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***Public Submission to the Australian Senate on the ‘Inquiry into a Plebiscite for an Australian Republic Bill 2008’***

My name is David Campbell Tipping. I am a student of engineering, business and administration and public affairs, and a master of the trades.<sup>1</sup> I am a loyal citizen of Australia.

It is a great pleasure to respond to this inquiry on the basis of research I have been conducting on the *Magna Carta 1215*, the *English Bill of Rights 1889*, and the theory of natural rights, which underpin concepts such as human reason, freedom under the rule of law, and notions such as social and economic rights (which are at the heart of our United Nations system today) and good governance to be pursued through democracy (which seeks to best serve and protect the safety and well-being of citizens). In any discussion of the values and principles that most civilized peoples would hold today, these concepts and notions seem to come to mind.

It is my belief that a *Plebiscite for an Australian Republic Bill 2008* may be the wrong goal for the Australian people to pursue now. My understanding, based on the particularities of my own recent experience and circumstances, is that our federation is relatively young and impressionable. I perceive that in this new age it has become more apparent that our society may be inadequately prepared to accommodate the great driving force of globalisation (e.g. the fallout of the global financial crisis, etc.). The people of Australia do not appear to be especially politically aware of new and emerging risks, or indeed, that it may be their public responsibility to have for more inclusion and more participation in how our current form of democracy is shaped as the times may require.<sup>2</sup>

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<sup>1</sup> “A man can be himself only so long as he is alone”. See Arthur Schopenhauer.

<sup>2</sup> The Levellers were the first democratic political party in Britain (circa late 1640s). Dr. Linebaugh suggests they linked the Magna Carta to the concept of the nation, by means of sacrifice, direct action and symbolic performances. He added their goal was "the right, freedom, safety, and well-being of every particular man, woman and child in England". See Linebaugh, P. (2008). *The Magna Carta Manifesto, Liberties and Commons for All*, University of California Press, Los Angeles.

I am cognisant of the fact that since federation there seems to have been an era of forgetting in Australia, of how our very basic liberties and fundamental freedoms were won. On the basis of my research and studies of late, our good people also seem to rarely mobilize for such good causes. They may be improperly informed as to the terrain of civil governments and the blurring contours of our fundamental and natural rights and interests.<sup>3</sup> It is this apathy that can create new space for the social decay, which throughout history has been found to be injurious to the public interest.

Based on my own personal experience and circumstances of modern Australia, I would seriously question whether our people may lack sufficient understanding of the nation's particularities, and of political democracy in general.<sup>4</sup> Yet based on these very particularities and at the root of the birthright and constitution of all Australians is a millennium of experience and circumstances. These particularities throw much light on simple concepts such as freedom under the rule of law, social and economic rights, and the safety and well-being of all through democracy.<sup>5</sup>

All of this seems to suggest that, since 1215, certain liberties and rights have become a necessary condition for the progress of a free people - a precondition or means to an end, and not a final or end goal. Should there be a lack of public awareness of these great liberties, there might be adjudged a failure of institutions to educate the public appropriately on such essential matters fundamental to free will. To enter into such discussions on transforming our political democracy into a republic may then in some sense be seen as more or less premature. So what other reasons might support this conclusion of a *Plebiscite for an Australian Republic Bill 2008* being the wrong goal?

Firstly, if one looks to the free will of our friends Canada and New Zealand, it is clear they are not looking for such a new beginning. They know who they are and seem happy as they prosper. The transition to a whole new and unknown system of political democracy does not seem to entice them at this time.

Secondly, if we look to the United States of 1775, the experience and circumstances of the people might be seen to be very different to those in Australia today. The people were very politically aware, and it was their free will to vindicate and assert their actions on the basis of the particularities I speak of. It was their will to fight for their freedoms, under the leadership of some great men; as it was the will of some greater men that came to accept this choice.

There seem to be few parallels with the case of Australia today. In fact there are some distinct opposites. Our nation is independent, we are today free from the control of other countries, and we are in some sense free to make our own choices.

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<sup>3</sup> "The evident short-comings of Australia's present system of rights protection – many of which have become more apparent in recent years – means that the question of enacting a Bill of Rights can not be brushed aside as unworthy of serious debate" - the Hon Michael McHugh AC QC. See McHugh, M., (2009). *Does Australia Need a Bill of Rights?*, New South Wales Bar Association, Sydney; online at [www.nswbar.asn.au/resources.php](http://www.nswbar.asn.au/resources.php).

<sup>4</sup> "Sloterdijk also argues that the current concept of globalisation lacks historical perspective". See Miley, M. (2009). *The Wages of Cynicism*, The Autodidact Project.

<sup>5</sup> "What is the 'level of historical reality' if not the suppressed praxis of the commons in its manifold particularities, despite a millennium of privatization, enclosure, and utilitarianism?". See Linebaugh, P. (2008).

Thirdly, if we were to look to the main differences between Australia and other constitutional monarchies and republics, then the most glaring difference today might be the fact that while we do have a constitution, we do not have the will to request a bill of rights. As such, it may be seen that the people of Australia can make no claim to owning a “charter of freedom”.

