

Transcript of DVD 'For we are young and free'

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For we are young and free?

In 1900, the commonwealth of Australia constitution act, was passed and became the constitution for the commonwealth of Australia, then a colony of the United Kingdom.

This Act of the United Kingdom Parliament, today remains the current Australian Constitution despite the fact Australia has since become a sovereign nation, confirmed through various acts including the signing of Treaty Versailles in 1919 and later the signing of Charter of the United Nations.

In 1998, in Sue vs Hill, The High Court ruled that the UK was a foreign power under its own legislation.

To anyone outside Australia, the current system is unbelievable in a modern society.

DVD features the following speakers -

- Ian Henke, Exec Director Exec Director IRldj(?) - Institute of Constitutional Education & Research
- Joe Bryant - Fmr City Councillor, Blacktown, Fmr Ind.Cand. State & Federal
- Nic Faulkner - Ind. Cand. Fed Seat Richmond, Ind.Cand.State Seat Raling
- Dr John Lamont MB BS M.Bus, GCFS, CPIAJL, Legal Researcher
- Dr David Siminton - Governor, Principality of Camside
- Phil Faulk BlndigS LLB (Hons) Law lecturer - Griffith Uni

What is the true purpose of the law?

Ian Henke: Fundamentally, law is something from which we can use as the basis for civilised dealings with society without killing each other and as the method of solving problems. But if we don't have a good fundamental law system that applies to everybody then we may as well not have one at all.

Joe Bryant: The law is about the protection of individual rights and freedoms. The law is necessary for people to live together so that everybody gets a fair go and

people who are not prepared to give others a fair go are dealt with by the law. That is the purpose of law.

Nic Faulkner: From an indigenous perspective the true purpose of the law, of our law, is to keep order in society, in our communities.

Where does the law stand now?

Joe Bryant: The purpose of the law has changed over the last century or so, where its now a matter of parliament or government having control of the people which is not the true intent of the law, or purpose of the law.

Henke: One of the key things about any law, as Geoffrey Robertson put it, is that its got to have a system of law which has inherent in it that the citizen can defeat the government if necessary. We now have a system of law in which the the citizen can't defeat the government, in which the system has been rigged to assure that the citizen can't beat the government.

Where did it all begin?

Dr John Lamont: My understanding is that it started in 1973 when a gentleman, Frank Conningham was travelling, making one of his many trips between Australia and the UK. He worked in a sort of very official government capacity.

Ian Henke: He was travelling on an Australian passport in which the Queen instructed people to give him various assistances and when he got there he was told, "Go and get in the Aliens Queue, you belong over there". And he produced the passport and they said, "We don't care what your passport says you belong over there".

Lamont: All his previous journeys there, when he arrived at Heathrow he lined up under British Subjects and went down that queue through Passport Control. What happened in this occasion in 1973 was he was put in the Alien Queue. Despite much protesting he couldn't do much about it. Unbeknownst to him the UK Parliament had just passed the Immigration, Asylum and Amendment Act 1973 which made all Australian citizens no longer British subjects.

Henke: When he came back to Australia and he's a mathematical physicist of great note - he spoke to a number of his colleagues including a number of senior QCs. And they said "Oh, yes the law is in fact, the fundamental law is the constitution. " He said, what's that in legal terms?". And they said "Oh well, its an English law". And he said, "Well hang on, how can we be under a law and yet they're telling us that we're aliens under that same law? There's something crazy going on here." And he started to dig.

Lamont: On his return from the UK he sought legal advice from some of his many friends. And I understand one that he went to was Colin Howard, who was the **head** (?) professional of constitution law at Melbourne University. After some

discussion and research my understanding is that Colin Howard informed him that constitution's not valid.

Continuing the research Frank went and saw the secretaries of the Treasury and also the Prime Minister's Department and my understanding is the response he got was, "We realised that somebody eventually would find out". So they were well aware of the illegal basis of it.

They then set about developing further research and also talking to politicians, because at the end of the day they thought it has to be corrected. The way to correct it is to get a political solution and so they dealt with politicians.

