwealth citizenship
Re; **dual citizenship**
Re; British subject
03-03-1898 Re; citizen of the Commonwealth
Re; federal citizenship
Re; Commonwealth citizenship
Re; British subject
04-03-1898 Re; citizen of the Commonwealth
10-03-1898 Re; Australian citizenship
11-03-1898 Re; British subject

.

As such, “Australian citizenship” is constitutionally meaning “Commonwealth citizenship” derived from “State citizenship” a political status, nothing to do with nationality. In fact the Constitution only allows to Commonwealth of Australia to legislate as to “naturalization” and not as to “nationality”! There is a considerable difference in meaning.

.

Now, as to the High Court having made certain decisions may be useful for the ATO against those whom the decisions were pronounced but to me have no meaning.
As the High Court of Australia itself in HCA27 of 1999 ***Wakim*** made clear;
Re ***Wakim; Ex parte McNally; Re Wakim; Ex parte Darvall; Re Brown; Ex parte Amann; Spi*** [1999] HCA 27 (17 June 1999)
QUOTE

> For the reasons that I gave in *Gould*, I am also convinced that the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) and the *Jurisdiction of Courts (Cross-vesting) Act 1987* of

each of the States are also invalid in so far as they purport to give the Federal Court of Australia jurisdiction to exercise State judicial power.

END QUOTE

.

Re ***Wakim; Ex parte McNally; Re Wakim; Ex parte Darvall; Re Brown; Ex parte Amann; Spi*** [1999] HCA 27 (17 June 1999)

QUOTE

34 It would be very convenient and usually less expensive and time-consuming for litigants in the federal courts if those courts could deal with all litigious issues arising between the litigants, irrespective of whether those issues have any connection with federal law. From the litigant's point of view that is saying a great deal. But unfortunately, from a constitutional point of view, it says nothing. The deficiencies and complexities of federal jurisdiction have been pointed out many times before, never more powerfully than by Mr Owen Dixon KC in giving evidence before the Royal Commission on the Constitution in 1928[40]. The inability of the federal courts to exercise cross-vested State jurisdiction in the manner provided for under the present legislation simply shows another deficiency in the system. I do not think that it can be seriously doubted that, if Australia is to have a system of federal courts, the public interest requires that these courts should have jurisdiction to deal with all existing controversies between litigants in those courts.

The function of the judiciary in constitutional cases

35 However, the judiciary has no power to amend or modernise the Constitution to give effect to what the judges think is in the public interest. The function of the judiciary, including the function of this Court, is to give effect to the intention of the makers of the Constitution as evinced by the terms in which they expressed that intention. That necessarily means that decisions, taken almost a century ago by people long dead, bind the people of Australia today even in cases where most people agree that those decisions are out of touch with the present needs of Australian society. Judge Easterbrook has pointed out that a written constitution "is designed to be an anchor in the past. It creates rules that bind until a supermajority of the living changes them."[41] In the same article, he pointed out[42] that a person cannot logically deny the power of the past to rule today's affairs and at the same time assert that Art III of the United States Constitution (the equivalent of our Chapter III) still binds. Judicial review of the constitutional validity of legislation "depends on the belief that decisions taken long ago"[43] still bind today's society.

36 The Constitution, although enacted in 1900, is binding today by reason of the tacit assent of the people of Australia to its continued operation. Few, if any, constitutional lawyers now accept Thomas Jefferson's claim that a Constitution enacted by one generation cannot bind subsequent generations. Jefferson first put forward this claim in a letter to James Madison which was written in Paris in September 1789. The claim was based on Jefferson's famous aphorism "that the earth belongs in usufruct to the living". Jefferson wrote[44]:

> "The question Whether one generation of men has a right to bind another, seems never to have been started [stated?] either on this or our side of the water. Yet it is a question of such consequences as not only to merit decision, but place also, among the fundamental principles of every government. The course of reflection in which we are immersed here on the elementary principles of society has presented this question to my

mind; and that no such obligation can be so transmitted I think very capable of proof.

I set out on this ground, which I suppose to be self evident, '*that the earth belongs in usufruct to the living*': that the dead have neither powers nor rights over it." (emphasis in original)

END QUOTE

.

Re ***Wakim; Ex parte McNally; Re Wakim; Ex parte Darvall; Re Brown; Ex parte Amann; Spi*** [1999] HCA 27 (17 June 1999)

QUOTE

Re Brown & Ors; Ex Parte Amann & Anor

1. So far as Mr Amann is concerned, I agree with Gummow and Hayne JJ that there is no basis upon which this Court can properly refuse to issue a writ of prohibition. I am unable to agree, however, that the Court should refuse prohibition to Mr Gould either on discretionary grounds or by reason of *res judicata* or issue estoppel. Those doctrines are common law doctrines. As this Court made plain in *Lange v Australian Broadcasting Corporation*[98], the common law cannot be at odds with the Constitution and must conform with it. Notwithstanding our decision in *Gould v Brown*[99], which concerned Mr Gould, the Court is now, by a substantial majority, of the opinion that the *Corporations Act 1989* and the *Corporations (New South Wales) Act 1990* cannot constitutionally invest State judicial power in the Federal Court of Australia. The orders made in *Gould v Brown* have no constitutional effect. For constitutional purposes, they are a nullity. No doctrine of *res judicata* or issue estoppel can prevail against the Constitution. Mr Gould is entitled to disregard the orders made in *Gould v Brown*. No doubt, as Latham CJ said of invalid legislation[100], "he will feel safer if he has a decision of a court in his favour". That is because those relying on the earlier decision may seek to enforce it against Mr Gould.

2. Where a litigant has unsuccessfully challenged a legislative provision on constitutional grounds and a later decision reverses the earlier holding, the Court has the discretion whether to extend time to allow the litigant once again to challenge the legislation. Ordinarily in those circumstances, the discretion should be exercised in favour of the citizen. Cases may arise where it is unfair to the defendant to allow a fresh challenge to occur having regard to the lapse of time and a change of circumstances on the part of the defendant. But such matters are not decisive in the present case. Furthermore, the liberty of Mr Gould is involved. And it would be incongruous for the Court to quash orders against Mr Amann but not against his fellow director, Mr Gould.

END QUOTE

.

Again;

Re ***Wakim; Ex parte McNally; Re Wakim; Ex parte Darvall; Re Brown; Ex parte Amann; Spi*** [1999] HCA 27 (17 June 1999)

QUOTE

No doctrine of *res judicata* or issue estoppel can prevail against the Constitution. Mr Gould is entitled to disregard the orders made in *Gould v Brown*. No doubt, as Latham CJ said of invalid legislation[100], "he will feel safer if he has a decision of a court in his favour". That is because those relying on the earlier decision may seek to enforce it against Mr Gould.

END QUOTE

.

As such, the Court itself held that one can disregard unconstitutional court orders, albeit it would be better if there was a judicial decision in favour of the person. "That is because those relying on the earlier decision may seek to enforce it against Mr Gould."

.

Al-Kateb v Godwin [2004] HCA 37 (6 August 2004)

QUOTE

> *169* *The evolution of constitutional law*: A majority of this Court may not yet have accepted the interpretive principle that I favour. However, in 1904, a majority did not accept the principle later upheld in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd*[210] as a fundamental interpretive principle of the Constitution. It has been applied ever since. In 1921, a majority of this Court did not accept the interpretation of the structure of the Constitution (and of the requirements of Ch III) adopted in 1956 in *R v Kirby; Ex parte Boilermakers' Society of Australia*[211]. In *Gould v Brown*[212] a majority could not be found to strike down part of the State cross-vesting legislation. Following changes to the membership of the Court, a majority was assembled little more than one year later in *Re Wakim; Ex parte McNally*[213]. There are many similar cases.
>
> *170* The understanding of the Constitution in this Court is constantly evolving[214]. The interpretive principle that I have expressed is but another step in the process of evolution.

END QUOTE

.

I do not for a moment agree with the assertion "The Tax Office is obliged to apply the laws passed by the Parliament on the basis that they are constitutional valid."

.

This is the same kind of nonsense for a soldier to commit murder because of being instructed to do so! And this the Neurenberg trials made clear is unacceptable.

.

If the legislation were to dictate that the Tax Commissioner may burn down a property if he deems a taxpayer failed to pay assessed tax would you then comply with this kind of provision?

.

Ex Parte Lovell; Re Buckley (1938) 38 S.R. N.S.W. 155 at 158; 55 W.N. 63 Jordan C.J.

QUOTE

> "This court however must take the act as it finds it, and cannot do violence to its language in order to bring within its scope, cases, which although within its mischief are not within its words."

END QUOTE

. .

Woolworths v Crotty (1942) 66 CLR 603 at 618 (per Latham CJ)

QUOTE

> "The act should be construed according to its intention of the legislature. Where the legislature has stated the mischief for which the common law did not provide, consideration of the nature and extent of that mischief is relevant to the interpretation of the act."

END QUOTE

.

While I noted that in the ***O'Meara*** decision it was claimed that the GST applies to "**supply**" but this cannot be deemed correct on constitutional basis as the Framers of the Constitution made this very clear. It is not for the Court to try to bring within the scope of constitutional powers something that was specifically not permitted by the Framers of the Constitution!

.

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. BARTON**.-

Of course it will be argued that this Constitution will have been made by the Parliament of the United Kingdom. That will be true in one sense, but not true in effect, because the provisions of this Constitution, the principles which it embodies, and the details of enactment by which those principles are enforced, will all have been the work of Australians.

END QUOTE

.

HANSARD *31-1-1898* Constitution Convention Debates

QUOTE **Mr. SOLOMON**.-

We shall not only look to the Federal Judiciary for the protection of our interests, but also for the just interpretation of the Constitution:

END QUOTE

.

HANSARD *8-2-1898* Constitution Convention Debates

QUOTE

Mr. HIGGINS.-I did not say that it took place under this clause, and the honorable member is quite right in saying that it took place under the next clause; **but I am trying to point out that laws would be valid if they had one motive, while they would be invalid if they had another motive.**

END QUOTE

.

HANSARD *17-2-1898* Constitution Convention Debates

QUOTE **Mr. OCONNOR**.-

We must remember that in any legislation of the Commonwealth we are dealing with the Constitution. Our own Parliaments do as they think fit almost within any limits. **In this case the Constitution will be above Parliament, and Parliament will have to conform to it.**

END QUOTE

.