This does not mean we do not have a so-called “plan of government”, just that the rights of our citizens are not listed. It is possible that because of this first division of our people, and because our constitution wrongly or rightly introduces the potential for further divisions of all minorities, that it might be said in some quarters that the people of Australia are not equal with their politicians, i.e. legally. A glance at section 51 (xxvi) may confirm this.

Freedom under the rule of law has proven to be a very important concept for advancing some civil societies over the past millennia. In this context, could it be construed that as a result of Australians having no bill of rights, that the people do not have the free will to make their own choices? We could look to whether there is freedom of religion, justice for all, equal rights for women, civil rights or any specific human rights enshrined in a domestic legal charter?

Unfortunately, given my limited experience of legal ethics, I am personally unable to clarify that there is any unbiased and unprejudiced declaration defining the public good in Australia. In fact there is only darkness when it comes to the inseparable and inalienable rights and freedoms of Australians. As a result, today, it seems one has to go through the costly legal system for an interpretation of rights, which may therefore in some sense position some rights and freedoms as inaccessible to the majority of Australians. This might be seen as social inefficiency, or it could be a cause for unhappiness. To transfer this frame to a republic constitution, that seeks to isolate our governance system from remnant links to duty and kindness, may be more or less irresponsible.

It is a perception that the people of Australia do not understand where our cherished ideals come from, and in fact, the whole idea of the enlightenment in securing and protecting such liberties in the many great nations. Is the general public in Australia adequately educated as to their rights and freedoms? There is a threat to an uneducated populace and its future generations in this new age of globalization, particularly when governments begin to cancel or altogether remove very basic or fundamental freedoms; this, at a time when Australians must help to promote these same grand values and principles, that other unfortunate and deprived nations and peoples may soon justly secure such rights and freedoms.

I feel this is not the solid foundation upon which we should now seek to stand as a republic. Yet in this discussion the way forward in a democracy is the choice of this majority. As I see it the decision is: will our founding fathers be John Howard, Kevin Rudd and Malcolm Turnbull – now standing alongside General Washington and that host of great men? Or is there will to instead focus on the little steps, such as re-securing the true, ancient and indubitable rights and liberties of our people (to fully restore those links to duty and kindness in our good federation), and remedying any potential for unhappiness in our communities (through good governance that strives to better serve and protect the safety and well-being of citizens); before any serious damage is inflicted upon any conscientious minority?

In this age of globalisation, is it responsible for the public to remain unaware of the great tyrannies that were overcome during the enlightenment? Do we need to clarify why earlier generations of Australians could not surrender such fundamental rights and freedoms in the social contract with civil government.<sup>6</sup> Is there a sense that this matters?

It is my belief that the function of legitimate civil government should today be re-clarified, so that the Australian people may better distinguish this from the despotism of illegitimate civil government.<sup>7</sup> Rights and freedoms serve as “bastions against authoritarian regimes”. They are important, for example, if we want the freedom to sleep safe at night, without fear of personal and privacy invasion;<sup>8</sup> or the freedom to watch the footy on television and be protected from arbitrary arrest, without fear of those who seek to serve and protect our communities by dispelling fear;<sup>9</sup> or if we want the freedom to go down to the local fish and chip shop, without fear of being cruelly and unusually punished on the walk home, simply because in conversation we might have a foreign accent or an Australian mumble and we could not be understood.<sup>10</sup>

This all comes back to how we choose to shape our democracy into the future. Simply refashioning as a republic now may crowd out the real issues of all Australians. As discussed previously, throughout history this potential has been shown to be injurious.

It seems that there is today a sense in our communities that nothing can be done to impact on government processes. As the working classes might now ask following the rollout of the work choice reforms, just how safe are Australian values and principles from the actions of well meaning governments in this age of globalization? The proposed introduction of a carbon emissions trading platform now looms supreme. Yet it is essential in this day and age that full debate take place (e.g. on all contributory and possible primary causes of climate change, and all other efficient and socially equitable means of protection of our public and household economies).

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<sup>6</sup> Stanford Encyclopaedia of Philosophy (2008). *John Locke*, biography, online at [www.plato.stanford.edu/entries/locke/#SecTreGov](http://www.plato.stanford.edu/entries/locke/#SecTreGov).

<sup>7</sup> John Locke (1632 - 1704), the philosopher of freedom whose work underpins the United Nations system, suggests “the aim of such a legitimate civil government is to preserve, so far as possible, the rights to life, liberty, health and property of its citizens, and to prosecute and punish those of its citizens who violate the rights of others and to pursue the public good even where this may conflict with the rights of individuals.”

<sup>8</sup> “The warrants will be issued in the Supreme Court and limited to investigations of suspected serious offences punishable by at least seven years jail”. This is a very wide range of punishable offenses; it seems these powers can be enacted from issues ranging from *supposed intent* to steal a loaf of bread to *supposed intent* of physician assisted euthanasia. See Australian Associated Press (2009). *(NSW) Police get secret search powers and you won't even know it*, 4 March.