The 1999 Referendum

Lamont: My understanding is that during the crisis events of 1975 Gough Whitlam, Malcolm Fraser and the Governor-General we were aware of this research and this information. Going through the 80s even, it was discussed with Bob Hawke and Paul Keating. It was Keating's suggestion that, yes it should be put in front of the people and the way they did that was in the form of a referendum which was eventually held in 1999.

Henke: Now what we did, is we decided we'd set out firstly just to get the facts out into the public. To say to people, "Hang on what is this that you're obeying, what's this law that you're obeying, what's its source, what's its origin, what's its authority, and do you still accept it?"

Now the government got wind of this and so they ran the republic debate in November 1999. Most people tend to think that that debate was about the republic question as to whether or not we had an Australian head of state. In fact the real question was Question 2, the so-called Preamble question.

Bryant: The system that presented to the elector was presented via a booklet called the 'Yes and No' booklet which set out what was to happen with the referendum, what the referendum question was and the two options, which was the republican option and what we might call the monarchist option.

The monarchist option was of course, only part of the constitution, section 9 only, of the original constitution act.

Henke: The so-called preamble question contains a clause which says "We, the Australian people commit ourselves to this constitution."

It is the first and only vote ever taken of the entire Australian people about the constitution by which we're governed. And by 60.66% to 39.34% the people said "no".

Bryant: So people were told in that booklet if they "yes" they would be voting for the republic and if they voted "no" they would be voting for section 9 only of the constitution. So the fact that the "no" vote got up reinforces the government's position that only section 9 of the constitution applies, and I believe in 10 or 20 years

time that will be the proposition they'll put to the people that Australia voted on it in 1999 and they accepted only section 9 as being the constitution, when in fact its not.

A constitution for a colony

Henke: The constitution that we have in Australia is clause 9 of a United Kingdom act passed in July 1900. The first eight clauses of the so-called covering clauses, clause 8 of that describes the commonwealth as a self-governing colony and for the purposes of law that's what it remains. Now in the 21st century that's just no longer valid.

A sovereign nation

Lamont: Trick or Treaty? Commonwealth power to make and Implement Treaties. It is a report by the senate legal and conference reference committee published in November 1995

It says quite clearly that on signing the treaty of peace and becoming a member of the international Labour organisation we were a sovereign nation, Australia was a sovereign nation from then. It also refers to the imperial war conference held in 1917 and it was decided at that meeting, resolution number 9 refers to the coming into hostilities, they would have a special conference to sort out the constitutional arrangements with the dominions because they were saying that they should be treated equally at that point in time, and this is was borne out in 1921, 1926, 1931 and so on.

Dr David Siminton: And one of the rules of becoming a member of the United Nations is that you must be an independent sovereign nation. That means you cannot be ruled, regulated or influenced by any other sovereign nation such as England.

What the Australian Government should have done on that exact day, within minutes of that documentation being accepted from England, is they should have instituted the replacement legal systems for Australia and they did no such thing.

What was done?

Lamont: In 1998 there was a further development. I think the various people in Melbourne realised the politicians weren't going to give them an adequate forum to have these issues ventilated, so they thought the would be, "OK we'll get some cases going, we get them into the high court and the politicians aren't prepared to fix it, but the judiciary, put it in front of them and them being honest people, we would expect them to fix the problem, at least make the politicians aware they have a major issue legally, for the legal basis of law in this country."

Bryant: The theory is that the courts are independent of government, but I think that's long proven not to be the case.

The Hayne Decision

Lamont: This is the first time these issues were put before the highest legal body in Australia, the first time the high court had the opportunity to view these issues. It was by way of a section 40 lift application from a lower court and the decision is Jooose vs the ASIC which was handed down on 12 December, it was dealt with on 12 December 1998.

And what Justice Hayne said in that meeting was that he had a duty to protect the system. We felt a bit cheated by that because we thought he was there to interpret the law and apply the law correctly. That appeared to be secondary to preserving the system.

