Sir/Madam,

As a COSTITUTIONALIST I find the usage of “rate capping” disturbing because it might be implied that municipal/shire council rates are constitutionally valid, which unlikely not a single Member of Parliament is aware of it is in violation to s109 of the Commonwealth of Australia Constitution Act 1900 (UK). Obviously, I do not expect anyone to nilly willy accept this merely because I stated so above and hence let me explain matters, which will perhaps give the reader a better understanding about the “rates” issue.

Our constitution has embedded certain legal principles, which is that there are different Parliaments which can legislate. The British Parliament is which in fact passed the Commonwealth of Australia Constitution Act 1900 (UK) as a “constitution act” which is different than any ordinary act, this as it can only be amended with a “Constitution Amendment Act” to which I understand no such ever was passed by the British Parliament since federation.

The Commonwealth of Australia Constitution Act 1900 (UK) is a British Act and as such considering the decision of Aggregate Industries UK Ltd., R (on the application of) v English Nature and & Anor [2002] EWHC 908 (Admin) (24th April, 2002) and Judgments - Mark (Respondent) v. Mark (Appellant), OPINIONS, OF THE LORDS OF APPEAL for judgment IN THE CAUSE, SESSION 2005-06 [2005] UKHL 42 on appeal from: [2003] EWCA Civ 168 It appears that the The European Convention for the protection of Human Rights and Fundamental Freedoms (“the ECHR”) albeit not overriding constitutional law, is complimentary to British (constitution) law, as the Commonwealth of Australia Constitution Act 1900 (UK) is.

In brief the Court held that the European Union legislation would override British domestic law but not British constitutional laws. As such any legislation by the European Union can be complimentary to the legal provisions of the Commonwealth of Australia Constitution Act 1900 (UK) but cannot override these constitutional provisions.

Much has been decided by the High Court of Australia since federation, and at times overturned by the court itself, much because it was ill conceived/ill considered, etc.

QUOTE Duncan v Queensland (1916) 22 CLR 556, 582 (per Griffith C.J.)

That case (a previous decision of the High Court, Foggit, Jones & Co v NSW (1915) 21 CLR 357) was very briefly, and I regret to say, insufficiently argued and considered on the last day of the Sydney sitting..... The arguments which now commend themselves to me as conclusive did not find entrance to my mind. In my judgment that case was wrongly decided, and should be overruled.

END QUOTE

The Framers of the Constitution made clear:
Hansard 2-2-1898 Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE  Mr. DEAKIN (Victoria).-

The record of these debates may fairly be expected to be widely read, and the observations to which I allude might otherwise lead to a certain amount of misconception.

END QUOTE

Just that many who were delegates in the convention then achieved positions in the High Court of Australia and elsewhere and so banning the usage of the Hansard records was the perfect vehicle to pervert the course of justice, and so pretend that constitutional provisions were different then what was actually intended.

To just give an example was the 1967 con-job referendum of ss51 (xxvi) of the constitution to amend this section purportedly to give Aboriginals equal voting rights and citizenship, etc.

Oh, boy what a deception this was!

Hansard 20-4-1897 Constitution Convention Debates

QUOTE

Clause 120-In reckoning the numbers of the people of a State or other part of the Commonwealth aboriginal natives shall not be counted.

Dr. COCKBURN: As a general principle I think this is quite right. But in this colony, and I suppose in some of the other colonies, there are a number of natives who are on the rolls, and they ought not to be debarred from voting.

Mr. DEAKIN: This only determines the number of your representatives, and the aboriginal population is too small to affect that in the least degree.

Mr. BARTON: It is only for the purpose of determining the quota.

Dr. COCKBURN: Is that perfectly clear? Even then, as a matter of principle, they ought not to be deducted.

Mr. O'CONNOR: The amendment you have carried already preserves their votes.

Dr. COCKBURN: I think these natives ought to be preserved as component parts in reckoning up the people. I can point out one place where 100 or 200 of these aboriginals vote.

Mr. DEAKIN: Well, it will take 26,000 to affect one vote.

Mr. WALKER: I would point out to Dr. Cockburn that one point in connection with this matter is, that when we come to divide the expenses of the Federal Government per capita, if he leaves out these aboriginals South Australia will have so much the less to pay, whilst if they are counted South Australia will have so much the more to pay.