HANSARD *1-3-1898* Constitution Convention Debates

QUOTE **Mr. GORDON**.-

The court may say-"**It is a good law, but as it technically infringes on the Constitution we will have to wipe it out.**"

END QUOTE

.

The following applies as much to Federal laws of the Commonwealth of Australia as it does to federal laws in the USA;

http://familyguardian.tax-tactics.com/Subjects/LawAndGovt/ChallJurisdiction/AuthoritiesArticle/AuthOnJurisdiction.htm

QUOTE

- The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid; one must prevail. This is succinctly stated as follows:

  The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. . .

A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it.

END QUOTE

Sixteenth American Jurisprudence
Second Edition, 1998 version, Section 203 (formerly Section 256)

.

Quick & Garran's "***Annotated Constitution of the Commonwealth of Australia***" more accurately and more meaningfully says that;

QUOTE

"A law in excess of the authority conferred by the Constitution is no law; it is wholly void and inoperative; it confers no rights, it imposes no duties; it affords no protection.".

END QUOTE

.

Hansard *1-3-1898* Constitution Convention Debates

QUOTE **Mr. GORDON**.-

Once a law is passed anybody can say that it is being improperly administered, and it leaves open the whole judicial power once the question of *ultra vires* is raised.

END QUOTE

.

Again;

QUOTE

and it leaves open the whole judicial power once the question of *ultra vires* is raised

END QUOTE

.

Hansard *1-3-1898* Constitution Convention Debates

QUOTE

Mr. SYMON.-**It is not a law if it is *ultra vires.***

Mr. GORDON.-**It would be law by acquiescence. It would remain a law until it was attacked.** It might injure a few individuals, but that might be to the benefit of the whole. Or if it were not, the party whose area of power was infringed on would attack if.

END QUOTE

Again;

QUOTE

It would remain a law until it was attacked.

END QUOTE

.

Clearly, once I objected to the constitutional validity of the proclamation, writ(s), election, etc then from that moment it was and remained **ULTRA VIRES**.

.

What seems to misunderstood is that lawyers tend to think that unless the High Court of Australia declares a legislation to be ULTRA VIRES it is legally enforceable.
The truth is that any legislation that is subjected to a claim of being **ULTRA VIRES** is so and remains to be so unless the Courts declare it to be **INTRA VIRES**.

.

And, in that case with constitutional issues, one hardly can consider ill-conceived judgments that failed to appropriately consider what the intentions were of the Framers of the Constitution!

.

Many quotations I use may never ever having been previously been considered by any Court because unlikely did any judge spend years to research so extensively certain constitutional issues.

.

I may state, that in 1994 I then challenged the application of the purported ***Cross Vesting Act*** but was defeated by Dawson J in the High Court of Australia being that in 1999 in the Wakim case the Court finally then held it was unconstitutional. As such, I am well aware that the Court make one ruling one day and a contradictive ruling later. It all depends on who are the judges and if they consider matters appropriately and/or if there is additional material that may expose the real intentions of the Framers of the Constitution.

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I noticed that the 29 February 2008 correspondence stated "However it is not the 'private final consumer' or end user of the goods and services who is legally obligated to account to the TA Office for GST. That burden is imposed on those businesses making 'taxable supplies' which are registered with the Tax Office for GST. The question then arises when is a business a business? Also, is an individual selling goods in a garage sale conducting a business. If a business gives away something for free, which ordinary has GST applied then is the business owner still required to pay GST on the items that were given away for free? For example, if someone produces records and then gives away free copies, then even so the receiver does not pay for it they nevertheless are provided with a "supply" of goods and services if one is to consider the argument in O'Meara!

.

Is then the "**Pro bono**" (***Pro bono publico)*** services provided (for the public good) subject to GST?

After all the service is being provided as a "supply". The question then is that if the "supply" of service is provided for free, but after the party assisted has won the case and the Court then award the person who provided the "pro bono" service certain compensation for cost, then the compensation is not because of the service provided as they were offered "pro bono". Hence, the compensation made was only because of a court order and not a right for services "supplied".

.

Over the decades at times lawyers of an opponent party requested me to assist an unrepresented party in a court hearing then going on, or the magistrate or judge would request me to assist an unrepresented litigant at the bar table. This was always by me "pro bono" but nevertheless a "supply" of service was rendered in that I assisted a person in their litigation, even so it was free of charge. You see, this is the problem when one seek to tax the "supply" rather then the sale of services or the sale of goods, the definition of "supply" simply has a total different meaning then the sale of goods or services for financial rewards.

.

In my view it would be sheer and utter nonsense to claim that the "supply" of services is conditional to a payment being made, as then the issue of payment has to be defined as to what kind of payment. Some people exchange "supply" services, without any monies changing hands. Some people, such as grand parents look after their grand children without charge and then their children may provide free accommodation for the grandparent to be able to look at their residence after the children. Both are providing, so to say, a "supply" of service.

.

What became clear to me was that the O'Meara case was not decided as to what the framers of the Constitution intended but what the judge fancied to rely upon was occurring overseas and some judgments made by other judges. Now, to me it seems to have been more appropriate to deal with matters as to the intentions of the framers of the Constitution!

.

When the 29 February 2008 correspondence refers to "'private final consumer' or end user of goods and service" then this also requires to be asked how does a business know if the purchaser is a to "'private final consumer' or end user of goods and service" or is in fact merely using the goods/services to "supply" goods or services to another person?

.

For example, a person who purchase blank CD's for purpose of recording to be "supplied" to another person clearly then is not the end user, yet still ends up having to pay GST and then may have to charge GST over the whole services and by this the GST being paid is by far in excess of what the legislation may call for.

.

Another matter is that where I purchase a item (power point) in a store and I am charged GST and so paid this then what happen when the item is used by an electrician who installs it. Is he having to charge 10% over the item I provided but he provide the service for by installing it? I found that by purchasing the items myself it was a lot cheaper then having the electrician purchasing it as he charges for the GST a lot more.

.

Likewise, where the 19 February 2008 correspondence indicates that on a Sunday market not likely there is a large turnover to make the cut off point. Well, some stall holders may be making perhaps a thousand dollars or more an hour! Some several thousand dollars an hour. Now, no GST receipts are provided and so no records either of any sales made. Where I am not the end user how then can I claim back any GST charged but not shown on any receipt? Neither knowing if any GST charges is being paid to the ATO?

.

As I indicated previously we have de facto tax collectors who are untrained applying GST and customers (even if not being end users) have generally no perception as to what GST is being charged or not and if the GST charged actually does make it to the ATO and so into the Consolidated Revenue.

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Neither do I accept that the Commonwealth of Australia has any constitutional powers to turn business owners to perform slave labour by being de fact tax collectors!

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Hansard *2-3-1898* Constitution Convention Debates

QUOTE

> **Mr. BARTON**.-**Yes; and here we have a totally different position, because the actual right which a person has as a British subject-the right of personal liberty and protection under the laws-is secured by being a citizen of the states. It must be recollected that the ordinary rights of liberty and protection by the laws are not among the subjects confided to the Commonwealth. The administration of [start page 1766] the laws regarding property and personal liberty is still left with the states.** We do not propose to interfere with them in this Constitution. We leave that amongst the reserved powers of the states, and, therefore, having done nothing to make insecure the rights of property and the rights of liberty which at present exist in the states, and having also said that the political rights exercisable in the states are to be exercisable also in the Commonwealth in the election of representatives, we have done all that is necessary. It is better to rest there than to plunge ourselves into what may be a sea of difficulties. We do not know to what extent a power like this may be exercised, and we should pause before we take any such leap in the dark.

END QUOTE

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As a matter of fact the Framers of the Constitution made clear that "liberty" was not one of the constitutional powers the Commonwealth could deal with. Hence any "accountability" to the tax Office to pay GST may be a form of slavery, as they have to collect it where possible from the end user as it is not a GST that applies to them personally, as otherwise "pro bono" supply of service would also be GST applicable.

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My wife and myself had this incident where I happen to give a pauper (asking him if it was alright to do so) a few dollars. Thereafter, my wife held I better go back and give some more. So, I gave the man another $50.00. No services was provided for this. I wonder if this now can be argued to be subject to GST? For the record, months later I was taking out some of my children when a well dressed man approached me asking if I wanted the money back. I declined. He explained that he was the pauper and that having given him the money changed his life dramatically as he was not only able to pay for a nights accommodation but by this happened to get a job and this changed his life. My response was; "Assist others as I assisted you". This has been my motto for decades. You see, this whole stupid issue about "supply" is utter and sheer nonsense, because if handing over moneys is also a "supply of service" then the banks will have to charge GST whenever you get paid out moneys, as you do not get your own money back but may get the equivalent to what you have paid in minus what they rob in charges, etc.

Now, the problem then is if you charge a person for any bank fees incurred to assist that person then this is not a service I would have provided but rather being, so to say, seeking compensation for the value of money I was robbed by the bank. Hardly a service provided and so why then should GST be applied to the end user?

Then where is the difference also if a person is a PAYE wage earner or is a self-employed person? Both are providing a "supply" of service. Both can provide identical service but the difference being one is full time employed as a wage earner and the other may be full time employed as a self-employed person!

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If a greengrocer gives me or anyone else, such as an apple to eat for the taste then is this a "supply" that is subject to GST or not?

Now, if the greengrocer provides the apple under the condition that if I like the taste then I am to pay one dollar for the apple, is that then a "supply" or in fact the "supply" is not relevant but the reality is the "sale" of the apple, if the is a financial reward or otherwise in return? If for example, the green grocer gives me a kilo of apples, free of charge, so to say, because I happen to have fixed his computer for no charge (for free) then is the "supply" of service to fix the computer, without intend for any kind of reward, never the less a "supply" of goods under the GST or is it not taxable by GST, regardless that the greengrocer unexpectedly gives me one kilo of apples as his way to thank me?.

We then have the problem that some shopping trolleys only can be used if one insert a coin (a dollar or two dollars mostly) and then the chain is released. Now, when I return the trolley to a certain holding area I can retrieve the trolley. The question then is was this a "service" provided by a company that I can use their trolley, regardless that I may not even purchase anything in their particular store, taxable under GST or not. If then children go around collecting trolleys because they want to make some pocket money, and then in the process collect the coins is this then a "supply" of service by them even so the person who paid the coin into the slot has no contractual arrangement by merely leaving the trolley where his/her car was parked?