The Australia Act

Phil Faulk: I think clearly the Australia Act in the way that it enacts Australia as a separate nation and separated from England has logistical and legal problems in that any changes to a constitution requires a referendum in this country, and clearly the Australia Act does change the constitution, in fact changes the heads of the constitution, and that was done without a referendum and on that basis I would think it was illegal.

As an indigenous Australian I have a very cynical viewpoint of the Australia Act and why it came about in 1986. When one looks from the international perspective at how the law has gone for indigenous peoples, you can see that in 1982 the Canadian Indians went to the Privy Council on the issue of treaty rights and the assertion of joint sovereignty. The Privy Council found in their favour and as a consequence of that particular case the Canadian Government were forced to recognise joint sovereignty, domestic nation status, and in fact constitutionalised it through section 35 of the Canadian Constitution.

The 1986 Australia Act conveniently cut off any connection to that higher authority for indigenous Australians. So in my view there was more to the Australia Act than to give us independence as a country.

1788

Phil Faulk: There are actually three elements of what you need to show legally at sovereignty to be able to claim occupation, which is how this country was claimed, and they are firstly, terra nalius (sp?) which we've all heard about, the other one is effective control, and the third being a will and intention to act as sovereign peoples.

Paul Coe: Captain James Cook when he arrived to charter land and waters of the continent of Australia had specific instructions from the imperial crown, and the British admiralty, only to do things with the consent of the aboriginal natives of Australia. That was completely ignored.

Phil Faulk: Terra nalius basically in law means land belonging to no-one, no-one here.

Paul Coe: So the basis upon which the occupation ...sorry, the possession of Australia by Cook was a fallacy. Totally legally wrong under English law and international law at the time.

Phil Faulk: Even without Mabo overturning terra nalius, I think it was always a question of international law, that whole issue of occupation and the legal nexuses that go with it.

Paul Coe: What we were trying to achieve by going through the Commission on Human Rights and eventually to get some the International Court of Justice was to get some open the lie, the international lie that Australia is a country of people, a democratic country that has been through a decolonisation process and as a result of that decolonisation process aboriginal people have also gone through it, and by some magical formula that we don't know, we've consented to the establishment of the commonwealth of Australia and the states and that the transfer of our land and territories and water rights were legitimised by some process unbeknownst to us.

Henke: The fact is we have a bureaucracy which has inherited its original powers from convict days, it hasn't changed its methods from the convict days, it hasn't changed its attitudes from the convict days. They regard themselves as public masters, not as public servants.

So we deliberately ...we decided that the way of challenging this would be to challenge not the weakest department of the government but the strongest.

The Taxation Office

Henke: And of course the first thing we found was that there was no such animal. The fact is nobody had ever actually created the Taxation Department. The constitutional basis on which our money was taken off us was never done. And in October 1999 before the federal court, we actually proved that it had never been done.

Here was something which should have been absolutely fundamental. If you or I set up new a company and didn't register it or didn't file the right papers, or didn't appoint people the right way, we would be in court and fined, and yet here we have the most influential and important department in the country which had no legal existence.

Well we went into courts, we fought now some nine High Court cases, numerous cases in other courts, and we sought to apply the very simple standard, that if the people had to obey the law then the Taxation Offices had to obey the law and we discovered that the courts were not prepared to make the Taxation Offices obey the law. The courts were not prepared to say, "This is not legally done the right way, it must be fixed."

The courts allowed the Taxation Offices to carry on illegally and in one fell swoop they demonstrated that the true function of the courts was not justice, it was not all of the separations of powers etc which they like to protest is their true guide, but they

were simply an executive instrument whose job it was to safeguard the revenue and the money coming in to pay their own salaries.

Bryant: The courts are an instrument of government, they are set up in the constitution as an instrument of government, although they are supposed to be independent. How can you have an independent court, say an independent High Court when the politicians, in particular a prime minister, appoints the judges? How can they be seen to be independent?

Siminton: If an entity is not a legal entity, is that not one and the same as saying that it is an illegal entity? To which the Australian Federal Police, on a transcript tape which we will be making available shortly on our website said, "Yes, that is correct". I think from memory it is the 1899 Crimes Act currently represented as the 1914 Crimes Act, that actually stipulates that if you interact with, or encourage, a known illegal entity it is a seven year jailable offence. And here we have on the website, a document stating that our Australian Taxation Office is illegal.