<sup>9</sup> “The (Australian) Government has included... horrific provisions that allows police to ‘shoot-to-kill’ anyone they claim to be involved... Malcolm Fraser commented scathingly “Any of us can be detained merely because authorities believe we might know something”. See Mac, P. (2005). *Australia: Arbitrary arrest, detention. Now it's shoot to kill*, Political Affairs; online at [www.politicalaffairs.net/article/view/2090/1/127/](http://www.politicalaffairs.net/article/view/2090/1/127/).

<sup>10</sup> “Police and health officials will be investigated over the death of a north Queensland man yesterday after he was repeatedly shot with a taser... the 39-year-old was shot at least three times with the 50,000-volt stun gun... The death follows the tasering last year of an unarmed 16-year-old girl.” See McKenner, M. (2009). *Taser death second in six months*, 13 June.

Without a Bill of Rights, this debate is the only safety guard our democracy has for the public interest. Could it be easy for a disengaged people to simply say why bother, why care, or bring it on?<sup>11</sup> Liberal democracy is however much more than simply waiting four years to possibly vote a new government into power. In some sense it might be understood that remnant links to duty and kindness - our old values and principles - are the sole reason the wings have never fallen off one of our Qantas planes.

All potential government decisions should go through both adequate economic and human checks, in the context of enlightened public foresight, that we might be better assured of their having been given careful consideration of our society's substantive aims and objects.<sup>12</sup> But it is suggested these aims and objectives can not be adequately defined by our "plan of government" without a bill of right that ensures the people's freedoms. Could this failure to establish a "charter of freedom" at federation have resulted in any lack of due care in any sections of our communities?<sup>13</sup>

Being a minority or holding a nonconforming view in Australia might be construed also as risky. Those who had the free will to fight to uphold such Australian values and principles in both world wars are now a minority. We should each more thoroughly consider our own free will, and whether we would like for our individual selves to be potentially left in a debased condition.

Most other civilized peoples value their liberties sacrosanct. Australia appears "to be the only Western country in the world without a Bill of Rights".<sup>14</sup> It is a perception that as a result of this fact we may never get away from all the crises of governments. Yet the real need seems to be to slow down, and not regulate for complexity; when perhaps only simplification is needed.

There may be an onus on our Parliaments to better prepare the Australian people for the coming ages of globalisation, also that we might now adequately protect very basic social or economic rights, to more safely guard both public and private interests. Insofar as my own personal and private experience and circumstances rationalise, I would wholeheartedly support the new reason for such enlightened foresight and caring thoughtfulness on the part of this Commonwealth Government.

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<sup>11</sup> There is a need to accept a unity in history. See Linebaugh, P. (2008). "What is the 'level of historical reality' if not the suppressed praxis of the commons in its manifold particularities, despite a millennium of privatization, enclosure, and utilitarianism?"

<sup>12</sup> "The *Federal Crimes Act 1914* (Cth) permits the federal government to detain any person found not guilty of a criminal charge on the ground of mental illness or who is not fit to be tried on the charge for the duration of the maximum period the person would have spent in custody if found guilty of the relevant offense (what offense?)... In NSW, any person... can be deprived of their liberty on the discretionary judgment of executive government... even though psychiatrists believe the individual is not a risk... A recent decision... in NSW (is that any person) can be detained longer than other persons who commit the identical crime if after conviction they develop a mental illness. (These) decisions... cannot be challenged in... any Australian Court". See McHugh, M. (2009).

<sup>13</sup> "The *Hindmarsh Island Bridge Case* therefore raises the possibility that section 51(xxvi) provides the Commonwealth Government with direct constitutional authority to enact legislation directly discriminating against or disadvantaging a particular race". See McHugh, M. (2009).

<sup>14</sup> "The evident short-comings of Australia's present system of rights protection – many of which have become more apparent in recent years – means that the question of enacting a Bill of Rights can not be brushed aside as unworthy of serious debate". See McHugh, M. (2009). *Does Australia Need a Bill of Rights?*, New South Wales Bar Association, Sydney.

In recent years our government machineries have been cut back. Our public service may have lost both its left and right advisory arms, and its public interest teeth.<sup>15</sup> The removal of the front teeth of children, to prevent decay from spreading, was necessary before the 1980s; but it may or may not be unconstitutional now.

Could government decisions today come down more to subjective opinion, or the party line, or could other extensive actions be taken by governments without a mandate from the people?<sup>16</sup> Some in high places say possibly so.<sup>17</sup> In fact my own experience and circumstances from public commenting on the water issues that currently challenge our nation suggests our governance machinery needs to be straightened out and considerably strengthened, so that the rational input of independent experts and observers can be more thoughtfully considered, in line with notions of good governance.<sup>18</sup>

It is most certain today that the Australian people face a number of more daunting challenges, than the refashioning of our political democracy. In fact, we seem to be greatly challenged in responding to major challenges given all the private interests that need to be accommodated. Yet how we respond in certain areas today will considerably shape our national character in the future.