Can it be argued that the store who provide the "supply" of goods" (the trolley) being for payment of one dollar or two dollars and this is only refundable if the trolley is returned to a certain location therefore has provided a "supply" of service that is taxable under the GST, this even so the store itself may never collect the money?

Indeed, we then have that some shops requires the payment of a dollar coin or more to have a trolley released from a holding bay, such as at airports and certain shopping centre stores, and one can only collect the moneys back if one return the trolley or for that matter any other trolley

to that store, as then a machine automatically refunds the money regardless if it is the same person who paid for the release of the trolley or someone else. And at times, don't they always do one may ask, the darn machine refuses to give a refund and then one has neither the trolley or the monies back. It could not be argued that those airport machines collecting all those monies would make less then $75.000.00 a year and yet no GST receipts is provided. Likewise, when one goes to Jeff sheds, a Melbourne exhibition area, one can end up paying, say, $20.00 for parking and yet not receiving any receipt in return. Businesses who display their wares there or those who attend for business purposes as such are deprived of any GST accreditation because the ATO failed to ensure a proper system is in place.

What seems to be obvious is that the principle governing issue is not at all the "supply" of "goods" and "services" but rather it is narrowed down to the "sale" of "goods" and "services"

If a person is given a "present" one could hardly argue that this is subject to a tax called GST but if the item was given as some alternative reward instead of a financial reward for providing services or goods to the giver then it may be deemed there was a sale by barting (exchange of goods/services for financial gain irrespective if monies does or does not exchange hands, so to say).

Therefore, if grandma looks after the grandchildren while their parents are out to work but she is not being paid for this "supply" of caring for the grandchildren even so she may benefit otherwise such as having free coffee, tea, scones, etc then this would not be regarded as a financial transaction that attracts GST. However, if grandma is providing the same services and still getting the free cup of tea and scones but now is being paid an hourly rate to look after the grandchildren then GST may be applicable. Not because the "supply" of service is different but because there is a "financial gain" for the "supply" of service.

Therefore it is not the "supply" that is critical to it attracting GST even so the Parliamentarians and the Courts may seek to device some backdoor approach to try to make out that the word "supply" is the critical issue, but rather the real issue is if there is a "direct or indirect" financial exchange" for "goods or services" rendered!

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Grandma is still eating her scones and drinking her cup of tea but because of having to care for her grandchildren she had to travel at considerable cost to get to the residence of the grandchildren. Now she is being "refunded" the cost of travelling. The question then is if the GST paid onto the "services" provided to her by the public transport companies is now GST credits for the parents of the grandchildren, as while they were not the "end consumers" they ended up in the end paying for it, or is it grandma who is entitled to the GST credits? Or is the GST credits applicable to grandma only if she is being paid for caring for the grandchildren (as such a financial transaction) but not if she is not paid for caring for the grandchildren?

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We now have that grandma herself is working in a job and so her daughter ask if she can take time of work too look after the grandchildren because the daughter has to go away for a trip and cannot take the children with her. She promise the grandmother that she will compensate her for any loos of income. So, the daughter goes away for a few days and grandma still on the cup of tea and the scones, looked after the children. The daughter returns and gives her mother cash being the equivalent of what the grandmother otherwise would have received after tax from ordinary performing her work. Grandma is still out of pocket, albeit that is ignored, because of working less hours it affects her long service leave entitlements, her superannuation contribution, etc. As such grandma may have been enjoying the free cups of tea and scones but she suffered in the end financially.

But, if now GST is to be applied to the "supply" of the service to care for the grandchildren then poor grandma rather then to drink her cup of tea and the scones may have rather done better to sell them to passer-by's, albeit then attracting GST if she made the "scones" and as she made the cup of tea she would have to pay for this GST also. Poor grandma who grew up in a world

without computers somehow now is obligated to pay GST to the ATO but no one told her to do so.

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Ok, I accept that ignorance is no excuse and if grandma goes out on a limb to sell something that attracts GST then she simply has to cop the responsibilities. Likewise so the ATO has no excuse that if it is appointed to administrate taxation then it must be aware what is constitutionally applicable and not pursue a person for taxes that are unconstitutional. Ignorance is no excuse.

.

What we find however, in particular with Community Service Departments is that when it comes to "wielding power" then anyone in the department will claim the right to make decisions because they are employed by that Department, however, when something goes wrong with a child, then everyone is seeking to excuse responsibility as they merely are employed and not being the final decision maker as they do no more but act for the Government. That is why children removed from their parents are ending up in prostitution on the streets because the employees of the department are only about "wielding powers" against the parents but not that of being "responsible" for having "wielded that power".

.

It seems to me the ATO likewise seem to have employees who are all about enforcing their "power" but when it comes to "responsibility" then they claim they are bound by "legislation" as the murderous criminals did when they were held accountable for mass murder that they were merely "following orders". The comparison is that those seeking to "wield" powers in name always will make their excuses to avoid "responsibilities".

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However, it is not that simple, as any ATO officer who seeks to enforce legislation has an obligation to ensure that this is done appropriately and there is no excuse to claim that because it is legislation it therefore is lawful.

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To give an example. John Howard as purported Prime Minister authorised the armed murderous invasion into the sovereign country Iraq. Constitutionally only a Governor-General has such a power and only by first publishing in the Gazette a "**DECLARATION OF WAR**". Section 24AA of the ***Crimes Act*** (Cth) specifically makes it an offence to act against a friendly nation.

On 19 March 2003, the very day of the armed murderous invasion, the High Court of Australia for the third time refused to allow my application for mandamus/prohibition to proceed which was against the armed murderous invasion upon constitutional grounds. It simply refused to allow the applications to be accepted for filing despite that the framers of the Constitution made clear the Court must hear such application within Section 75(v). As a matter of fact the seven judges of the Court already had fraternized with the Governor-General, a defendant, and as such their ruling was invalid for this also.

.

Now, while the Parliament has provided for legislation that the federal executive can authorise an armed conflict, the reality is that this legislation is ULTRA VIRES because there is no constitutional powers for this.

Hence, every Member of parliament and every soldier who supported the armed invasion and even the Governor-General ultimately can be held accountable before the Courts for defiance of constitutional provisions and principles.

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Contrary to common belief it does not matter if the Queen in the UK allows the Prime Minister to go to war without needing Her Majesty's consent, this as the powers of the British Minister are unlimited within his/her portfolio. However, within the Commonwealth of Australia the Minister is limited to what is for the "peace, order and good government" and while the High Court of Australia has purported otherwise, something you get when uneducated lawyers in constitutional matters are appointed to the bench where even a judge refused to hand down a decision claiming

not to know the constitutional issue in the case, but it does not mean that the judges decisions then has any judicial value, as the judges are bound to interpret the constitution as to the intentions of the Framers of the Constitution and not how they fancy for themselves the Constitution ought to be applied.

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In the ***O'Meara*** case the judge concerned was not particularly interested, as it appeared to me, to consult the Hansard records of the Constitution Convention Debates as to elicit for himself what actually Section 53 and 55 are standing for. The same with the High Court of Australia in its decision in the following examples

Chapter 007A The Great Deception

This was previous set out in my 071026 correspondence, and I refer to this!

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It must be clear that the judges of the High Court of Australia are making not just utter ridiculous statements but highly dangerous claims that somehow the Parliament could legislate to have every blue eyed baby killed where this utter nonsense may one day incite some twisted minded power user to pursue something like this, as we already had with the unconstitutional murderous invasion into Iraq.

.

Judges are always eager to quote Authorities, as if this get them over the problem rather then to do some real research themselves and show they are in their own right competent to adjudicate. Hence, we find judge referring to past decisions as if they are the rule of law. The problem we face is that for example in the ***O'Meara*** case the judge referred to.

QUOTE

State Chamber of Commerce and Industry & Ors v *Commonwealth of Australia* /atolaw/view.htm?locid='JUD/87ATC4745'&PiT=9999123123595887 ATC 4745 at 4748-4749; (1987) 163 CLR 329 at 342-343. Again, the objective is to prevent tacking or packaging of legislative measures.

4. In *Harding* v *FC of T* (1917) 23 CLR 119 Isaacs J described s 55 of the Constitution in the following terms (at 134):

> ``The prohibition... was not inserted as a trap for the Commonwealth Legislature, and through them for the Nation. It was intended as a genuine protection to the people of the Commonwealth, by guarding the Senate from compulsive acquiescence in one tax by the moral necessity of passing another distinct tax. To secure that end the test is unity of subject matter of taxation in each measure, so that each proposed tax may be fairly considered on its merits."

END QUOTE

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Now let's have a look at the 1917 ruling without actually reading it. Yes, this can be done.

.

When the Framers of the Constitution framed the Constitution they made clear that the provisions of the Constitution had to be interpreted by what they had stated during the Debates, the principles embedded, etc. As such they made also clear that the Courts would have to consult the Hansard to be able to determine what their intentions were in framing the Constitution.

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Now, in about 1904 after the High Court of Australia was created there were judges sitting at the bench of the High Court of Australia who basically, so to say, didn't want to be chained to the Hansard as by now they had the opportunity to express constitutional powers they desired all along but were defeated during the Constitution Conventions and so ruled that the hansard could not be used to interpret the Constitution. Obviously this was itself unconstitutional but you always get a treasonous person in the midst of judges who is not interested about "JUSTICE" but

about “WIELDING POWER”. Others then will follow blindly. What we therefore had was that in 1904 the High Court of Australia banned the usage of the Hansard and as such this remained to be so until about 1992. By then all decisions handed down regarding constitutional matters had omitted appropriate consideration for what really the Constitution stands for. No wonder the true meaning and application of “citizenship” was therefore contaminated with a **LEGAL FICTION** of “nationality”!

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The truth is that the Framers of the Constitution made clear that a tax applicable to one item cannot be in the same (final) tax legislation containing taxation on another item. You can call it GST, supply tax or whatever but it still offend the intentions of the Framers as it is a tax that applies to different items. If the “supply” was the issue then the Framers of the Constitution didn’t have to ponder about the different items at all. The fact that they did underlines that whatever alternative name it may be given in the end it is a tax on more then one item and that is the end issue. As like the word “citizenship” it is used now in a common language as portraying to be a nationality but only because the Commonwealth did so by robbing unconstitutionally the States of its legislative powers. Now, as like the “citizenship” issue it is and remains unconstitutional.