Henke: The constitution under section 51 gives the government the right to make laws for peace, order and good government. Yet in the Ryan case in the high court about two years ago the high court ruled that we were not entitled to fair and just tax laws. And that's the statement by the chief justice of the high court. Now if fair and just tax laws are not laws for peace, order or good government, what are? And what people seem to forget is that just about every major revolution in history started on the basis of unjust taxation.

Bryant: Taxation, whether it is based on transactions whether its debits, credits or whatever, is based on all transactions without exception, without any exclusion, everybody pays an equal amount of tax. People who have avoided tax to a larger degree - the mega corporations - all those people will have to pay their fair share of tax, and that's not happening at the moment, the mums and dads pay all the tax.

Henke: When our tax system was first set up we had a system which taxed most of the business in this country. Today most of the business in this country is done by overseas owned companies, who in turn pay their taxes overseas but not in Australia. The result is that you've got to collect more and more tax from the ordinary taxpayer, from the small man, from the ordinary punter in the streets and that of course, gets more and more unfair.

Phil Faulk: The Goods and Services Act of 1999 Section 165.55 talks about Commissioner having disregard in making declarations for various purposes. And those purposes are such things as, and there's several listed, (a) treat a particular event that happened as not having happened. Well that's interesting, an amazing piece of legislation that gives the commissioner a veto right over and above tangible things that would have happened.

Nik Faulkner: Now this seems to me to be a clear example of where the parliament has made a law that allows the commissioner who administers the law, to lie or to set somebody up in a position which is not correct. Now to me that is unconstitutional. We only have the laws to obey and if a person obeys those laws then they cannot be found to be at fault, but under that act of the GST 165.55, it

means that if you acted lawfully, the commissioner can actually make a statement saying that you acted unlawfully, and you have no right to do anything else other than to comply with his direction.

Royal assent

Siminton: Its important for you to understand that before law becomes law from a parliamentary point of view that a bill passing through the houses of parliament must receive the final signature of a representative of the queen whilst under British law in order for it to become law and to actually become an act.

Nic Faulkner: The research has shown us that in fact the Queen of England, or the Queen of the United Kingdom and northern Ireland, as constituted under the great seal of England, is a distinctly different queen or monarch under our Australian system who is now called under the 1973 Royal Styles and Titles Act, the Queen of Australia, Head of the Commonwealth and her other realms and territories.

And now we realise that some of the state governors actually have their letters patent issued by Elizabeth II by the grace of god and our other realms and territories.

Now there is no great seal in England or Australia under which she is constituted, so therefore any instruments or royal assents that she gives under that title are not legal, they are not lawful, and they have no course of law.

Siminton: If Queen Elizabeth II has no executive authority over Australia from even back in the time in which she was born, then there is no such thing as a legally appointed representative of the queen. That means all governor-generals in Australia are invalid.

If the governor-general's position is not a true representation of Queen Elizabeth II, that means every bill that has been passed and signed off by him on her behalf is not law.

Nic Faulker: Now so far in our journey, we found most of the people who sit in the parliament are not interested in if they have lawful authority to sit there.

Principalities within Australia

Siminton: The principalities structures that can be constituted under rules of British law was first established and set as a historical precedent by Prince Leonard of the Hutt River Province in Western Australia. This he established some 35-36 years ago. I believe his anniversary is April.

Prince Leonard found himself in a situation where he was being interfered with economically by the Australian government at the time who had created a wheat quota system. This new wheat quota system would have caused Prince Leonard to have had to destroy 95% of the best crop he had ever created on his farm.

This brilliant and determined man, went off and researched law along with an enthusiastic group of Perth University law students and found under British law that

we as the citizens at an international level as well as a British law level have a right at any time to secede (sp?) and to legally remove ourselves from influence of any government which has done the wrong thing by us.