It could be conceived that some necessary adjustments cannot be adequately effected in the slipstream of a rapid and unpredictable political acceleration towards a republic,<sup>19</sup> with altogether unknown consequence for the public interest and the Australian people.<sup>20</sup> Nor can

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<sup>15</sup> “The policy advisory sphere of government has become increasingly crowded with the proliferation of ministerial staff, research bodies, think tanks and consultants... In recent times, many of the permanent research advisory bodies have been abolished and the resources for those left reduced and under increasing influence of departments... Experts may not want to come forward (as they may be implicated in an incident or they need protection against actions for libel), or the information is not in the public domain”. See Prasser, S. (2006). *Royal commissions and public inquiries in Australia*, LexisNexis Butterworths, Australia.

<sup>16</sup> “(With Work Choices) I’m afraid the devil is in the detail – which is the regulations made under the ACT... Indications are that they a quite draconian. My own guess is that the regulations and the Act are god’s gift to the trade union movement which will find people flocking to join. People forget what it was that caused the growth of unions in the first place – rotten bosses, rotten pay and rotten working conditions”. See PPRuNe (2009). *Work Choices Legislation – What does it really mean to us*, Blog of QFinsider, 20 March; online at [www.pprune.org/dg-p-general-aviation-questions/217736-work-choices-legislation-what-does-it-really-mean.html](http://www.pprune.org/dg-p-general-aviation-questions/217736-work-choices-legislation-what-does-it-really-mean.html).

<sup>17</sup> “Parliament can therefore legislate unjustly as it sees fit”. See McHugh, M. (2009). *Does Australia Need a Bill of Rights?*, New South Wales Bar Association, Sydney.

<sup>18</sup> There appears to be no dignity in drinking recycled sewage and industrial waste.

<sup>19</sup> “The Australian government’s plan to set up a Chinese style firewall and censor the web so that it only says good things is facing a backlash... Obviously this sort of censorship is not the sort of thing Aussies can put up with... Despite the fact that the move is about as unpopular as compulsory government anal probing”. See Farrell, N. (2008). Aussies revolt over government’s censorship plans, *The Inquirer*, 28 November; online at [www.theinquirer.net](http://www.theinquirer.net).

<sup>20</sup> While some minorities may be apathetic to the politics and economics of today’s international game, the early work of Edward Coke suggests there may still be a right to a livelihood. “In 2007, 31 per cent of applicants for drivers’ jobs failed a pre-employment drug test. Widespread drug use has also been detected across rural-based businesses including among fruit pickers, 30 per cent of job hopefuls failing pre-employment saliva drug tests with one Riverina company”. See Duff, E. and Jennings, J. (2009). *More workers caught as drug tests increase*. Sydney Morning Herald, 14 June.

these adjustments be left to chance in a liberal democracy.<sup>21</sup> After the invasion of foreign ideology, it took around 150 years for the peoples of Britain to affect a relative peace and security of person, through Magna Carta and the Charter of the Forest.

Today, we continue to be faced by the greatest if not the most strategic challenge of our nation. Water is the arena that presents high risk and serious threat to the Australian way of life, and the future progress of all our communities. Unfortunately at Federation, instead of advancing our political democracy in the right direction on water, to get things done in government we seem to have downgraded the priority for the public good of the people.<sup>22</sup> We may need a stronger culture of remembering, as the indispensable and vital needs of our people should be the key emphasis of our liberal democracy.<sup>23</sup>

Water has most recently been back on the agenda for over 18 years, and it is a perception that we have made little progress in this time. The main claim appears to be that we have successfully separated water allocations from land. The wisdom of this step is questionable; based on the history of water and equity in Australia. In fact the tying of water to land seems to have been one of the key protections (of social and economic rights) and safety guards (of public interests) instituted to protect the people in the 19<sup>th</sup> Century. This measure allowed some fundamental principles and very basic rights to be experimented with.<sup>24</sup>

This experiment,<sup>25</sup> it seems, has turned out to be less than positive,<sup>26</sup> with the potential to get worse,<sup>27</sup> especially for regional and rural Australia.<sup>28</sup> In fact over this period of 18 years, some governments have been instituting forms of market-oriented governance that in the past may have been altogether unacceptable. This has resulted in urban populations being forced to significantly reduce their water consumption; possibly due to the fact that water planning did not need to adequately invest in public infrastructure. The money was there, it just appears to have been spent on running government, or on other discretionary spending measures, instead of assuring greater integrity of the necessary and justifiable core of our public health system.<sup>29</sup>

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<sup>21</sup> John Stuart Mill, who was the foremost British economist of the 19<sup>th</sup> Century, conceived over 150 years ago that “the possession of such monopoly over water by individuals constituted not freedom, but slavery; it delivered over the public to the mercy of those individuals.”