.

Sure there was a protection that the Senate could not be bullied into having to pass unconstitutional legislation but also that where the senate was not aware of any conflict then the Constitution itself made it prohibitive to have any taxation applying to more then one item.

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The Framers of the Constitution were therefore not only concerned to shield the process in the Senate for it not being forced to approve Taxation Bills that it held to be unconstitutional but also that even if the senate passed a Tax Bill not realising there was a constitutional conflict then the legislation would still be ULTRA VIRES and of no legal force because it related to more then one item.

.

Because the intentions of the framers do not apply to other countries in regard of which the judge in the O’Meara case refers to, it is therefore totally absurd for the judge to refer to whatever applies or may not apply in any other legislative environment. If anything it underlines the judge lacked competence to appropriately deal with the GST issue.

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It is absurd to argue that somehow a High Court decision is required to nullify a legislation as the line of argument of this in itself is an absurdity.

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Legislation is unconstitutional not because it is so declared by the High Court of Australia but because it was unconstitutional in the first place. The High Court of Australia has no constitutional powers to declare any legislation or part thereof unconstitutional if in fact it is constitutionally within the Parliaments power to legislate. What the High Court of Australia therefore only can do is to confirm or to deny the constitutional validity of certain legislation objected against. And, as the composition of the bench changes it may changes its views about this also.

.

This is also why it opposed my applications, as it also relied upon that “citizenship” was not a constitutional power for the Commonwealth and the judges were well aware that the validity of their own appointments were in question. As such, railroading my applications was the alternative power wielding exercise. The fact that as result hundreds of innocent people were slaughtered by the masses by an unconstitutional armed murderous invasion seemed not to be the least of their concerns.

.

I could devise a test on constitutional issues and have absolutely no doubt that each and every judge of the High Court of Australia would fail the test, this because of the nonsense I come across in the judgments, and **WorkChoices** 14-11-2006 decision is one of them makes it clear they lack a proper understanding and comprehension of what is constitutionally applicable. The ***Sure v Hill*** is another example. The moment I commenced to read the 14-11-2006 judgment about WorkChoice legislation it triggered in me that it was sheer and utter nonsense who the Court presented its judgment..

What the Court did was to not rely specifically on all relevant details/information contained in the Hansard records but to single out some statements as to try to make it (the legislation) constitutional viable.

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A clear example is that for example the judges omitted some of the following relevant details in their reason of judgments;

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HANSARD *27-1-1898* Constitution Convention Debates

QUOTE **Mr. SYMON**.-

> The relations between the parties are determined by the contract in the place where it occurs.

END QUOTE

And

HANSARD *27-1-1898* Constitution Convention Debates

QUOTE

> **Sir EDWARD BRADDON** (Tasmania).-
>
> **We have heard to-day something about the fixing of a rate of wage by the federal authority. That would be an absolute impossibility in the different states.**

END QUOTE

And

HANSARD *27-1-1898* Constitution Convention Debates

QUOTE

> **Mr. BARTON: If they arise in a particular State they must be determined by the laws of the place where the contract was made.**

END QUOTE

And

HANSARD *27-1-1898* Constitution Convention Debates

QUOTE

> **Mr. BARTON**.-**We do not propose to hand over contracts and civil rights to the Federation, and they are intimately allied to this question.**

END QUOTE

And

HANSARD *27-1-1898* Constitution Convention Debates

QUOTE

> **Sir JOHN DOWNER**.-
>
> **The people of the various states make their own contracts amongst themselves, and if in course of their contractual relations disagreements arise, and the state chooses to legislate in respect of the subject-matter of them, it can do so.**

END QUOTE

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Now this was on the very same day the judges referred to other parts of the Hansard records.

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As such, there was no balanced presentation of the intention of the Framers of the Constitution but a one side view to pretend that the legislation was constitutionally valid.

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Because I researched the Hansard records extensively, and as such fell as if I was part of the framers, it gives me the added benefit not just being able to read what is written but to have the feeling that some High Court of Australia judgment is wrong in argument and then I search back for the right Hansard debates to find the part that support what I held was wrongly argued.

A statement made by one of the delegates may have no meaning whatsoever to an average reader who is not aware what the Delegate is eluding to. Hence, having a comprehensive knowledge of what transpired in the debates you can then discover matters otherwise unbeknown to the average reader.

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To give an example.

The 1967 con-job referendum was purportedly to give Aboriginals equal rights in voting, etc. What was apparently never understood was that the framers of the Constitution held that for Commonwealth purposes if a Colony (now State) was provided with franchise then Section 41 of the Constitution guaranteed the Aboriginal franchise in federal elections. Indeed, albeit perhaps a few hundred, in the first federal election Aboriginals who had State franchise did vote in the first federal election. What however occurred was that unconstitutionally the White Only legislation was introduced to rob Aboriginals of their voting rights. Now, instead of this being argued to be unconstitutional the masses fought to get Subsection 51(xxvi) amended. No one seemed to be aware that Section 51(xxvi) was for racial discrimination against an "inferior" "**coloured race**"! Indeed, the ***Racial Discrimination Act 1975*** (Cth) is unconstitutional as it does not fit in the ambit of legislative powers of Subsection 51(xxvi)! Likewise the ***Aboriginal and Torres Strait Islanders Act*** is unconstitutional as it deals with more then one race!

Neither what electors were made aware of was that the moment any legislation is enacted in regard of a particular "race" within Subsection 51(xxvi) then all people of that race looses their citizenship (including franchise)!

.

Another example is the absurd 1999 REPUBLIC referendum. There is no Section 128 of the (federal) Constitution referendum powers to turn the Commonwealth of Australia into some REPUBLIC.

Dang, Ex parte - Re MIMA **M118/2001 (18 April 2002)**

QUOTE

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Melbourne No M25 of 2001

TRANSCRIPT OF PROCEEDINGS
AT CANBERRA ON THURSDAY, 18 APRIL 2002, AT 10.17 AM

> **KIRBY J:** Your clients were not British subjects.
> **MR MAXWELL:** That is so. If I might move immediately to the question of what *Patterson* decided. In our respectful submission, what *Patterson* decided was this, that allegiance, not citizenship, is the touchstone for determining alien status.
> **KIRBY J:** There is only one reference to citizenship in the Constitution, is there not, and that is the disqualification that was considered in *Sue v Hill*?
> **MR MAXWELL:** Yes, your Honour.
> **KIRBY J:** There is no other reference to the concept and, indeed, we did not have a Citizenship Act until quite late in the history of the Commonwealth.

END QUOTE

And

***Dang, Ex parte - Re MIMA* M118/2001 (18 April 2002)**

QUOTE

> **GUMMOW J:** How do notions of allegiance work with republican systems of government? As I understand it, the whole notion of citizenship dates back to the American and French Revolutions, where they had to replace notions of allegiance which were monarchical with something else and they devised the notion of citizenship. These gentlemen never owed allegiance to any sovereign, did they?

END QUOTE

And

***Dang, Ex parte - Re MIMA* M118/2001 (18 April 2002)**

QUOTE

> **MR MAXWELL:** But, your Honour, in our respectful submission, as a matter of principle this will not turn on whether a person came from a country which was a monarchy or a republic. The concept of allegiance - - -
>
> **GUMMOW J:** The point I am trying to make to you is that notions of allegiance come out of English medieval feudalism. That is where it comes from - monarchical feudalism.
>
> **MR MAXWELL:** With respect, we fully appreciate that. As your Honours in the lengthy joint judgment explained, the concept has developed very significantly since the original notion of personal loyalty to a lord. It became, and it was declared in the Court of Queen's Bench in the 1880s, as your Honours pointed out, that it changed from a personal obligation or an obligation to the sovereign in his or her personal capacity to an obligation to the sovereign in his or her political capacity. That is just one respect in which the discussion about allegiance in the 21st century is a different discussion from that which it would have been under more confined notions.
>
> **HAYNE J:** And it is pointed up by your proposition that each renounced allegiance to the country of his birth because the regime of the day would not protect him.
>
> **MR MAXWELL:** Exactly so.

END QUOTE

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The following is an extract of my successful **UNCHALLENGED** appeals where I raised constitutional matters considerably. The Court upheld the appeals without any reservation!

QUOTE 19-7-2006 ADDRESS TO THE COURT

Shaw v Minister for Immigration and Multicultural Affairs

HYPERLINK "http://www.austlii.edu.au/au/cases/cth/high_ct/2003/72.html" [2003] HCA 72

9 December 2003

B99/2002

QUOTE

> 11. However, contrary to the submissions for the applicant, the result of such a consideration of his position is his classification as an alien for the purposes of HYPERLINK "http://www.austlii.edu.au/au/legis/cth/num_act/c167/s51.html" s 51 (xix) of the Constitution. Much of the applicant's argument proceeded from the premise that, because the expression "British subject" could be applied to him, he was not an alien. That premise is flawed. **First, "British subject" is not a constitutional expression**; it is a statutory expression. Secondly, and more fundamentally, if "British subject" was being used as a synonym for "subject of the Queen", an expression which is found in the Constitution, that usage would assume that there was at the time of federation, and there remains today, a constitutional and political unity between the UK and Australia which 100 years of history denies.

END QUOTE

Hansard *2-3-1898* Constitutional Convention Debates

QUOTE

Mr. BARTON.- I did not say that. I say that our real status is as subjects, **and that we are alike subjects of the British Crown**.

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END QUOTE

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Hansard *1-4-1891* Constitution Convention Debates

QUOTE **Mr. MUNRO:**

. I am proud of being a citizen of the great British empire, and shall never fail to be proud of that position.

.END QUOTE

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Hansard *26-3-1891* Constitution Convention Debates

QUOTE **Mr. HOLDER:**

because I take it that the legal bonds which bind us to the mother-country, to the great British Empire,

END QUOTE

.

Hansard *1-4-1891* Constitution Convention Debates

QUOTE **Mr. BARTON:**

The association of the Queen **with the action of the commonwealth is distinct, and is firmly embedded in the whole bill.** If that is done, **there can be no association of the idea of republicanism with this bill.**

END QUOTE

.

