Jindal Global Law Review (2023) 14:99–122
https://doi.org/10.1007/s41020-023-00189-w

ARTICLE

Whose constitution: Sovereign citizenship, rights talk, and rhetorics of constitutionalism in Australia

Bruce Baer Arnold[1] · **Erina Mikus Fletcher**[1]

Accepted: 19 April 2023 / Published online: 22 May 2023

Abstract

The 'sovereign citizen' is a contemporary phenomenon increasingly evident in Australia and other jurisdictions. It represents an alternative understanding of constitutions, justice, and authority. It centres on a rhetoric in which adherents assert rights but disclaim responsibilities and deny obedience to national, provincial, or municipal/rural governments when obedience would be inconvenient. The rhetoric involves claims that specific constitutions since the mediaeval period are invalid, with individuals being free of state or corporate authority unless each person chooses to assent. The language seeks to characterise each individual as a sovereign, a self-possessed individual with a legal status equivalent to a state, and lawfully ignoring obligations such as taxation, traffic rules, child support, firearms restriction, and environmental protection. It often features assertions that such obligations are voided through language about an individual's name or supposed rights to settle disputes through ad hoc 'juries' that erase the authority of legislatures, statutes, and formally appointed embodiments of state authority such as judges, police, welfare, and public revenue officials. It also selectively denies the authority of private sector entities such as banks, with sovereign citizens frequently claiming that debts to corporations are not enforceable. The article interrogates the social and conceptual bases of sovereign citizenship in Australia, arguing that the 'sovereigns' have a misplaced understanding of the modern legal order and the functioning of constitutions in contemporary liberal democratic states. The rhetoric is incoherent and administratively unpersuasive, reflecting a belief in a past without the ills of the nation state, a world of self-reliant 'freemen' and small communities whose legal order was fit for purpose because it was local, trusted, not bureaucratised, and predominantly oral. The article thus offers insights about both the phenomenon and the nature of constitutions.

Keywords Constitution · Common law · Sovereign citizens · Legal theory · Rights · Rights talk

Extended author information available on the last page of the article

1 Introduction

This article is an exercise in critical constitutionalism,[1] exploring responses to the Australian constitutional framework by individuals who characterise themselves as sovereign citizens, asserting a legal identity unrecognised by courts. Those individuals have a heterodox populist, adversarial, and incoherent understanding of Australia's legal system. That understanding is manifested through what Glendon and others have characterised as 'rights talk'[2] and through recurrently unsuccessful denial of constitutional authority on the basis that the government lacks legal validity or that individuals are entitled to benefits but not subject to legal obligations unless they agree. The language of sovereign citizenship in Australia and New Zealand is informed by and often resembles discourse elsewhere in the world by individuals and groups who have been variously characterised as Freemen on the Land,[3] exponents of Organised Pseudo-Commercial Argument (OPCA),[4] or users of a 'straw man theory'[5] in interactions with law in the United Kingdom, Canada, United States, and other liberal democratic polities.[6] It centres on a view of legal personhood in which self-

[1] In analysing sovereign citizenship, the article critiques thinking about the legitimacy and functioning of the Australian constitution, in particular the dissonance between hegemonic understandings of the Australian constitutional framework and expressions of rights by sovereign citizens as a minority group that either denies the legitimacy of that framework or reads the framework in ways that authorities regard as nonsensical. For discussion about critical constitutionalism as offering insights about authority and opportunities for empowerment through constitutional change or divergent readings of a constitution, see Louis Michael Seidman, 'Critical Constitutionalism Now' (2006) 75(2) *Fordham Law Review* 575; Gavin W Anderson, 'Critical Theory' in Anthony F Lang, Jr and Antje Wiener (eds), *Handbook on Global Constitutionalism* (Edward Elgar 2017) 140; Anthony Chase, 'A Note on the Aporias of Critical Constitutionalism' (1987) 36(2) *Buffalo Law Review* 403.

[2] Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (The Free Press 1991); Neal Milner, 'The Denigration of Rights and the Persistence of Rights Talk: A Cultural Portrait' (1989) 14(4) *Law & Social Inquiry* 631; Michael Ignatieff, *Human rights as Politics and Idolatry* (Princeton University Press 2011); Paul A Djupe, Andrew R Lewis, Ted G Jelen, and Charles D Dahan, 'Rights Talk: The Opinion Dynamics of Rights Framing' (2014) 95(3) *Social Science Quarterly* 652; Marius Pieterse, 'Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited' (2007) 29(3) *Human Rights Quarterly* 796.

[3] See, for instance, David C Hofmann, 'Breaking Free: A Socio-Historical Analysis of the Canadian Freemen-on-the-Land Movement' in Jez Littlewood, Lorne Dawson, and Sara K Thompson (eds), *Terrorism and Counterterrorism in Canada* (University of Toronto Press 2020) 77. Examples of Australians self-identifying as Freemen-on-the-Land include *Australian Competition & Consumer Commission v Rana* [2008] FCA 374; *Van den Hoorn v Ellis* [2010] QDC 451. Use of the same characterisation in courts includes *State of New South Wales v Gavin* [2022] NSWSC 84 [39].

[4] See, for instance, Garret Sammon, '"Organised Pseudo-Legal Commercial Argument" Litigation: Challenges for the Administration of Justice in Ireland' (2015) 38(1) *Dublin University Law Journal* 85; Donald J Netolitzky, 'The History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada' (2016) 53(3) *Alberta Law Review* 609.