<sup>22</sup> “This gap becomes even more evident when we consider recent decisions by all arms of government... (which have) highlighted the ease with which human right concerns can be sidelined in Australia.” McHugh, M. (2009).

<sup>23</sup> “Recent decisions by the High Court... provide many examples of current deficiencies in the protection of human rights within Australia”. If the public good is not defined, then how do we measure the performance of legitimate governments, and hence set a basis of democracy? McHugh, M. (2009).

<sup>24</sup> “William Blackstone - who prepared the most influential book on the laws on England, and published the Great Charter and the Charter of the Forests - “admitted in his commentaries “that there are elements such as light, air, and water, which must still unavoidably remain in common”. See Linebaugh, P. (2008:112).

<sup>25</sup> “Human rights in Australia have been granted statutory protection in a piecemeal and incomplete fashion”. See McHugh, M. (2009).

<sup>26</sup> “In the absence of a Bill of Rights, any human rights protected under the common law may be overridden by an ordinary act of Parliament”. See McHugh, M. (2009).

<sup>27</sup> “Parliament can therefore legislate unjustly as it sees fit”. See McHugh, M. (2009).

<sup>28</sup> “Unlike ordinary legislation, a Bill of Rights is expressly designed to place fundamental human rights beyond the reach of day-to-day politics”. See McHugh, M. (2009).

<sup>29</sup> “It could take “weeks and weeks” to stabilise and reconstruct the site of last week’s landslide at Bellevue Hill that swallowed up two cars, a tree and a power pole... engineers might not be able to determine for some time what happened... A Woollahra Council spokeswoman... rejected reports of the hole widening at the weekend.” See Brown, M. (2009). *Bellevue hole an active crater for weeks to come*, 2 June.

Possibly, as a result of the subsequent water restrictions, at least one Australian is dead and at least one other is in jail.<sup>30</sup> But yet the international right to water states clearly that there is a legal entitlement of all persons to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.<sup>31</sup> Notwithstanding the fact that the *English Bill of Rights* (1689) states that instituting some forms of incidental taxation may not be a proper course,<sup>32</sup> for a civilized society to take.

This issue seems to draw one contrast with the experience and circumstances that led to the United States becoming a republic, indeed with the particularities of Britain gaining choice in how it was governed. The problem of water at the urban-rural interface is beginning to get worse for some minorities;<sup>33</sup> with some rural communities now unable to protect their local water supplies from being taken for the want of upfront investment in urban areas.<sup>34</sup> Could things get much worse for other minorities with the prolonged onset of local and regional climate changes?<sup>35</sup>

Just in the past 50 years, the proportion of our people living in our urban areas has increased from 77 % in 1950, to around 88 % in 2005. Are all the people leaving the land? Is water just being reallocated politically or economically elsewhere, as a resource? Is water in our regional

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<sup>30</sup> Australian Associated Press (2009). *Water rage death: attacker jailed*, Sydney Morning Herald, 9 April. “Mr Proctor, 66, was watering the front lawn of his Sylvania property when Munter lashed out at him in the mistaken belief he was breaking water restrictions. Munter called him a “stupid old goat”, and Mr Proctor turned the hose on him.”

<sup>31</sup> A State party is required to “refrain from interfering directly or indirectly with (individuals’) enjoyment of the right”. If deliberate retrogressive measures are taken, then - there is an obligation on the State party - to prove that they have been introduced only “after the most careful consideration of all alternatives”. In this regard, each nation is obliged to “use the maximum of its available resources” in securing and protecting the right to water. See United Nations Committee on Economic, Social and Cultural Rights (2003), *The Right to Water*, General Comment 15, UN Doc. E/C12/2002/11. New York.

<sup>32</sup> “By levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal”. See *English Bill of Rights* (1689).

<sup>33</sup> “The state government plans to upgrade the Goulburn irrigation system and take about a third of the estimated water savings to quench the thirst of the state capital Melbourne. However, it will take the water right from the start before any water savings are actually being made.... The Goulburn Valley is one of the food bowls of Victoria worth more than 9 billion dollars in production and exports... As someone promoting good democratic governance in “poor” countries overseas, I was appalled by the lack of standard procedures as promulgated by every international and national government code of conduct. No citizens participation worth speaking of had taken place, environmental impacts were not assessed, the population was poorly informed, there was (and still is) no transparency etc. The list of omissions and violations of principles of good governance – for instance as related to public consultations and community involvement – is long. See Rainer, A. (2009). *The North-South Pipeline, The Man from Mosel River: Of Wine and Culture – From the Old to the New World*; online at [themanfrommoselriver.wordpress.com/2008/02/05/the-north-south-pipeline/](http://themanfrommoselriver.wordpress.com/2008/02/05/the-north-south-pipeline/).

<sup>34</sup> “Locality, then, is the dominant factor of local government. It is the forces which has made counties, boroughs, and parishes remain in undisturbed possession of the most important and the most elemental feature of government – namely, freedom from central control... It is the force which lies at the back of the promised system of decentralization of parliamentary functions, which is so often spoken of as one of the necessities of modern times.” See Gomme, L. (1897). *Lectures on the Principles of Local Government*, delivered at the London School of Economics, London.