Hansard *2-3-1898* Constitution Convention Debates

QUOTE

Mr. BARTON.-Yes; and here we have a totally different position, **because the actual right which a person has as a British subject-the right of personal liberty and protection under the laws-is secured by being a citizen of the States.** It must be recollected that the ordinary rights of liberty and protection by the laws **are not among the subjects confided to the Commonwealth**.

END QUOTE

.

Hansard *2-3-1898* Constitution Convention Debates

QUOTE Dr. QUICK.-

we were not in any way interfering with our position as subjects of the British Empire. It would be beyond the scope of the Constitution to do that. We might be citizens of a city, citizens of a colony, or citizens of a Commonwealth, but we would still be, subjects of the Queen.

END QUOTE

.

Hansard *3-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON**.-

We are subjects in our constitutional relation to the empire, not citizens. "Citizens" is an undefined term, and is not known to the Constitution. The word "subjects" expresses the relation between **citizens** of the empire and the Crown.

Sir GEORGE TURNER.-**Is a naturalized alien a subject?**

Mr. BARTON.-**He would be a citizen under the meaning of this clause**.

Sir GEORGE TURNER.-**Suppose you say "subject" without definition, would that include naturalized aliens?**

Mr. BARTON.-Yes. Dr. Quick's definition is: Persons resident in the Commonwealth, either natural-born or naturalized subjects of the Queen, and if they are subject to no disabilities imposed by the Parliament they shall be **citizens** of the Commonwealth. Why not use the word "subject," and avoid the necessity of this definition?

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Mr. OCONNOR.-**Exactly. It has two meanings, but we are only dealing now with the one meaning-the general meaning. Mr. Isaacs' reference shows the danger that might be incurred by using the word "citizen," because it might have the restrictive meaning the last decision imposes. All we mean now is a member of the community or of the nation, and the accurate description of a member of the community under our circumstances is a subject of the Queen resident within the Commonwealth."**

Mr. SYMON.-**A person for the time being under the law of the Commonwealth.**

Mr. OCONNOR.-**A person for the time being entitled to the benefits of the law of the Commonwealth.**

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Mr. BARTON (New South Wales).-If it is a fact that citizens, as they are called, of each state are also **citizens** of the Commonwealth, there may be some little doubt as to whether this is not providing for practically the same thing.

Mr. WISE.-No, there may be territories that is what I want to provide for.

Mr. BARTON.-**In other portions of the Bill we use the words "parts of the Commonwealth" as including territories, so that the object of Mr. Wise would be met by using the words "citizens of every part of the Commonwealth" or "each part of the Commonwealth."**

And

END QUOTE

.

Hansard *3-3-1898* Constitution Convention Debates

QUOTE **Mr. BARTON**.-

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Mr. BARTON.-Yes. Dr. Quick's definition is: Persons resident in the Commonwealth, either natural-born or naturalized subjects of the Queen, and if they are subject to no

disabilities imposed by the Parliament they shall be **citizens** of the Commonwealth. Why not use the word "subject," and avoid the necessity of this definition?

Dr. QUICK.-This definition does not interfere with the term "subject" in its wider relation as a member of the empire or **subject of the Queen**.

Mr. BARTON.-No, but the definition of "citizen" as a natural-born or naturalized **subject of the Queen** is co-extensive with the ordinary definition of a subject or **citizen** in America. The moment be is under any disability imposed by the Parliament be loses his rights.

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Dr. QUICK.-**The regulation would have to specify the ground of disability.**

Mr. BARTON.-Yes; but my honorable friend says not under any disability imposed by the Parliament. Would not the difficulty be that if he were under any slight disability for regulative purposes, all his rights of **citizenship** under the Commonwealth would be lost?

Mr. KINGSTON.-**There might be a special disability on minors.**

Mr. BARTON.-**That might be one of the disabilities. Of course here the disabilities as to minors would not matter much**, but I would like to put this consideration to Dr. Quick, that if we use the term "subject," or a person subject to the laws, which is a wider term, we shall avoid the necessity for a definition of "citizen." **You might say a subject or resident being the subject of the Queen.**

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Mr. SYMON.-There is no man in Australia who is more profoundly versed in constitutional law than Mr. Isaacs, and he knows that every point and every question has been the subject of more or less debate and discussion, and will be until the end of time.

The words "subject," "person," and "citizen" can be made subjects of controversy at all times if occasion requires it. At the same time, it does not affect the principle that there should be a definition of "citizen," either in the form suggested by Dr. Quick or by Mr. Barton.

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Mr. ISAACS (Victoria).-I am afraid that the amendment is far too wide, unless we say that the disabilities imposed by Parliament may extend to birth and race. **This would, notwithstanding the rights conferred under clause 52, deprive Parliament of the power of excluding Chinese, Lascars, or Hindoos who happened to be British subjects.**

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Mr. GLYNN.-

I would like to mention, in connexion with what Mr. Isaacs said as to aliens, that this provision would not interfere in the slightest degree in the way of preventing aliens from coming in, because it is only when the aliens get inside the Commonwealth that this provision is to apply to them. The decision of the Privy Council in the case of *Ah Toy* v. *Musgrove* was that an alien had no right to land here, **but that decision does not affect his citizenship after he has landed.**

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Mr. WISE (New South Wales).-My mind has wavered very much during this debate. **I have come to the conclusion that my original suggestion was wrong**, that the best form of all in which the original amendment could be moved is [start page 1793] that in which it was proposed by Mr. Symon, and that then no definition such as is suggested by Dr. Quick will be really required, because, **if we allow each state to make its own standard of citizenship, we shall reserve all the rights of the states, and obviate all the difficulties contemplated by Mr. Trenwith, by retaining to each state the right to determine the qualification of its own citizens.** And then we will make a provision that is necessary as part of the Federal Constitution, that when a man has acquired **citizenship** in one state he shall be entitled to the right of **citizenship** in the other states.

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Dr. COCKBURN (South Australia).-**If the word "citizen" simply means resident or inhabitant, why should we go to all this trouble about it? If it means inhabitant, what is the use of saying the inhabitant of one state going to another state shall be an inhabitant of that other state? It seems to me that if you are going to use the word "citizen" in the sense of being equal to resident or inhabitant, and it is to have no other meaning such as has always been attached to it, we had better leave out the clause.**

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Mr. OCONNOR (New South Wales).-I would suggest that Mr. Symon should accept the amendment suggested by Mr. Barton, so that his clause shall read-

Every **subject of the Queen** resident in any state or part of the Commonwealth shall be entitled to all privileges and immunities of subjects resident in other states or parts of the Commonwealth.

I am altogether in favour of the principle of Mr. Symon's amendment; but the word "citizen" creates a difficulty. If, instead of the word "citizen," we use the words "Every **subject of the Queen** resident in a state," it really means the same thing. **The meaning to be given to the word "citizen" in Mr. Symon's amendment is not the narrow limited meaning of the citizen who can exercise the franchise, but it is the broad general meaning which the word has been held to have under the United States Constitution. It has been decided there that the word "citizen" has, [start page 1796] in a general and wide sense, this meaning:-**

In its broad sense the word is synonymous with subject and inhabitant, and is understood as conveying the idea of membership of the nation, and nothing more.

END QUOTE

And

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

Dr. COCKBURN.-But the present proposal if carried would raise an initial difficulty in framing special laws. **It might be urged that it was necessary to discriminate between residents who are subjects of the Queen and those who are not, and the amendment would introduce an element which would give rise to a great deal of trouble in the future.**

Mr. HIGGINS.-**You want to keep both classes out.**

Dr. COCKBURN.-**We desire always to deal with Asiatics on broad lines, whether they are subjects of the Queen or not; and in South Australia, and, I believe, other colonies, those lines of distinction are obliterated. In South Australia we make no difference between Chinese from Hong Kong and those from other parts of China. That, I think, is the most effective way of dealing with this matter.**

END QUOTE

Again;

Hansard *3-3-1898* Constitution Convention Debates

QUOTE

We are subjects in our constitutional relation to the empire, not citizens. "Citizens" is an undefined term, and is not known to the Constitution. The word "subjects" expresses the relation between citizens of the empire and the Crown.

END QUOTE

.

Clearly, the Framers made clear it is not the relationship between a subject and some Queen, but more significantly the relationship between the subjects as “citizens of the empire and the Crown.” One must therefore be a citizen of the empire to have a relationship with the Crown. If one is not a subject of the Crown residing as a citizen in the empire then no relationship exist. This, the High Court of Australia never addressed as such. It simply sought to bypass this kind of definition, being it unaware of it all together or not. But, the “Queen of Australia” is no Queen recognised by the British Crown, or can be Queen of the Empire. It is a fictitious name and title that can hold no water, so to say, to issue proclamation in that title, as to do so would create a fictitious appointment not worth the paper it is written upon.

.

To get a bit of an understanding about “internal affairs” and “external affairs” the following may be considered;

Hansard 8-4-1891 **Constitution Convention Debates**

QUOTE

Dr. COCKBURN: I should like to justify the vote that I shall have to give on this matter, because it will be rather dissonant with the votes I have been giving throughout the sittings of the Convention. I shall vote for the clause as it stands, and also for the amendment intended to be proposed by the hon. member, Mr. Gordon, because I take it to be essential to federation. It is the very definition of a federation that, as regards external affairs, the federation shall be one state, and only have one means of communication, and in regard to internal affairs the federation should be many states-

Mr. GORDON: These are not internal affairs!

Dr. COCKBURN: These are internal affairs, and it is one of the principles of federation that, in internal affairs, there should be complete autonomy. In local affairs, why do you want to go outside the state at all? For the alteration of the constitution of a state, why should you go outside the boundary of that state?

END QUOTE

.

Effectively, "external affairs" referred to in the constitution deals with nations/territories not within the Commonwealth of Australia and/or under the British parliament. The Delegates did refer to the "**Home Office**" when referring to contact with the British government, as it is the "home" of the Commonwealth of Australia, which exist only because of the States (formally colonies) being granted Letters Patents to have their own limited self government under British law.

.