Phil Faulk: Michael some years ago and others, Bob Wetherall, Melissa (?) O'Donohue, Jeff Clarke, several of our current leaders, were involved in it and they set up what is known as the Aboriginal Provincial government. And they did that as a means to meeting the requirements at international law, basically to give an equivalent of the crown in that we are a government of the people. We have laws within that society and it was all about setting up a system of sharing sovereignty in this country, and creating indigenous land masses or areas to be recognised as a government, very similar to what happens in Canada where they set up provinces. Provinces are really indigenous provinces, so they have three tiers of government over there, the APG promotes that Australia fits another tier, or layer of government within its current system, that being indigenous peoples.

Siminton: The objective for the people is to find a process which we have developed for them, which first of all they can remove themselves from a system that everyday is doing damage to them, is abusing their constitutional rights, and allows the people to legally step out of the system by simply saying, "We are no longer associated with this system, it is corrupt".

It allows them to interact with the ministry structures of our government and that is the government of Camside and give us directions of which it is our job to act on the will of the people.

Faulk: We have our own passports as well, indigenous passport that we use when we go overseas and back. Michael uses his regularly, I've use mine regularly. Its accepted in other indigenous states, not in non-indigenous however. That's always a bit of a problem. Michael decided to use his indigenous passport when he arrived back in Australia and they wouldn't accept it. They said, "No, sorry mate, that's not a real passport. We need your passport from your country of origin."

He said, "It was, it is my passport of my country of origin". And the law is that if you don't accept the person's passport you need to send them back to their country of origin, and that made it rather hard for people in Sydney at the time, to send Michael home to his country of origin because he was standing in it.

The good thing about democracy

Paul Coe: Well when we look at the debates leading up to the establishment of the commonwealth parliament, the colonies at that time had requested authority from the imperial parliament to do what they were planning to do, namely to establish the Commonwealth of Australia. The mandate to do it was actually a gift from the imperial parliament. It was not something that came from the ordinary average Australian because only a very select group of people participated in those parliamentary debates and drew up the Constitution of Australia and they were men who were of a propertied class. If you didn't have property you were excluded from the process. So I can't see how the vast majority of Australian people are implicitly

bound by the rules of the constitution of Australia if they had no say in the drafting of the constitution, if they didn't give free and informed consent to it.

Nic Faulkner: Really only about eight or nine per cent of the population of Australia voted, not for the constitution but for federation. We actually had no say in the constitution at all and we had further less say when it was taken back to England and qualified by the covering clauses, that is the clauses 1 to 8 in which is granted all the power still back through the imperial parliament to United Kingdom parliament.

All or nothing!

Henke: If we are going to be forced to have this current constitution, since its current British law, let's have all the other benefits which are available to us under British law. The first one is the Human Rights Act 1998. Automatically under the British Law the Human Rights Act is part of our constitution if we continue to use it. And this is our problem, the politicians and the courts want to select what law they would use when they want to apply it to us to force us to do something, but they don't want to use the same law when it gives us rights to come back at them.

So let's either have all of the current British law, together with all of the rights that go with it, or let's have a new set of laws which balances things up another way.

Lamont: If we were covered under British law we would be protected by the Bill of Rights 1988 and the Human Rights Act 1998. But since we are an independent sovereign nation it is up to us to put in place a bill of rights for ourselves. We are the only OECD country that doesn't have a bill of rights.

Henke: Australia is the only OECD country which has no human rights. There is no code of human rights which any Australian can go into court and quote and say, "These are my rights. I am entitled to this."

Now why should we be so much less than every other country in the world, even some of the worst dictatorships have got codes of human rights but our government, to quote Sir Garfield Barwick, "If Australia had a bill of rights it would be ungovernable". What of course he means is that you couldn't possibly keep doing things to the Australian people the way they're done if they had a bill of rights.

Lamont: Where we are up to today there is no further cases as I understand it going through the Australian legal system because all the avenues have been exhausted and all efforts are now concentrated on dealing with issues internationally in two venues, one in the British High Court and another is in the European Court of Human Rights.