<sup>35</sup> “The ‘positive evil’ of impure water was exhibited too frequently, as was the ‘negative evil’ of the want, during the prevalence of epidemics, of water that was ‘pure and salubrious’ for the drinking of patients”. See Government of Britain (1850).



areas really so scarce? Or are we just perhaps trying to use too much of it? It is not clear that we know; as far as it is known, the information is not collated centrally for more effective water governance purposes.<sup>36</sup> Nor does information have to be made available today,<sup>37</sup> or in any format that can be understood to properly inform public opinion.

What is clearer is that while our cities have grown, water consumption for domestic purposes seems to have been radically reduced. Have our state and territory governments built sufficient infrastructure since the 1975, when the urban population was only 11.7-million; given we are today at around 18-million, which represents growth of around 6-million urban residents? It is also clear that state and territory governments continue to allocate water with little concern of causing harm to downstream users. Centralizing forces also are actively encroaching on the fundamental rights and freedoms of local communities, not just taking the water they need for social and economic survival, but today allowing mining operations to potentially contaminate our high-quality farmland and water sources.<sup>38</sup>

It is a perception that there is a 'right to water' that is not being completely acknowledged, and that the Australian people seem politically and legally unaware of this right, or indeed the greater public interest.<sup>39</sup> To address the problem in urban areas, some governments have actually chosen to push recycled sewage on the people, even after a local referendum said "we choose not".<sup>40</sup> Centralising forces are going so far as to say drinking recycled sewage and industrial waste is safe, that other global cities do it routinely, and that no water expert has come out against it.

I beg to differ on this debate. The political spin is not strictly correct. I personally have written several letters to authorities on this matter, including to the Premier on behalf of our Queensland communities, and going so far as to Petition to Legislative Assembly of the Australian Capital Territory for a public inquiry.<sup>41</sup> Of more concern than not having a right to protect your water is that forcing people to drink recycled sewage may be seriously bad for your health. Personally, I would consider it an affront to human dignity, and most certainly another step backwards on water in Australia.<sup>42</sup>

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<sup>36</sup> See Tipping, D. (2008a). *The underlying value of wholesome and clean water supports the need for an effective system of water governance*, Public Submission to the Australian Competition and Consumer Commission on the 'Water Market Rules: Issue Paper'; online at [www.davidthipping.com](http://www.davidthipping.com).

<sup>37</sup> See Tipping, D. (2008b). *Why fresh water is in the Best Interest of the Australian Society: in pursuit of happiness and prosperity*, Public Submission to the Australian Senate on the 'Inquiry into the Implications for the Long-term Survival of the Murray darling Basin System'; online at [www.davidthipping.com](http://www.davidthipping.com).

<sup>38</sup> "It was an emotional day for many farmers who came from the Liverpool Plains and the Hunter Valley to demonstrate their support for a bill to preserve high-quality farmland and water sources from mining." See Wilkinson, M. (2009). *Land use war: two tribes dig in*, Sydney Morning Herald, 5 June.

<sup>39</sup> United Nations Committee on Economic, Social and Cultural Rights (2003)

<sup>40</sup> Toowoomba to get recycled water it rejected, 6 November. "TOOWOOMBA residents, who vetoed plans to recycle water, will end up drinking Brisbane's treated waste in just over a year." See Morley, P. (2008).

<sup>41</sup> See Tipping, D. (2007). *Not in the public water supply please: why the good health, quality of life and prosperity of the people of Canberra should not be placed in jeopardy by the wrongful introduction of purified sewage/wastewater for human consumption and hygienic purposes*, Attachment A; online at <http://www.acc.gov.au/content/index.phtml/itemId/827347>.

<sup>42</sup> "Policy makers opted to downgrade public health protections under the guise of economic efficiency, and to the detriment of a spectrum of Australia's political classes... there has been a gradual but steady downgrading of absolute water quality standards into guidelines in Australia." The case of downgrading of water quality standards over many years reflects that some modern nations may today be aspiring to a lower common denominator. See Tipping, D. (2008).

There may need to be greater transparency and accountability on water license allocations, for the public good. If it were to become clearer that general principles of water supply and sanitation have been simply ignored by our modern governments, or if there has been any lack of proper inquiry into the potential for evil effects of recycled sewage to destroy the wealth and independence of a population, this may not be such a culturally acceptable solution. What may be worse is that many Australians have succumbed to the distortions of the associated propaganda.

There is a crisis of water scarcity and drinking and bathing in recycled sewage can not be guaranteed to be safe. We have proven today that there are no longer enough “reflexive cynics” to override a “master ideology”.<sup>43</sup> The blind faith in untested technology in the field is staggering. Does the good health of the Australian people, as a minority, now come second best, to the politics and the economy of water?