Clause, as read, agreed to.

END QUOTE

What the Framers of the Constitution were referring to was that those Aboriginals who had attained colonial franchise and those who would further gain State franchise would all be protected within s41 of the constitution.

Commonwealth of Australia Constitution Act 1900 (UK)

QUOTE

41 Right of electors of States

No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

END QUOTE

As such the so called “white only voting rights” that purported to deprive Aboriginals since about 1908 from voting were unconstitutional.
Hence, all that was needed was one lawyer stand up and challenge the constitutional validity of the legislation. Regretfully this never eventuated and Aboriginals and other electors alike were duped in voting in a con-job ss51(xxvi) referendum that was to make it worse for them. After all ss51(xxvi) was specifically inserted in the constitution for the Commonwealth to legislate against “foreign” “inferior” “coloured” “races” as to protect Australian job security. Clearly Aboriginals were not “foreign nor could be legislated against to protect Australian job security. I will avoid quoting numerous sections of the Hansard to further underline this safe to say my books published in the INSPECTOR-RIKATI® series on certain constitutional and other legal issues canvas this and other issues extensively. They are available in the Australian national Library at Canberra.

“..However, the judiciary has no power to amend or modernize the Constitution to give effect to what Judges think is in the best 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."

"... The starting point for a principled interpretation of the Constitution is the search for the intention of its makers"

Gaudron J (Wakim, HCA27\99)

"... But … in the interpretation of the Constitution the connotation or connotations of its words should remain constant. We are not to give words a meaning different from any meaning which they could have borne in 1900. Law is to be accommodated to changing facts. It is not to be changed as language changes."

Windeyer J (Ex parte Professional Engineers’ Association)

Re Wakim; Ex parte McNally; Re Wakim; Ex parte Darvall; Re Brown; Ex parte Amann; Spi [1999] HCA 27

QUOTE

Constitutional interpretation

1. The starting point for a principled interpretation of the Constitution is the search for the intention of its makers. That does not mean a search for their subjective beliefs, hopes or expectations. Constitutional interpretation is not a search for the mental states of those who made, or for that matter approved or enacted, the Constitution. The intention of its makers can only be deduced from the words that they used in the historical context in which they used them. In a paper on constitutional interpretation, presented at Fordham University in 1996, Professor Ronald Dworkin argued, correctly in my opinion:

"We must begin, in my view, by asking what - on the best evidence available - the authors of the text in question intended to say. That is an exercise in what I have called constructive interpretation. It does not mean peeking inside the skulls of people dead for centuries. It means trying to make the best sense we can of an historical event - someone, or a social group with particular responsibilities, speaking or writing in a particular way on a particular occasion."

END QUOTE

We also should consider the following:

Hansard 19-4-1897 Constitution Convention Debates

QUOTE

Mr. CARRUTHERS:

This is a Constitution which the unlettered people of the community ought to be able to understand.

END QUOTE

Hansard 21-9-1897 Constitution Convention Debates

QUOTE

The Right Hon. C.C. KINGSTON (South Australia)[9.21]: I trust the Drafting Committee will not fail to exercise a liberal discretion in striking out words which they do not understand, and that they will put in words which can be understood by persons commonly acquainted with the English language.

END QUOTE
Hansard 8-3-1898 Constitution Convention Debates

QUOTE Mr. ISAACS - We want a people's Constitution, not a lawyers' Constitution.

END QUOTE

Therefore the constitution and so its interpretation must be in the words of the Framers of the Constitution and not be perverted to serve some alternative purpose that may suit whomever in a contemporary manner.

We also have to consider:

Hansard 17-3-1898 Constitution Convention Debates

QUOTE Mr. BARTON - Providing, as this Constitution does, for a free people to elect a free Parliament-giving that people through their Parliament the power of the purse-laying at their mercy from day to day the existence of any Ministry which dares by corruption, or drifts through ignorance into, the commission of any act which is unfavorable to the people having this security, it must in its very essence be a free Constitution. Whatever any one may say to the contrary that is secured in the very way in which the freedom of the British Constitution is secured. It is secured by vesting in the people, through their representatives, the power of the purse, and I venture [start page 2477] to say there is no other way of securing absolute freedom to a people than that, unless you make a different kind of Executive than that which we contemplate, and then overload your Constitution with legislative provisions to protect the citizen from interference. Under this Constitution he is saved from every kind of interference. Under this Constitution he has his voice not only in the, daily government of the country, but in the daily determination of the question of whom is the Government to consist. There is the guarantee of freedom in this Constitution. There is the guarantee which none of us have sought to remove, but every one has sought to strengthen. How we or our work can be accused of not providing for the popular liberty is something which I hope the critics will now venture to explain, and I think I have made their work difficult for them. 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. 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 17-3-1898 Constitution Convention Debates