Hansard 22-4-1897 **Constitution Convention Debates**

QUOTE

Mr. BARTON: The hon. member who is in the chair will be able to inform you. He said:

I do not think there is in this Convention a stronger advocate of State rights and State interests than I am; but still I strongly support the clause as it stands, for it seems to me that one of the very fundamental ideas of a Federation is that, so far an all outside nations are concerned, the Federation shall be one nation, that we shall be Australia to the outside world, in which expression. **I include Great Britain**; that we shall speak, if not with one voice, at all events, through one channel of communication to the Imperial Government; that is, as it has been put, we shall not have seven voices expressing seven different opinions, but that **Her Majesty's Government in Great Britain shall communicate to Her Majestys Government in Australia** through one channel of communication only.

END QUOTE

Again;

Hansard 22-4-1897 **Constitution Convention Debates**

QUOTE

Her Majesty's Government in Great Britain shall communicate to Her Majestys Government in Australia

END QUOTE

.

It is clear that the Framers of the ***Constitution*** referred to the one and only person and any purported title of a legal fiction of "Queen of Australia" cannot amend or purport to amend the ***Constitution***, or the application of the **Constitution**.

.

Hansard *16-3-1898* Constitution Convention Debates

QUOTE

Mr. BARTON (New South Wales).-**The Drafting Committee could not interpret the intentions of the Convention, excepting in so far as they found them expressed in the Bill, in the amendments, or in the debates. We have endeavoured to give effect simply to what the Convention have said and done.**

END QUOTE

And

Hansard *16-3-1898* Constitution Convention Debates

QUOTE

Sir RICHARD BAKER (South Australia).-

When we consider how vast the importance is that every word of the Constitution should be correct, that every clause should fit into every other clause; when we

consider the great amount of time, trouble, and expense it would take to make any alteration, and that, if we have not made our intentions clear, we shall undoubtedly have laid the foundation of lawsuits of a most extensive nature, which will harass the people of United Australia and create dissatisfaction with our work, it must be evident that too much care has not been exercised.

END QUOTE

.

Hansard 9-9-1897 **Constitution Convention Debates**

QUOTE

Mr. GLYNN (South Australia)[12.35]: I have not the Federal Council Bill before me; but I believe that that bill contained the words "sailing between the ports of the colonies." The bill was sent home with those words in it; but her Majesty's advisers at home deliberately changed the wording of the measure so as to give the Council wider jurisdiction. There was a limitation in the bill which does not appear in the act, and the Imperial authorities must have made this alteration for some specific purpose. They could not have accidentally inserted the words "port of clearance, or**." There is no danger of conflict between the laws of the commonwealth and the Imperial law. The moment a new act is passed in England which conflicts with any legislation passed by the commonwealth, that act will to the extent of the difference abrogate the legislation under the constitution of Australia. At the present time there is never any conflict. Our Marine Board and navigation acts are not in conflict with the English merchant shipping acts; but they give us jurisdiction, not to the 3 miles limit, but within Australian waters, as specifically defined in these acts, that is, between port and port. Without these acts we should not have this jurisdiction. As I understand the law, it was decided in the case of the Franconia that, the 3-mile limit only applied in connection with intercolonial disputes, that limit being arrived at in the first instance because it [start page 247] was then the range of a cannon shot; and that civil and criminal jurisdiction stopped at low-water mark. Originally there was no jurisdiction beyond the limits of mean low-water mark; but that jurisdiction has been extended by legislation, and the Imperial authorities deliberately changed words in the Federal Council Bill which would place a limitation upon the existing jurisdiction as defined by our local acts, so as to amplify it, and make it apply to any vessel leaving our ports for foreign parts, or coming from foreign parts to the colonies. They did this deliberately, and in view of the fact that there was no possibility of conflicting decisions being arrived at under the proposed constitution, we have no criminal jurisdiction at all, so that if a crime is committed on board a ship coming to Australia, the criminal will be tried according to the laws of Great Britain.**

The Hon. E. BARTON: We cannot give a sanction to a law without imposing some penalty or punishment!

Mr. GLYNN: The hon. and learned gentleman is quite right; but we have only power to impose such penalties as will operate as sanctions for the civil legislation under clause 52.

The Hon. E. BARTON: We cannot establish a new criminal offence!

Mr. GLYNN: No, unless it is part of a sanction to enforce the obligation of a civil law. So that if an offence is committed on board a ship coming to the commonwealth it will have to be dealt with according to the law of England, not according to the law of the commonwealth. Seeing that the English authorities deliberately changed the wording of the Federal Council Bill, although there is no possibility of the legislation

of the colonies clashing with Imperial legislation, because English legislation must abrogate colonial legislation to the extent of the difference between them, I think we should accept the words used by the Imperial advisers of her Majesty.

END QUOTE

.

The latter about "abrogating" colonial laws do not apply when it comes to the ***Commonwealth of Australia Constitution Act 1900*** (UK) in that this provides that amendments of the ***Constitution*** can only be made by a successful section 128 referendum. As such, it excludes powers of the Imperial government (British Parliament) to amend the ***Constitution***. However, State laws remain subject to Imperial laws and are abrogated where they are in conflict of Imperial laws.

.

Again;

Hansard 9-9-1897 **Constitution Convention Debates**

QUOTE

They did this deliberately, and in view of the fact that there was no possibility of conflicting decisions being arrived at under the proposed constitution, we have no criminal jurisdiction at all, so that if a crime is committed on board a ship coming to Australia, the criminal will be tried according to the laws of Great Britain.

END QUOTE

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The Statement;

Hansard 9-9-1897 **Constitution Convention Debates**

QUOTE

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END QUOTE

.

is not correct in that while normally the imperial government can make specific legislation to amend a constitutional enactment, in this case it has ousted itself of doing so by including the Section 128 provision.

.

Hansard 17-4-1898 **Constitution Convention Debates**

QUOTE **Mr. SYMON:**

There can be no doubt as to the position taken up by Mr. Carruthers, and that many of the rules of the common law and rules of international comity in other countries cannot be justly applied here.

END QUOTE

.

In the ***Shaw*** case the High Court of Australia stated;

QUOTE

42. Jason Shaw, the applicant, migrated to Australia with his parents in 1974. He was then two years of age and a citizen of the United Kingdom. Along with his parents, he was granted a permanent entry permit. Under reg 4 of the Migration Reform (Transitional Provisions) Regulations (Cth), after 1 September 1994 the permanent entry permit held by the applicant continued in effect as a transitional (permanent) visa that permitted the applicant to remain in Australia indefinitely. He has never left Australia since arriving in 1974. **However, he has never become an Australian citizen.**

END QUOTE

Again;

QUOTE

However, he has never become an Australian citizen.

END QUOTE

.

The judges simply seemed not to realize that they were talking about "citizenship" involving political rights and not at all being about nationality.

.

QUOTE **Mr. SYMON**.-

I am not going to put that in the power of any one, and if it is put in the power of the Federal Parliament, then I should feel that it was a very serious blot on the Constitution, and a very strong reason why it should not be accepted. It is not a lawyers' question**; it is a question of whether any one of British blood who is entitled to become a citizen of the Commonwealth is to run the risk-it may be a small risk-of having that taken away or diminished by the Federal Parliament!** When we declare-"Trust the Parliament," I am willing to do it in everything which concerns the working out of this Constitution, but I am not prepared to trust the Federal Parliament or anybody to take away that which is a leading inducement for joining the Union.

END QUOTE

.

Therefore, Mr Shaw was an "Australian citizen" the moment he entered the Commonwealth of Australia and began to reside in a State by obtaining State citizenship! He remained for all purposes a "**subject of the Queen**" and as the Commonwealth of Australia is a limited **POLITICAL UNION** and not a nation in its own rights one cannot have a nationality of being an Australian (as incorrectly referred to being Australian citizenship") as no such nation exist!
To hold that the Commonwealth of Australia is an independent "nation" would mean to claim that the States no longer exist as such. The federation then was a confederation!

.

For the extensive set out above, it is clear that **Jason Shaw** was an Australian citizen from the moment he came to reside in a State in the Commonwealth of Australia.

.

The High Court of Australia has only constitutional powers to interpret the meaning of the ***Constitution*** provisions by the intentions of the Framers and it has no constitutional powers to pursue to bring within the meaning of constitutional provisions that were never intended by the Framers to be so!

.

Ex Parte Lovell; Re Buckley (1938) 38 S.R. N.S.W. 155 at 158; 55 W.N. 63 Jordan C.J.

QUOTE

"This court however must take the act as it finds it, and cannot do violence to its language in order to bring within its scope, cases, which although within its mischief are not within its words."

END QUOTE

END QUOTE 19-7-2006 ADDRESS TO THE COURT

.

Again;

QUOTE

Mr. BARTON.-No, but the definition of "citizen" as a natural-born or naturalized **subject of the Queen** is co-extensive with the ordinary definition of a subject or **citizen** in America. **The moment be is under any disability imposed by the Parliament be loses his rights.**

END QUOTE

And

QUOTE

Dr. QUICK.-**The regulation would have to specify the ground of disability.**

Mr. BARTON.-Yes; but my honorable friend says not under any disability imposed by the Parliament. Would not the difficulty be that if he were under any slight disability for regulative purposes, all his rights of **citizenship** under the Commonwealth would be lost?

Mr. KINGSTON.-**There might be a special disability on minors.**

Mr. BARTON.-**That might be one of the disabilities. Of course here the disabilities as to minors would not matter much**, but I would like to put this consideration to Dr. Quick, that if we use the term "subject," or a person subject to the laws, which is a wider term, we shall avoid the necessity for a definition of "citizen." **You might say a subject or resident being the subject of the Queen.**

END QUOTE

.

As such, when any legislation is enacted within Subsection 51(xxvi) then the “coloured race” against whom the legislation is enacted “**The moment be is under any disability imposed by the Parliament be loses his rights.**”. As such the 1967 con-job referendum achieved precisely the opposite then what Aboriginals had anticipated. As I understand it the federal Government in the 1950’s abandoned using Subsection 51(xxvi) to include Aboriginals because of legal advice that this might in fact be rather harmful to Aboriginals instead of aiding their rights.

.