This petition to the Senate is not about “encouraging spirited protest”.<sup>44</sup> It is not clear there is any declaration of any right to wholesome water as a public good in Australia; or to effective sanitation, or to good public health as a matter of fact. Yet some say the actions of legitimate government must be limited to the public good.<sup>45</sup>

What this may mean is that under our “plan of government” water will continue to be allocated as a political and economic resource, rather than as a public good.<sup>46</sup> As a result of our having no “charter of freedom”, urban populations are at risk, small and medium sized farming operations are at risk, and in fact whole regional towns are at risk; our lands ecological integrity and our climate protection are especially at risk, perhaps due to the way we collect, distribute, discharge and manage water. It is not such a stretch to suggest that the food supply channels of the nation are also at risk, and thus in some sense, our Australian way of life.<sup>47</sup>

It seems that no one is safe. Around 20 years ago, even the Public Health Guardians of the City of Sydney were pushed out of the way,<sup>48</sup> in the quest to divide up all the economic monopoly rents. One only has to look to the results today.<sup>49,50</sup>

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<sup>43</sup> Miley, M. (2009). *The Wages of Cynicism*, The Autodidact Project.

<sup>44</sup> *English Bill of Rights* (1689).

<sup>45</sup> John Locke (1632 - 1704), the philosopher of freedom whose work underpins the United Nations system, suggests “the aim of such a legitimate civil government is to preserve, so far as possible, the rights to life, liberty, health and property of its citizens, and to prosecute and punish those of its citizens who violate the rights of others and to pursue the public good even where this may conflict with the rights of individuals.”

<sup>46</sup> United Nations Committee on Economic, Social and Cultural Rights (2003)

<sup>47</sup> John Stuart Mill, who was the foremost British economist of the 19<sup>th</sup> Century, conceived over 150 years ago that “the possession of such monopoly over water by individuals constituted not freedom, but slavery; it delivered over the public to the mercy of those individuals.”

<sup>48</sup> Sir Edwin Chadwick, Knight Commanders of the Most Honourable Order of the Bath; Sir Robert Rawlinson, Knight Commanders of the Most Honourable Order of the Bath; Sir Joseph Bazalgette, Knight Civil Engineer. See Chadwick, E. (1887). *Address on the Occasion of Queen Victoria's Golden Jubilee*, London.

<sup>49</sup> “Sydney's water authority says a major cast-iron water main was leaking underground for at least 60 hours before rupturing completely and causing a landslide that swallowed two cars and a power pole in Bellevue Hill last week.” See Robinson, G. (2009). *Bellevue Hill crater: Sydney Water admits failing to detect leak*, 4 June.

<sup>50</sup> Is it possible that many such hypothesized cases in NSW are being reported as mere gastroenteritis, potentially an additional 35,659 cases of such water, sanitation and hygiene-related disease, which might be distorting

The report on the website of the New South Wales Bar Association this week may suggest we are actually in fairly bad shape.<sup>51</sup> While Australia was one of eight nations that drafted the *United Nations Declaration of Human Rights* in 1948, and while we were seen as a model nation in 2000, it is reported that things have taken a turn. Has our reputation as a good global citizen has today been diminished?<sup>52</sup>

Yet there is a ray of hope for correction. It is reported that “since the implementation of the *Statute of Westminster Adoption Act* in 1942, the *English Bill of Rights* cannot be altered in any realm except by that realm's own parliament, and then, by convention, and as it touches on the succession to the shared throne, only with the consent of all the other realms”. In the United Kingdom, the Bill of Rights is further accompanied by the *Magna Carta*, *Habeas Corpus Act 1679* and *Parliament Acts 1911* and *1949* as some of the basic documents of the uncodified British constitution.

The Australian Prime Minister has also identified that there may now need to be a Bill of Rights, to limit the actions of governments to serve and protect the government. This suggests that it may not be clear whether the *Australia Act of 1985* has innocently repealed the ancient and fundamental rights of Australians? It seems there could have been a grave mistake.

That English champion of African liberties, Granville Sharp, made representation to the Courts of the injustice and dangerous Tendency of Tolerating Slavery in 1769. It was stated “the wisdom of ages has made [Magna Carta] venerable, and stamped it with an authority equal to the Constitution itself, of which it is, in reality, a most essential and fundamental part; so that any attempt to repeal it would be treason to the State! This glorious Charter must, therefore, ever continue unrepealed: and even the articles which seem at present useless, must ever remain in force.”<sup>53</sup>

*Magna Carta 1215* and the *English Bill of Rights 1689* may be a basis on which the Australian people can adjudge the legitimacy of its governments. In fact the very basic fundamental liberties underpinning the United Nations system of human rights seem to be the very ones that most Australians today were born with. Given Australia drafted the *UN Declaration of Human Rights in 1948*, could it be reasonable to suggest all of these rights and freedoms should be securely protected and promoted in Australia today?

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prioritisation of government spending on public health? NSW seems to be beset with such disease outbreaks, including: *Clostridium perfringens* (2008), cryptosporidiosis (since 1998), gastroenteritis (since 2005), giardia (since 1998), *Salmonella* (since 1995) and *Shigellosis* or *E.coli* O157:H7 (since 2000) – all impacting adversely on vulnerable persons, and not strictly limited to those immune-compromised, infant and elderly populations. See Tipping, D. (2008b).