QUOTE Sir EDWARD BRADDON - 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 8-2-1898 Constitution Convention Debates

QUOTE

Mr. OCONNOR (New South Wales).—The honorable and learned member (Mr. Isaacs) is I think correct in the history of this clause that he has given, and this is [start page 672] one of those instances which should make us very careful of following too slavishly the provisions of the United States Constitution, or any other Constitution. No doubt in putting together the draft of this Bill, those who were responsible for doing so used the material they found in every Constitution before it, and probably they felt that they would be incurring a great deal of responsibility in leaving out provisions which might be in the least degree applicable. But it is for us to consider, looking at the history and reasons for these provisions in the Constitution of the United States, whether they are in any way applicable: and I quite agree with my honorable and learned friend (Mr. Carruthers) that we should be very careful of every word that we put in this Constitution, and that we should have no word in it which we do not see some reason for. Because there can be no question that in time to come, when this Constitution has to be interpreted, every word will be weighed and an interpretation given to it; and by the use now of what I may describe as idle words which we have no use for, we may be giving a direction to the Constitution which none of us now contemplate. Therefore, it is incumbent upon us to see that there is some reason for every clause and every word that goes into this Constitution.

END QUOTE

One would therefore find that decisions such as Sue v Hill, WorkChoices, Sykes v Cleary, Mabo, etc, were well outside the judicial powers of the High Court of Australia in regard of major/critical parts of those judgments.

But rather then get stuck further in these and other issues let us return to the “rate” issue.


QUOTE H. L. D’EMDEN v F. PEDDER – High Court of Australia

The Commonwealth and the States are, with respect to the matters which under the Constitution are within the ambit of their respective legislative or executive authority, sovereign States, subject only to the restrictions imposed by the Imperial connection and the provisions of the Constitution, either expressed or implied. Where, therefore, the Constitution makes a grant of legislative or executive power to the Commonwealth, the Commonwealth is entitled to exercise that power in absolute freedom, and without any interference or control whatever except that prescribed by the Constitution itself.

END QUOTE

Again; “, either expressed or implied.”

As such we must consider the legal principles embedded in the constitution and even in Sydney Municipal Council v Commonwealth [1904] HCA 50; (1904) 1 CLR 208 (26 April 1904) the court referred to what was intended by the convention to apply to constitutional provisions. As such, all and any legislative powers and other executive powers must be considered as to what the Framers of the Constitution intended.

Sydney Municipal Council v Commonwealth [1904] HCA 50; (1904) 1 CLR 208 (26 April 1904)

QUOTE

But to get at the real meaning we must go beyond that, we must examine the context, consider the Constitution as a whole, and its underlying principles and any circumstances which may throw light upon the object which the Convention had in view, when they embodied it in the Constitution. This is a sound rule in the interpretation of Statutes, and is well explained by Lord Blackburn in the River Wear Commissioners v. Adamson, 2 App. Cas., at p. 763, as follows:—”In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring further and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view; for the meaning of words varies according to the circumstances with respect to which they are used.” Before examining the words of the section, it will be useful to advert to the circumstances which the Convention had in view in framing this section, and their purpose and object in relation to those circumstances.

END QUOTE

The High Court of Australia in Sydney Municipal Council v Commonwealth [1904] HCA 50; (1904) 1 CLR 208 (26 April 1904) held that municipal/shire councils charging rates were in fact exercising “delegated” State land taxation powers.
The Court distinguished between impermissibly tacking extraneous provisions onto a law imposing taxation and inserting in a taxing statute provisions for the assessment, collection and recovery of that tax. A law containing provisions of that nature was still a law imposing taxation.

In Permanent Trustee the Court referred not only to British constitutional history but also to the Record of the Debates of the Constitutional Conventions of the 1890s, which drafted and settled the text of the Constitution.