Henke: Now what we've done is, we've gone to the British courts and we've said, "Here is this law, it is domestic British law, certain things are not being done correctly under it. For instance, governor-generals are not being appointed in the way laid down in other British acts and therefore their appointment is illegal. Now you have one of two choices, either you force their appointment according to proper British standards or rule that the appointments are null and void. And if you rule that they

are null and void, then every act they've passed, every appointment they've made, every judge they've appointed, all become illegal.

They want to have the power but they don't want to have the responsibility. Now we're saying have the power but you must have the responsibility and the accountability and what we've done by taking the cases to the British court, we're acquiring accountability for the first time in many years and it is causing a great deal of heartache in government quarters.

Bryant: If government is out of control or off the rails, you can only look to one document for that and that's the constitution. Its successful if governments are doing the right thing, its unsuccessful if they're not and the evidence is clear that they're not. The constitution is unsuccessful and for that reason we thought we'd better get busy and draft another one. At least somewhere down the track when that better one becomes a popular idea it will be ready.

Henke: What we need is a new constitution based upon the equality of everybody before the law including the government.

Paul Coe: Every time an issue of constitutional validity arises its head the people should be consulted and they should be asked to vote on those matters.

Henke: One of the things that we can actually try is a form of government that we haven't actually tried yet. Its called democracy and once we try that I suspect that at the very least we can produce is a 21st century constitution, voted on by the people, clause by clause. Let's not have any of this nonsense of, "You take one bit, you take it all". Let's have each clause voted on separately, so that nothing gets through by accident.

Bryant: We continue drafting the constitution. We seek as much input as possible across Australia. We hold a convention every year to update the draft in relation to the input we've got, or have received during that year. Its an ongoing process.

Henke: Let's start the constitution with a preamble that says, "All rights belong to the people and only those rights delegated to the parliament and the government by this constitution shall be exercised by the government and the parliament, and it shall be their responsibility at all times to prove that any exercise of power is within the limits delegated to them by this constitution."

Media

Lamont: The solicitor that I work with has contacted most of the mainstream media, current affairs programs, Channel 9 for example. He was told very clearly, "Yes, we know about the issue. No, we're not going to run anything on it because if we do, our boss not only will come down and pull the plug, we all get sacked."

Another friend of mine went to a barbeque with ABC reporters. He mentioned this issue. They all knew about it. He wanted to know, "Why won't you run this story?" Because they've been told by their boss not to touch it.

We had an article published in a local press, which was supposed to be two articles in weekly succession. The first article gets in the second one gets canned. The editor, who is was new editor, thought the idea was good and wanted to run the story, The reporter had been trying to get it in the paper for 12-18 months, the new editor said, "Yep, to hell with it, let's run it". Ran the first article, canned on the second one. So 18 months work went nowhere.

A solicitor I know off, took this issue and got on Channel 10 over a parking issue. All the promised follow-up interviews never eventuated ...all died. So if some does leak through, its very quickly canned. And so when you talk to the people in the street, they don't know what you're talking about. Its not out there for discussion, its not something you will see on any mainstream media.

The future?

Bryant: Australia has the potential to be one of the greatest countries in the world. My vision is that people should have every opportunity to become prosperous, they should have from childhood throughout their lives, great hope in the future because hope brings happiness and we need happy, contented and prosperous people.

Paul Coe: The only thing that I'd like to say, is the future of Australia belongs to the Australian people, that means every Australian person, aboriginal, it means the total multicultural society that we live in, not just the privileged elite. Its not just the elected parliamentarians, its not just the judges or those who are the mandarins in the bureaucratic circles, or those who are the elders of the multi-national corporations.

Hinke: Whilst they may not like the idea, in fact its a revolution. Its coming this time in a different way. You've got people declaring themselves to be independent principalities, you've got other people just seeking to defy the law, you've got other people using the court system in a way that its never been able or designed to or cope with, you've got huge numbers of people putting cases in which the lawyers won't put in because the lawyers are part of the system and part of the problem.

So what you've got is a revolution taking place in multiple ways. Nobody's shooting, but the question at the moment is, "Who would you shoot anyway, and get a result?" But what we have is a very, very widespread revolution, and its a revolution that at the end will succeed. It can't do anything else.