

## **The future for a new South Australian bill of rights: Some indigenous issues**

- The first unilateral statement of a charter of rights issued for South Australia was in the Letters Patent of 19 February 1836, and in which the British Crown made a commitment to the Aboriginal traditional owners to uphold their rights
- The first Governor, John Hindmarsh, recognized the Crown's commitment in the 1836 Letters Patent's original charter of rights for the traditional owners, by publicly insisting in the Proclamation of South Australia on 28 December 1836 that the Aboriginal traditional owners had full rights under British justice
- Governor Hindmarsh's original instructions to the Protector of Aborigines in 1837, Dr Wyatt, took a first step to implement the traditional owners' rights by asking Dr Wyatt to protect from acquisition all the burial places, the dwelling places and the sources of food specially managed by the traditional owners
- By 1841 the commitment that had been expressed by the Crown in this 1836 charter of rights for Aboriginal traditional owners was openly betrayed by the developer with the money backing the Wakefield scheme and wanting South Australia to be one Province established on the lands of the traditional owners
- This developer was George Fife Angas, and in 1841 he gave false legal advice to the British House of Commons saying the 1834 South Australia Foundation Act had overridden the prior Crown charter of rights for the traditional owners
- In 1836 George Fife Angas had at first supported the just commitment of the Crown in the 1836 Letters Patent to respect the rights of the traditional owners
- He wanted Governor Hindmarsh to uphold the charter of rights for Aboriginal people so he could use a legal agreement in their language to acquire a parcel of lands from the elders for private development, after teaching them to write their language down for the first time for an Aboriginal Bible for their children
- George Fife Angas wanted to buy the Adelaide Park lands for development
- He brought German pastors, Teichelmann and Schurmann, from Germany to teach Kaurna children how write in a single language for all Aboriginal people
- The first recording of the Ngarrindjeri language was by German teacher, Mr Meyer, who also wanted the Ngarrindjeri language written down in a Bible
- This plan lapsed when the Governor Hindmarsh was recalled early, in 1838
- Subsequent Governors did not uphold the charter of the 1836 Letters Patent
- So in 1841 George Fife Angas changed tack and claimed that the Foundation Act had destroyed any rights in 1834 and that there were no obstacles in law to his acquisition from the Crown of a part of the vast park land around Adelaide
- This began a betrayal of these Aboriginal rights under British justice, in which people were betrayed instead of enjoying their rights under the Letters Patent
- Their lands and life were taken, and their children were stolen by the Crown
- Their rights to their lands and an enjoyable life in the Letters Patent are their equity to be respected by justice in the courts, and by the Parliament enacting a Bill of Rights to be the legal foundation for justice in South Australian law.

The fundamental relationship between the governed and government in South Australia has never been politically spelled out in a democratic, equal and just process within the legal life of the State, and solely because Aboriginal people lack due Constitutional recognition for their original land rights in the State.

The Constitution of the Parliament of South Australia was drafted by a 19th Century Premier of South Australia, without the full democratic involvement of all the people in the community, and so lacks Aboriginal input about their rights.

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Of main concern for the better future of South Australia is the just, equal and democratic treatment of all South Australians by government, and especially of all Aboriginal people, and a just recognition and equal respect for their prior equity.

At the heart of the principle of a social contract between the people and the

Government is the right of the community to determine its future by making society accountable to the State under justice and within a just system of laws.

South Australia began in an 1834 Act of a colonising British Parliament in London half- way around the world, and it unjustly appeared to ignore all local Aboriginal people as *persona nullius* outside equity, despite their inherent proprietary rights.

The founding legislation for South Australia was an ignominious start to what is now a shamefully unjust 170+ year history of infamy for all Aboriginal people, who are yet to be asked to establish a form of legal relations with our colonising State.

Central to the Wakefield Plan for colonising the Aboriginal lands of South Australia was a reputed repugnance for race slavery, and the sharp securing of a privileged English social contract for a few, while dispossessing all the traditional owners.

Slavery was legally abolished in Britain and its colonies from 1833. The worst fear faced by the English emigrants to South Australia was of being seen to be guilty of enslaving the Aboriginal people. In ensuring against a legal penalty for slavery and avoiding allegations of slavery, Aboriginal people were subsequently deprived of any right of survival or equity in their lands and were refused the right to work.

Aboriginal people were British subjects by law. But this was only a nominal right in justice because taking their lands was claimed to be justified. This designer injustice was especially incorporated in the legal establishment of South Australia.

This false legal doctrine of *terra nullius*, refuted by the 1992 Mabo judgment, was

first developed by English law here to permanently entrench this injustice in the State's legal and constitutional framework, denying Aboriginal equity and rights.

There is an urgent need for the people of South Australia to reject and redress this ignominy of our past and to go forward together with local Aboriginal people for a brighter, equitable and just future in a better community upholding respect.

The traditional way to achieve unison of this nature, both among Indigenous and immigrant cultures alike, is for a social compact or contract to be formulated to establish a future pact within the State through the Parliament to uphold justice.

The whole community must be consulted and all interest groups must have the legal right to negotiate with government in the make-up and terms of a rewrite of the State's Constitution, which must extend to including a specific Bill of Rights.

It is up to the community to extend the hand of partnership and co-operation to all people and groups in the State, and to reform South Australia to be inclusive of everyone's rights by instructing the Parliament to enact this by a Bill of Rights.

A bright and just future for all is only based upon an equal and democratic negotiation by all.