It was not until 1988 that the High Court permitted resort to the Convention Debates of the 1890s in order to understand the meaning of words in the Constitution. The restriction dates back to a decision of the Court in 1904 in Municipal Council of Sydney v Commonwealth. That was another tax case. It was about the rateability of land previously owned by the Government of New South Wales which had become vested in the Commonwealth. Section 114 of the Constitution applies not only to prohibit the imposition of taxes by the Commonwealth on State property, but also to prohibit the imposition of taxes by the States on Commonwealth property. The Commonwealth claimed its protection. The Attorney-General of New South Wales wanted to refer in argument before the High Court to a statement of opinion which had been expressed by a delegate at the Convention Debates about the operation of s 114. The Attorney himself had been a delegate. The members of the Court, Griffith CJ, Barton and O'Connor JJ, all of whom had also been delegates, would not allow him to do so. Justice O'Connor treated the terms of the Constitution like those of a written contract, and said:

We are only concerned here with what was agreed to, not with what was said by the parties in the course of coming to an agreement.

Over the years this court-imposed restriction led to a rather artificial approach to interpretation of the Constitution. It also led to some absurdities and amusing moments. In the course of argument in the Concrete Pipes Case, which concerned the scope of the corporations power of the Commonwealth conferred by s 51(xx), counsel Mr Lyons, responding to a question from the Bench, acknowledged that he was not permitted to refer to the Convention Debates but went on to say what they showed. Mr Ellicott who was on the other side, described Mr Lyons' reference as 'not permissible' and added:

But all I want to say is that if they were looked at, one would find the contrary.

The High Court of Australia in Sydney Municipal Council v Commonwealth [1904] HCA 50; (1904) 1 CLR 208 (26 April 1904) held that Sydney City Council within s114 of the constitution was exercising the delegated powers of the State land taxation powers.

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2 (2004) 220 CLR 388, 419 [70].
3 (1904) 1 CLR 208.
4 (1904) 1 CLR 208, 213.
While we often hear judges claiming that the judiciary is the 3rd part of the government, the truth is that that might have been so with a colonial “sovereign Parliament” but since federation all colonial “sovereign”: Parliaments became “State “constitutional” Parliaments and the judiciary by this became 3rd part of the “constitution”.

This also because if one check the State letters patents issued at the time of federation they refer to an “impartial administration of justice”!

HANSARD 4-3-1891 Constitution Convention Debates
QUOTE Sir HENRY PARKES:

(2.) A judiciary, consisting of a federal supreme court, which shall constitute a high court of appeal for Australia, under the direct authority of the Sovereign, whose decisions, as such, shall be final.

(3.) An executive, consisting of a governor-general and such persons as may from time to time be appointed as his advisers, such persons sitting in Parliament, and whose term of office shall depend upon their possessing the confidence of the house of representatives, expressed by the support of the majority.

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.

Hansard 27-1-1898 Constitution Convention Debates
QUOTE Mr. BARTON.-I was going to explain when I was interrupted that the moment the Commonwealth legislates on this subject the power will become exclusive.

What appears to be grossly overlooked is that s123 of the constitution is the equivalent for the states as what is s128 for the Commonwealth. As such, where the States are created within s1906 of the constitution “subject to this constitution” then this applies to all legal principles embedded in the constitution. One is that there is a division between the legislative powers of the Commonwealth and those of the States as to avoid both to legislate upon the same subject matters. S109 does provide that where the Commonwealth legislate within its legislative powers or incidental to it then it excludes the states from any further legislative powers.

Hansard 27-1-1898 Constitution Convention Debates
QUOTE Mr. BARTON (New South Wales).-If this is left as an exclusive power the laws of the states will nevertheless remain in force under clause 100.

Mr. TRENWITH.-Would the states still proceed to make laws?

Mr. BARTON.-Not after this power of legislation comes into force. Their existing laws will, however, remain. If this is exclusive they can make no new laws, but the necessity of making these new laws will be all the more forced on the Commonwealth.
My only desire is to give power to the Federal Parliament to achieve a scheme for old-age pensions if it be practicable, and if the people require it. No power would be taken away from the states. The sub-section would not interfere with the right of any state to act in the meantime until the Federal Parliament took the matter in hand.