<sup>51</sup> McHugh, M. (2009).

<sup>52</sup> Every Australian should read this assessment today. See McHugh, M., (2009). *Does Australia Need a Bill of Rights?*, New South Wales Bar Association, Sydney; online at [www.nswbar.asn.au/resources.php](http://www.nswbar.asn.au/resources.php).

<sup>53</sup> See Linebaugh, P. (2008).

In Australia today, the water issues and the issue of a Bill of Rights both present risk and threat to all persons. They seem much more important than refashioning our political democracy for an unpredictable outcome. While we should now restore our traditional link to duty and kindness, we should also remedy any potential for our people to be unhappy, by dispelling dangers and promoting a notion of good governance for the safety and well-being of all.

These two challenges impact directly on conditions in all of our towns and cities (e.g. bullying in the workplace and wider community, other attacks on minorities and foreign visitors, etc.), indeed on all of our people (e.g. what quality of sewage and industrial wastewater one can now be served for their culinary delight,<sup>54</sup> etc.), and hence on the level of trust and confidence that persons give Australia as a place to do business. Could this be adversely impacting on the level of domestic and foreign direct investment in Australia? Some seem to suggest the union movement has held back foreign direct investment, but could it also be that an uninformed citizenry – one that is not politically aware or seldom mobilized to protect its interests in this age of globalisation – now presents the greater risk?

If an investor's rights are not securely protected, then it may be that their interests also can not be safely guarded. One may need then a compelling reason to risk investing in the future in Australia. Yet some former politicians will say they believe citizens do not need very basic liberties or fundamental freedoms, and some of them will go so far as to drink a glass of liquid containing more or less sewage on television?<sup>55</sup>

It is my belief that the enactment of a Bill of Rights could lead to better human and economic outcomes for all of the Australian people. We should then do this and reposition Australia back in line with the leaders of the international community. Instead of unwittingly dismantling our system of fair and just laws, and constituting a new republic, let's advance Australia more slowly and surely and with greater caution.

It should also be considered that even when some Australians had defined fundamental and natural rights and freedoms, it seems to have taken around 30 years of consultation to negotiate the path to independence. This process somehow failed to institute a "charter of freedom". Could this perhaps have promoted an era of forgetting, and too much division?

I hope this inquiry sees fit to consider this entire field of perceptions, and that there may be sufficient reason to make a recommendation for a new inquiry, perhaps into establishing the true, ancient, indubitable rights and liberties of the Australian people; that we may all meet on the level and live longer, happier and more prosperous lives. Whatever the outcome, it may be important to reflect more on the hard won gains of our civilized society. As it becomes clearer that the people need to survive in the new age of globalisation, we may need to take greater cognisance of historical perspective; mutual convenience, economy and safety also matter.

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<sup>54</sup> For the guidelines that protect our environment and heritage, see Environment Protection and Heritage Council (2008). *Australian Guidelines for Water Recycling, Managing Health and Environmental Risks* (Phase 2), Augmentation of Drinking Water Supplies, Commonwealth of Australia, Canberra; online at <http://www.ephc.gov.au/taxonomy/term/39>.

<sup>55</sup> Please allow me to fill your glass Sir!

Based on my experience and circumstances, it could be conceived that a new world of constant struggle will feed upon itself, when perhaps recognition of the true, ancient and indubitable rights and liberties of the people might provide all the simplification we seek. It seems more positive to focus on the needs of all the people, and develop the free will to now promote a higher standard of human dignity. We should take the best care of our people and our communities. Through greater efforts with enlightening public opinion and multi-stakeholder partnerships and participation we can better serve and protect our children.<sup>56</sup>

There is great threat to societies running too many unknown and unpredictable risks; yet the paradox is that we all seek to live safe and well in a great society; and in the next age of globalisation. In summary, this petition suggests that a *Plebiscite for an Australian Republic Bill 2008* may be the wrong goal for the Australian people to pursue now. It is further recommended that the issues to focus on instead are: the enactment of a Bill of Rights, the reinstatement of very basic liberties and fundamental freedoms, the declaration of the public good (in each domain of government service and protection), and the lively pursuit of sound water management, all for human reason and our very survival.

We could instead gain much value as one people, by taking such little steps, and building such experience of implementing good governance practice that more strategically responds to these issues; before we aim for other more or less ambitious goals. A “charter of freedom” may be a good first step to levelling our playing field. Thank you for your kind attention and consideration.

Yours faithfully,

David C. Tipping

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<sup>56</sup> “The steps need to be carefully measured, for if the family begins to rely on the State for the backbone it should have, it will not stay up, and its fall will be lower than the stage it rose from”. See Richards, E. (1911: 46, 140). *Conservation by Sanitation: Air and Water Supply; Disposal of Waste*, Wiley & Sons, New York.