Shaw v Minister for Immigration and Multicultural Affairs

HYPERLINK "http://www.austlii.edu.au/au/cases/cth/high_ct/2003/72.html" [2003] HCA 72

9 December 2003

B99/2002

QUOTE

12. However, contrary to the submissions for the applicant, the result of such a consideration of his position is his classification as an alien for the purposes of HYPERLINK "http://www.austlii.edu.au/au/legis/cth/num_act/c167/s51.html" s 51 (xix) of the Constitution. Much of the applicant's argument proceeded from the premise that, because the expression "British subject" could be applied to him, he was not an alien. That premise is flawed. **First, "British subject" is not a constitutional expression**; it is a statutory expression. Secondly, and more fundamentally, if "**British subject**" was being used as a synonym for "subject of the Queen", an expression which is found in the Constitution, that usage would assume that there was at the time of federation, and there remains today, a constitutional and political unity between the UK and Australia which 100 years of history denies.

END QUOTE

.

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE

Mr. BARTON.-

this Constitution is to be worked under a system of responsible government

END QUOTE

And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE

Mr. BARTON.-

We have simply said that the guarantee of the liberalism of **this Constitution** is responsible government, and that we decline to impair or to infect in any way that guarantee.

END QUOTE

And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE

Mr. BARTON.-

Of course it will be argued that this Constitution will have been made by the Parliament of the United Kingdom. That will be true in one sense, but not true in effect, because the provisions of this Constitution, the principles which it embodies, and the details of enactment by which those principles are enforced, will all have been the work of Australians.

END QUOTE

And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. BARTON**.-

Having provided in that way for a free Constitution, we have provided for an Executive which is charged with the duty of maintaining the provisions of that Constitution; and, therefore, it can only act as the agents of the people.

.

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. DEAKIN**.-

In this Constitution, although much is written much remains unwritten,

END QUOTE

And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. DEAKIN**.-

What a charter of liberty is embraced within this Bill-of political liberty and religious liberty-the liberty and the means to achieve all to which men in these days can reasonably aspire. A charter of liberty is enshrined in this Constitution, which is also a charter of peace-of peace, order, and good government for the whole of the peoples whom it will embrace and unite.

END QUOTE

And

HANSARD *17-3-1898* **Constitution Convention Debates**

QUOTE **Mr. SYMON** (South Australia).-

We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new Magna Charta for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question

upon which we are about to invite the peoples of Australia to vote. The Great Charter was wrung by the barons of England from a reluctant king. **This new charter is to be given by the people of Australia to themselves.**

END QUOTE

.

Therefore one can determine if by this, directly or indirectly, the Constitution does or does not refer to "**British subjects**"

One can only understand if one explores the Hansard, as has been done below to some extend to present an appropriate reflection to how and in what context it was referred to.

.

It would be taking to many pages to also set out the constitutional relationship other then to state that the Commonwealth of Australia is not a "dominion", "republic", "Kingdom", "Empire" but a "**POLITICAL UNION**";

.

Hansard *2-3-1898* Constitution Convention Debates:

QUOTE **Mr. SYMON** (South Australia).-I beg to move-

That the words "The Commonwealth of" (line 10) be struck out.[start page 1747] That will leave the clause to provide simply that the colonies shall be united in a Federal Constitution, under the name of "Australia." Now, my honorable friend (Dr. Cockburn), earlier in the present session, moved in this direction in connexion with a later clause, but it was pointed out at that time that that clause did not deal specifically with the name, that the clause now under reconsideration dealt with that subject, and that the amendment he then proposed could be more properly dealt with under this clause. Now, honorable members will recollect that in Adelaide I moved in the same direction. On that occasion there was a very short debate, and not wishing to press the matter exhaustively then, but rather to leave it until after the Bill had been before the public and the Legislature, pursuant to the Enabling Act, I did not on that occasion press the matter to a division; but I wish to tell honorable members that I intend to press the question to a division on this occasion. I only desire to utter one or two sentences, because it seems to me the matter is so plain that any one who will consider it for a moment will agree with my view, and that it will be unnecessary for me to occupy a long time in commending it, as I do, to the acceptance of honorable members. I wish to clear away the misconception in the first place that I have any objection whatever to the word "Commonwealth," or to the use of the word "Commonwealth," in this Bill. I have no objection to that where it is confined to the expression of the political Union. In the preamble honorable members will find that what we desire to do is to unite in one indissoluble Federal Commonwealth-that is the political Union-"**under the Crown of the United Kingdom of Great Britain and Ireland**, and under the Constitution hereby established." Honorable members will therefore see that the application of the word Commonwealth is to the political Union which is sought to be established. It is not intended there to have any relation whatever to the name of the country or nation which we are going to create under that Union. The second part of the preamble goes on to say that it is expedient to make provision for the admission of other colonies into the Commonwealth. **That is, for admission into this political Union, which is not a republic, which is not to be called a dominion, kingdom, or empire, but is to be a Union by the name of "Commonwealth," and I do not propose to interfere with that in the slightest degree.**

END QUOTE

.

One cannot have an "alliance" to a **POLITICAL UNION**" being the Commonwealth of Australia as if it is a nationality! Hence, the alliance is to the British Crown as " **British subjects**"!

.

And not even a Section 128 referendum can alter this!

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What however is clear is that we have judges who are not "**constitutionalist**" but "**living constitutionalist**". A "constitutionalist" seeks to apply the constitution as was intended by the framers of the Constitution and as successfully subsequently amended by referendums. A "living constitutionalist" is where a judge likes to interpret the constitution as to whatever may be today's perception and by this disregarding the stability of a constitution people are entitled upon. A "living constitutionalist" therefore would give a Government a tool to circumvent constitutional constrains by pretending there is some constitutional powers and then legislate accordingly and by flux of time people will accept this as being constitutionally proper. Also, the judges giving their own personal interpretation to what the constitution stands for and as such the very stability a constitution is to provide is no more because the judges will use their own interpretation as a backdoor manner to apply the constitution as they deem fit and an alternative way to legislate without the consent of the people and/or the Parliament.

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As the Framers of the Constitution stated about the issue of "**British subject**";

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Hansard *10-3-1891* Constitution Convention Debates

QUOTE **Mr. DIBBS:**

> I look upon the question of the creation of a **military power** within a territory under the Crown as a menace to the people who are to continue as **British subjects**. We have been sent here by our various parliaments to frame a constitution under the Crown-under the Crown, bear in mind. That is the idea which has been put forward in every speech that has been made. I presume, then, that the members of the Convention are prepared at once to give the go-by altogether to the idea of imperial federation. **So long as we remain in our present position as individual colonies, we are imperially federated, and we can be imperially federated in no stronger manner than in connection with our relation to the mother country.** We are as much imperially federated as the people living in the cities of London, Liverpool, Manchester, or other large centres of population. **We are a portion of the British Crown, joined together by the most solemn ties and obligations; and we have to bear the brunt of any misfortune which may fall upon us in connection with any attack upon our shores by reason of our enemies being the common enemies of England.** We have already made certain provision, partially of a federal character, to assist the Imperial Government in the protection of our shores from without; but let us set our faces as a young nation-if I may use the word "nation" in advance-against standing armies; **let us set our face once and for ever against the creation of anything like a military despotism. We are met here under the Crown, and I must say that, as one possessing a slight tinge of republican notions, as one who sees that the future of Australia is to be what was prophesied of it fifty years ago, by poets who have written of what the future of Australia is to be-having a certain tinge of republicanism in my nature, the result naturally of my being a descendant of an Englishman, I was surprised to find a gentleman occupying a position under the Crown proposing what 100 years ago would have been simply regarded as high treason.** Why, the other day the hon. member, Mr. Munro, made a proposal with regard to one phase of the question which made me ejaculate, "One strand of the painter has gone."
>
> **Mr. MUNRO:** What was that?
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> **Mr. DIBBS:** The hon. member proposed to take from us, as **British subjects**, the chartered right which we possess of appeal to the Crown.

END QUOTE

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Hansard *17-3-1891* Constitution Convention Debates

QUOTE **Sir GEORGE GREY:**

I contend that the patience and the endurance of the people of Australia have been perfectly wonderful, and they deserve that the great reward of freedom should now be given to them. Have they in any one of the colonies had in past years the freedom of **British subjects**?

END QUOTE

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Hansard *2-4-1891* Constitution Convention Debates

QUOTE

Mr. CUTHBERT: I wish to suggest that at the end of the clause the words "for the space of five years" be added. **Under the different constitutions which have been recognised a foreigner does not stand in the same position as a British subject, even though he take out letters of naturalisation, and I think it would be very desirable if the same principle were recognised in the federal constitution, namely, that a man is not, because he takes out letters of naturalisation to-day, entitled to sit in the senate tomorrow.** I venture to submit for the consideration of hon. members the desirability of making some limitation such as I suggest, namely, that for a period of five years after taking out letters of naturalisation a foreigner should not be entitled to a seat in the senate. This restriction is carried to a much greater extent in the Victorian Constitution, because a foreigner is not allowed to sit in the Legislative Council there until [start page 610] ten years have elapsed since he took out letters of naturalisation, **and inasmuch as it is provided that a person must be "either a natural born subject of the Queen," or a subject of the Queen naturalised by law, who has resided in the commonwealth for five years, and who is 30 years of age, before he is eligible for election as a senator, I think we should make this limitation with regard to naturalised Subjects.** I believe that the hon. member in charge of the bill will see that the proposal is not an unreasonable one, and I hope he will see his way clear to accept it.

END QUOTE

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Hansard *3-4-1891* Constitution Convention Debates

QUOTE

Sir SAMUEL GRIFFITH: I do not think there is any inconsistency. Each state is allowed to prescribe who are to be its electors-it may say anything it pleases about that. I do not think that an electoral law saying that only **British subjects** shall vote can be said to be a special law applicable to the affairs of the people of any race for whom it is thought necessary to make special laws not applicable to the general community. I think that would be rather a far-fetched construction of the provision.