Numerous other such statements can be quoted but again I view those already quoted should be sufficient to get the message, that once the Commonwealth commences to legislate then this is the end of the legislative powers of the States forever. The constitution doesn't provide any mechanism to return legislative powers from the Commonwealth to the states. Ss51(xxxvii) is as French J (Now French CJ) also made clear a mechanism for the Commonwealth to accept referral of legislative powers and not for the States being authorised to do so. This is because of the separation of powers the States cannot refer legislative powers and by this the associate judicial powers to the Commonwealth unless within s123 of the constitution a State referendum approves such amendment to the State constitution to reduce both legislative as well as judicial powers.

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.

No “constitutional” Parliament can deprive a subsequent Parliament of its legislative powers and as such unless the State electors approved to refer legislative and associated judicial powers to the Commonwealth any purported reference of legislative powers is null and void.

Mr. GLYNN.-I think they would, because it is fixed in the Constitution. There is no special court, but the general courts would undoubtedly protect the states. What Mr. Isaacs seeks to do is to prevent the question of ultra vires arising after a law has been passed.

Mr. ISAACS.-No. If it is ultra vires of the Constitution it would, of course, be invalid.

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.
The Commonwealth on 11 November 1910 commenced the Land Tax Office (the forerunner of the ATO) and as such by s109 of the constitution all State land taxation became null and void. This means that also as from 11 November 1910 all delegated land taxation powers to municipal/shire councils became null and void. After all “councils” no longer held any “delegated land taxation powers”. While the commonwealth in 1952 abolished Land Taxation but with a proviso that no further land taxation could be applied, in 1953 it then abolished this 1952 act. But then subsequently abolished the 1953 act which then effectively re-instated the 1952 provisions that no further land taxes could be applied.

In my communication the then then Premier Kirstine Kaneally government of NSW it then was claimed that the State had obtained again land taxation powers, just that it failed to show within which constitutional provisions, as I know of none to exist.

Even if purportedly the Commonwealth had provided somehow legislation that allowed the states to raise land taxation on its behalf then all land taxation (including rates) would have to be “uniform” throughout the Commonwealth of Australia, and this clearly never eventuated.

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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**

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**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 be 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 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.

END QUOTE

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

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

The following is what later became s92 of the constitution;

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

Hence, any claims that “free intercourse” somehow includes the right of a lawyer of one state to practice in another state has got absolutely nothing to do with s92 as this was never as such intended by the Framers of the Constitution.

Again:
Mr. CARRUTHERS:

This is a Constitution which the unlettered people of the community ought to be able to understand.

The Right Hon. C.C. KINGSTON (South Australia) 9.21: I trust the Drafting Committee will not fail to exercise a liberal discretion in striking out words which they do not understand, and that they will put in words which can be understood by persons commonly acquainted with the English language.

Mr. ISAACS.-

We want a people's Constitution, not a lawyers' Constitution.

Therefore one must look at the plain language of the constitution and not fanciful lawyer's interpretations.

Another issue is that ss51 is nothing more but a section that provides legislative powers for the Commonwealth. Section 52 provides that it is exclusive legislative powers, whereas s51 is that the States can continue to legislate up till the time the Commonwealth commences to do so and then “no new laws” can be enacted. The constitution specifically provides in s106 for the creation of the States “subject to this constitution” as they are the “Local Government” while the Commonwealth is the “Central Government”

Mr. MCMILLAN:

There is another question which, to a certain extent, I think is connected with my contention in favour of a strong central government. There is in the centre of this great continent, which you may call Central Australia, a large area of land that adjoins three or four colonies. From its peculiar position, from the smallness of its rainfall, it will have to be dealt with in the future separately, from the other portions of Australia. It is not likely with an enterprising people such as we have in these colonies, with every obstacle going down before the race to which we belong that we shall allow the and wastes of the centre of this continent to remain as they are for many years to come. There is no doubt that a system of conservation of water and irrigation must be introduced into that great tract, and if that is done at all it must be done by a united Australia. Consequently there should be some machinery in the central government by which the country in the centre of this continent maybe dealt with differently from other parts of the continent.

Mr. CARRUTHERS:

Not to have legislation merely to protect the people lower down the river Murray; but it is within the cognisance of this Committee that the hon. member has proposed that the Federal Government should undertake the work of cutting a deep water channel at the Murray mouth, so that large ships may come in and out of the Murray with freedom, and that if the Federal Parliament does not do this, authority may be given to the local Government to do it. He knows that if the channel is cut, the water will flow away much more freely than before, and so be of no benefit to the settlers on the river, but all this is to be done for the benefit of the colony of South Australia only, so that traffic may flow through its territory.

Dr. COCKBURN:

We know the tendency is always towards the central authority, that the central authority constitutes a sort of vortex to which power gradually attaches itself. Therefore, all the buttresses and all the ties should be the other way, to assist those who uphold the rights of the states from being drawn into this central authority, and from having their powers finally destroyed. The whole history of federation in America, whether it be the United States or Canada, has proved this: that the tendency is towards centralisation, and away from that local government which is inseparable from freedom. I have heard it said that those who advocate state rights are taking a conservative view of the question.
would like to know since what time have centralisation and democracy been associated? Those who advocate state rights advocate local government, under whose shadow alone democracy can exist. There is nothing in common between centralisation and democracy, and if you handicap a house, which is erected, to preserve state rights, what have you to prevent the establishment, in this huge island of Australia, of a strong central government which is local only to one portion of the continent, and as far as the rest of the continent is concerned is distant and central? I maintain that a central government, just inasmuch as it never can be associated with the power of the people, is inseparably associated with tyranny, arising either from ignorance or design-frequently from ignorance-because a central and distant government can never properly appreciate the local conditions for which it is to legislate. I am surprised that any one in this Convention should for one moment say that to strengthen in every way the rights of the states, as such-to protect in every way the local institutions-is the conservative mission. The whole history of federation has proved it is otherwise. It was in the name of state rights, when the question of the Constitution of America was being discussed, that the most fervent appeals to liberty that ever stirred the human breast were made, and all those opposed to state rights were the conservatives, the monarchists of that time. The strongest upholders of state rights from time to time have been those in favour of government by the people, and it is only when you have state rights properly guarded, and safeguard local government, that you can have government by the people. Government at a central and distant part is never government by the people, and may be just as crushing a tyranny under republican or commonwealth forms as under the most absolute monarchy. I do hope that hon. members will not allow themselves to be hoodwinked in this matter. It seems that the crushing majority in favour of the state rights that are essential to federation, which we had at the commencement of this discussion, has dwindled away. I maintain that unless the state rights are in every way maintained-unless buttresses are placed to enable them to stand up against the constant drawing towards centralisation-no federation can ever take root in Australia. It will not be a federation at all. It will be from the very start a centralisation, a unification, which, instead of being a guardian of the liberty of the people, will be its most distinct tyrant, and eventually will overcome it.

END QUOTE

Hansard 9-4-1891 Constitution Convention Debates

QUOTE
Dr. COCKBURN: Local freedom and government by the people are inseparable.

END QUOTE

Hansard 28-1-1898 Constitution Convention Debates

QUOTE
Mr. BARTON.- If you refer to clause 105, you will see that it can only be done with the consent of the state.

Dr. COCKBURN.- On the other hand, Sydney might object to have her harbour and 10 miles roundabout taken away by the Federal Parliament, and its administration withdrawn from the local Government.

Mr. BARTON.- Clause 105 is quite clear on that point.

Dr. COCKBURN.- I would like to be sure of that. Would there not be some right of pre-eminent powers in the Federal Parliament, unless it was restricted by this Act, to take any land anywhere it chose?

Mr. ISAACS.- Yes; so there ought to be.

[end page 258]

END QUOTE

It must be clear that the constitutional meaning of “local government” refers to “State government”. As such any State legislation to purportedly create some “local Government” as some other level of government is without constitutional authority, in fact in violation of s109 of the constitution also. This as one cannot have some “council” making a by-law that would be in conflict of s109 but somehow deemed to be outside s109 application because the “council;” is not the State. As the Framers of the Constitution made clear “municipal councils” were incorporated bodies. Incorporated bodies cannot operate as a form of government. In fact the very separation of powers that constitutionally is required for both Federal and States entities do not exist in municipal/shire councils.
Also, both Federal and State must operate that all taxation must be placed into Consolidated Revenue funds and can only be drawn by appropriation bills if passed by the respective Parliament. Clearly municipal/shire councils have no such system in place and if anything the current NSW ICAC Operation Ricco investigation into the millions of dollars (Botany Bay Council) allegedly fraudulently taken from funds ought to be a clear warning that this kind of fraud can be perpetrated unchecked in numerous councils. In fact it is a way to syphon of billions of dollars that should be paid into Consolidated Revenue Funds without any Appropriation Bills and so without any check and balances and allow corruption to flourish.