END QUOTE

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Hansard *6-4-1891* Constitution Convention Debates

QUOTE

Mr. DIBBS: I think the proposal to establish. an appeal court within these colonies is a mistake, as far as the suitors are concerned, and that the proposal is more the outcome of sentiment than of practical necessity. The idea has been that we should give to **our own people**-I was about to use the word "**subjects**," but the time has not yet arrived for that-an appeal court of their own, and that we should take away from them the right of appeal, **making them almost foreign subjects**. The idea exists in the minds of certain gentlemen that it will cheapen the cost of litigation to the suitor, if we have an appeal court in our own territory. Having had considerable experience in appeals to the Privy Council, I would say

that it is cheaper to appeal to the Privy Council, to have a thoroughly unbiased court, a court in which the highest legal talent of the empire ought to be available, for the hearing of cases, than it would be to, appeal to any appellate court which might. be established here. Of course, I hold that, as **British subjects**, we have the right of appeal to the Queen, and I, therefore, shall support the amendment of the hon. member, Mr. Wrixon. To take away from **the people of this country** the right of appeal to the throne is to commence to sap the foundations of a union under the Crown, the principle upon which our federation is to be established. If we are to be under the Crown let there be one form of law let there be one set of decisions ruling in every part of the empire.

END QUOTE

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Hansard *15-4-1891* Constitution Convention Debates

QUOTE

Mr. GORDON: I should like to ask Mr. Barton whether there is anything in this point: A number of German fellow colonists may have taken the oath of allegiance to a foreign power, especially those who have served in the ranks in Germany. Would it not be necessary to add after "power" in line 27 the words "or who has not since been naturalised as provided in clause 30"?

Mr. GLYNN: You cannot have two, allegiances.

Mr. BARTON: No; a man might have to go out of our Parliament to serve against us.

Sir GEORGE TURNER: He may be Minister of Defence.

Mr. CARRUTHERS: I would like to put a case to Mr. Barton. It may happen that treaties may be in force between say England and Japan. There is a treaty almost in operation on the very lines I am citing that will give to a British subject travelling in Japan practically the same rights and privileges as he would enjoy as a citizen of his own country. Surely it is never intended that by a person travelling in another country, who becomes entitled to privileges conferred on him by a treaty between two high powers, he should be disqualified from holding a seat in the Federal Parliament. Our members of Parliament who are hardworked take their summer trips, and it may be that some of them may come back and find they have lost their seats as a result of this clause.

Clause as read agreed to.

END QUOTE

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Hansard *20-4-1897* Constitution Convention Debates

QUOTE **Sir JOSEPH ABBOTT:**

Of course, this is at present a mere proposal; and I cannot but think that, on deliberate consideration, good reason will appear for not insisting upon it.

1. The first and most obvious objection is one which must necessarily have occurred to yourself, and to any other statesman who has given the matter a thought. British capital is, and it is to be hoped will continue to be, largely invested in these colonies. It appears, therefore, to be a perfectly reasonable demand on the part of the mother-country, that any British subject feeling himself aggrieved by the decision on his civil rights of a local court shall, if the case be of sufficient importance, have his right of final appeal to an Imperial tribunal. However fair colonial judges and juries may have

shown themselves, it is inevitable that persons resident in the United Kingdom, or in other colonies, who should find themselves worsted in litigation before a colonial court from which there was no appeal, would, in many cases, both feel and express a doubt that justice had not been done them, and would be ready to impute the decision against them to local prejudice and favoritism.

END QUOTE

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Hansard *20-4-1897* Constitution Convention Debates

QUOTE

The person so dealt with conceiving himself aggrieved, brought an action for wrongful arrest and imprisonment against Sir Arthur in the Supreme Court of New Zealand, both parties being then in the colony. Commissions to take evidence in Samoa and in London were issued and executed. It was understood that Sir Arthur was defended by the British Treasury; and the present Mr. Justice A. L. Smith, of the English High Court of Justice, acted as his counsel on the execution of the Commission in London. No objection was taken on behalf of the defendant to the jurisdiction of the New Zealand court, No doubt this was on the ground, established in the leading case of Mostyn *v.* Falrigas, and other oases, that a **British subject** may be sued for damages in any British court within whose jurisdiction he is found for a personal wrong done to another **British subject** in any part of the world. But such a jurisdiction is one which cannot belong to a merely local court. Supposing that it could in law survive the contemplated alteration, it is plain that the British Parliament could not allow it to remain. It may be asked: What loss would that be to the colony? I maintain that it would be a real loss. For by the existence of such a jurisdiction the remedy for injustice and oppression in this quarter of the globe is made more prompt and easy. The dignity of the tribunal exercising so high a function is enhanced. The unity of the empire is affirmed in a striking manner. To destroy such a jurisdiction would be an art of separatism and a degradation of our courts. If this view is regarded by anyone as sentimental, I would observe that it is exactly by the prevalence of such sentiments, if at all, that the unity of the empire can be maintained.

In Sir Arthur Gordon's case the decision was on the main point, favorable to the defendant, the question being one of law, but judgment went against him for a small sum. There was no appeal lodged. The plaintiff, it is said, would have appealed had his means permitted. The British Government acquiesced in the decision.

END QUOTE

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Hansard *20-4-1897* Constitution Convention Debates

QUOTE

Sir JOHN DOWNER: I have a good deal of sympathy with the two speeches that we have listened to, because one naturally has inclinations towards the way [start page 975] in which one has been brought up. But I would like to ask both Sir Edward Braddon and my hon. friend who has just sat down, whether we are ever to get out of our swaddling clothes? What are we here for?

Mr. FRASER: Not to cut the painter.

Sir EDWARD BRADDON: Not to deprive a **British subject** of a right.

Sir JOHN DOWNER: We have come to the conclusion that we may cease to be provincial, and form the foundation of a nation. **We do not propose in any way to separate from the British Crown**, but on the other hand we look to it with reverence. **We consider ourselves the same people**, but the very essence of the difference is that we think

we can make laws which will suffice us; in other words, to put it colloquially, we think we can manage our own affairs. I ask these two hon. gentlemen to think for a moment or two. We are to have powers dealing to an unlimited extent with the most sacred of all subjects-life-and with property; in fact everything that can affect us is to be within the legislative power of the Commonwealth. Our relations to foreign powers so far as they do not interefere with Imperial concerns, we wish to have in our own hands, but when we come to the subsidiary thing, the administration of our own laws, we have got to admit our inefficiency.

Mr. FRASER: They may not be our own laws.

Sir JOHN DOWNER: **They are our own laws, because the laws we bring from England are only our own laws so long as we do not please to alter them.**

END QUOTE

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Hansard *20-4-1897* Constitution Convention Debates

QUOTE

Mr. SYMON: The hon. member, as he very often does, has adopted that uncompromising tone which carries him beyond the necessities of his argument. He reminds one-in fact he is an Australian reproduction-of that celebrated English politician known as "Tear'em." When he attempts, in that emphatic manner of his, to prove that the effect of the clause will be to take away rights which **British subjects** possess all over the empire, he is imposing a little too much on our credulity. This clause does not take away what is known as the inalienable right of a **British subject** in one single particle. The inalienable right of a **British subject** is to approach Her Majesty as a suppliant. **That is left entirely untouched by this Constitution**. It is the right of every **British subject**, the humblest in the realm, whether in this portion of the Empire or any other, to go to the Throne for the redress of grievances, but Her Majesty has constituted in various parts of the Empire, courts for the redress of grievances, and each of these courts is as much the court of Her Majesty the Queen, whether it exists in this country or in England, as the Judicial Committee of the Privy Council. Now, if the Imperial Parliament had chosen, as they might have done, to declare some court in these colonies to be the final court of appeal, no one could have said for one instant that that was not giving the subject the right of final appeal to which he was entitled; and all we propose to do here is to declare that, instead of having a court of appeal in England to which the suitor can go, we have a final court of appeal here which should absolutely and finally decide the question.

Sir EDWARD BRADDON: Is that not begging the question?

Mr. SYMON: No. What particular virtue is there in the Privy Council that is not shared by the courts in Australia?

Sir JOSEPH ABBOTT; More able men!

END QUOTE

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Hansard *20-4-1897* Constitution Convention Debates

QUOTE

Mr. DOBSON: **We simply ask you not to take away a right which every British subject now possesses.** It is all very well to refer to the petition of right, but that is never used Once in, a century.

Mr. SYMON: It has been used here.

END QUOTE

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Hansard *15-9-1897* Constitution Convention Debates

QUOTE **Mr. SYMON:**

Therefore, I accept the position put with so much power by the hon. member, Mr. Deakin, that it is unlikely, that it is improbable, that anything of the sort will occur; and I say, why insert in the federal constitution a provision at variance with and destructive of the federal idea, when there is no possible or conceivable likelihood of its ever being called into force? It seems to me to be opposed to the ordinary dictates of common-sense to introduce so debatable, so questionable a contrivance a contrivance with which we as **British subjects** are not familiar in order simply to gratify it may be a passing whim.

END QUOTE

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Hansard *21-1-1898* Constitution Convention Debates

QUOTE

The CLERK read the petition, as follows:-

To the Right Honorable the President and Members of the Australasian Federal Convention, in session assembled:

The humble petition of the undersigned, the executive officers of the Australasian National League, humbly sheweth:

1. That your petitioners represent a large and influential body having a considerable [start page 4] membership in New South Wales, Victoria, and South Australia, who are deeply interested in the question of the federation of Australasia, now under consideration by the Convention.

2. That amongst the provisions of the Draft Constitution of the Commonwealth is one for the establishment in Australia of a Court of Appeal, the judgments of which shall as regards all cases between individuals, be absolutely final, and shall as regards matters affecting the proposed Commonwealth, or any constituent state, thereof, be also final, save in cases in, which Her Majesty the Queen shall be pleased to grant, special leave to appeal to Her Majesty.

3. That your petitioners are of opinion that there should be a Federal Court of Appeal; but humbly urge, that they ask not the concession of, a privilege but the maintenance of an important right, for the proposed extinction of which no adequate reason has been shown; which has not been withdrawn from their fellow subjects in Canada, and the abrogation of which right of appeal to the Privy Council would take away one of the highest privileges of a **British subject**. It would also seriously prejudice the material interests of Australia by depriving the British capitalist of his right to appeal to his own courts in serious cases, and thus prevent the inflow of British capital, upon which the colonies largely depend for their development; and it would constitute a serious menace to the integrity of the empire by severing one of the strongest existing ties between the Australian colonies and the British Crown, besides making Australia almost the only, self-governing part of the empire in which such a right would not exist.

4. Your petitioners, therefore, humbly pray that such amendments may be made in the Commonwealth Bill during the present session of the Convention as will preserve to Australian and British litigants in the Australian courts the final right of appeal to her Majesty in Privy Council.