In my view, council rates are unconstitutional for the above set out. I am with Buloke Shire Council (Victoria) charges “‘rates’” but then also charged $360 a year for garbage collection regardless this is not used. As such “rates” isn’t for service provided as otherwise garbage collection should be part of the rates.

For sure States have legislated for “Local Government” referring to “municipal”/”shire” councils but as indicated above it is and remains to be ULTRA VIRES because it is a purported level of government, legislator, etc, that is not permitted by the constitution. In fact any purported State constitution that was amended since federation without the approval of the relevant State electors by way of State referendum is ULTRA VIRES. As such any State legislating for a purported “local government” exceeded its legislative powers, as the constitution specifically provides only for Federal and State legislature and the Territories are for that deemed to be quasi States.

Hansard 2-3-1898 Constitution Convention Debates
QUOTE Mr. OCONNOR (New South Wales).-
Of course, when I speak of a state, I include also any territory occupying the position of quasi-state, which, of course, stands in exactly the same position.
END QUOTE

It is indeed totally absurd that somehow a municipal/shire council could restrict its citizens by by-laws that are not applicable to citizens in other councils and so rob the citizens of equality.

Obviously, if rates are unconstitutional since 11 November 1910 then as the Framers of the Constitution made clear that any rates wrongly collected have to be refunded to the tax payer.

The pursuance of municipal/shire councils to be recognised in the constitution, something I was one of many to successfully oppose, is that it would have to have separation of powers which clearly doesn’t exist with such councils.

Despite what the High Court of Australia may have stated otherwise, S96 is not a way for everything but was inserted at the Premiers conference only as to enable the Commonwealth to assist a State that was in dire financial strife to lend it monies, and within the confines of constitutional requirements. It would be absurd for s96 to be allowed to be used to for example circumvent s116.

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
Therefore I view that municipal/shire councils can only charge a citizen upon presentation of a bill the real; cost of services rendered to each particular citizens. I see absolutely no justification for a council to charge citizens for major highway wear and tear merely because the state fails to cover it all, where the citizen may never use those particular highways. Too much has been shafted to municipal/shire councils because the State Ministers by this could unload plenty at cost of citizens in certain areas without providing sufficient finances for particular councils. Councillors being it for grand standing or otherwise accept more power even if this cause the financial suffering of citizens in their area. That should stop!

Also as Buleke Shire Council proved to do is to use the Country Fire Authority Act 1958 for ulterior purposes and blatantly disregard the safety of citizens and fire fighters but use this in a fraudulent manner to enrich itself on fines allegedly to enforce State legislation. This is why we need the OFFICE-OF-THE-GUARDIAN (Don’t forget the hyphens!) a constitutional council that advises the Government, the People, the Parliament and the Courts as to the true meaning and application of the constitution and which can take to task before the courts any government or delegate before the courts without citizens so to say risking their home security while the offender uses taxpayers monies.

The answer is therefore that municipal/shire councils can only charge a citizen within the council area for actual services provided and further seek the State Government to provide a perhaps pro-rata payment to provide other non-chargeable services, which then by Appropriation bills are taken from the Consolidated Revenue Funds. It means no more nonsense of councillors travelling overseas at cost of those residing within the shire/municipality, as citizens should not have to pay for that and unlikely would the State government provide funding for that.

I stress again that the above set out is very limited but for the sake to keep it short I have therefore restrained myself as not to include reams of paperwork on quotations in addition to what already was referred to. Still, (again) those interested to read more extensive and avoiding to purchase any of my books in the INSPECTOR-RIKATI® series on certain constitutional and other legal issues can check out my blog at www.scribd.com/inspectorrikati or just go along to the Australian National Library at Canberra.

This document is not intended and neither must be perceived to refer to all details/issues.

MAY JUSTICE ALWAYS PREVAIL

(Our name is our motto!)

Awaiting your response, [Redacted] G. H. Schorel-Hlavka O. W. B. (Friends call me Gerrit)