[5] Mellie Ligon, 'The Sovereign Citizen Movement: A Comparative Analysis with Similar Foreign Movements and Takeaways for the United States Judicial System' (2021) 35(2) *Emory International Law Review* 297.

[6] Bruce Baer Arnold, 'Pseudo-states and Sovereign Citizens' in Kevin W Gray (ed), *Global Encyclopedia of Territorial Rights* (Springer 2023).

possession valorises rights over responsibilities and ostensibly entitles individuals to opt out of obligations that are personally inconvenient.[7]

Expressions of sovereign citizenship have been characterised by courts as vexatious,[8] nonsensical,[9] incomprehensible,[10] ludicrous,[11] mumbo jumbo,[12] gobbledygook,[13] gibberish,[14] untenable,[15] or simply ineffective. In terms of litigation outcomes, those characterisations are correct. Individuals who expressly self-identify as sovereign citizens or who in the course of dealing with other entities (such as law enforcement) rely on sovereign citizen understandings of constitutional law have not gained a privileged freedom from arrest, waiver of debts, or other benefits. However, from the perspective of critical constitutionalism, the sovereign citizen phenomenon offers insights about how people mis/understand constitutions, law, rights, and responsibilities. Those insights are relevant for courts, legal practitioners, and public administrators in an era of community disengagement[16] and increasingly pervasive fake news.[17]

The following pages do not provide an in-depth analysis of the psychology of sovereign citizenship,[18] the use by Australian sovereign citizens of social media,[19] co-

[7] Bruce Baer Arnold, *The Law of Identity: Principles, Practice, Contestation* (Springer 2023) (forthcoming). See, more broadly, Elisabeth Roudinesco, *The Sovereign Self: Pitfalls of Identity Politics*, trans. Catherine Porter (Polity Press 2022).

[8] *Bradley v the Queen* (2021) QCA 101 [8]; *Glew v Attorney-General (WA)* [2014] WASCA 93 [12]. Instances outside Australia include *The Man Known as Anthony Parker v The Man Known as Ian McKenna And The Enforcement of Judgments Office* [2015] NIMaster1 [54]; *Meads v Meads* 2012 ABQB 571 [71]; *Royal Bank of Canada v Anderson* 2022 ABQB 354 [1].

[9] *Attorney General (WA) v Glew* [2014] WASC 100.

[10] *Frank Jasper Pty Ltd v Glew [No 3]* [2012] WASC 24.

[11] *Schneider v Colhoun* 2022 SKQB 163.

[12] *William aka Larsen v New Zealand Police Company* [2022] NZHC 2374 [8].

[13] *Bradley v The Crown* [2020] QCA 252 [1].

[14] *Smith v Chief Executive of the Department of Corrections* [2019] NZCA 362 [8].

[15] *Warahi v Chief Executive of the Department of Corrections* [2022] NZCA 105 [11].

[16] The 2019 Australian National University Election Study, for example, reported that Australian satisfaction with democracy is at its lowest level since the 1970s constitutional crisis, with trust in government having reached its lowest level on record. The ANU data indicated that fewer than 26% Australians believe people in government can be trusted, with 56% believing government is run for 'a few big interests' and only 12% believing government is run for 'all the people'. That disquiet is increasing, with, for example, a 27% decline since 2007 in stated satisfaction with how Australia's democracy is working and a 20% decline in overall trust in government since 2007. See Sarah Cameron and Ian McAllister, 'The 2019 Australian Federal Election: Results from the Australian Election Study' (Australian National University, December 2019). https://australianelectionstudy.org/wp-content/uploads/The-2019-Australian-Federal-Election-Results-from-the-Australian-Election-Study.pdf. Accessed 16 March 2023.

[17] See Fernando Miró-Llinares and Jesús C Aguerri, 'Misinformation about Fake News: A Systematic Critical Review of Empirical Studies on the Phenomenon and its Status as a "Threat"' (2023) 20(1) *European Journal of Criminology* 356.

[18] See Jennifer Pytyck and Gary A Chaimowitz, 'The Sovereign Citizen Movement and Fitness to Stand Trial' (2013) 12(2) *The International Journal of Forensic Mental Health* 149; Christine M Sarteschi, *Sovereign Citizens: A Psychological and Criminological Analysis* (Springer 2020).

[19] See Lydia Khalil, 'Alternative Platforms and Alternative Recommendation Systems: A Case of the Australian Sovereign Citizen Movement on Telegram' (Lowy Institute, 2021). https://policycommons.net/

option by neofascist or other groups that deny the legitimacy of law enforcement,[20] or the risk that disenchantment with the legal system (and economic marginality) will result in what might be considered to be domestic terrorism.[21] The article instead considers the Australian constitutional framework as a matter of incomprehension and contestation by sovereign citizens, particularly the ineffective denial by those people of the authority of law founded on the national and provincial constitutions. The discussion draws on Australian case law, alongside reference to comparable jurisprudence in other countries. It is informed by literature on hermeneutics, in other words how constitutions as foundational legal texts are interpreted by legal practitioners and non-specialists.[22] It is also informed by the study of law's construction and verification of legal personhoods.[23] The objective is to offer insights about a divergent reading of Australia's legal framework founded on a belief that the constitution is invalid or only applicable when beneficial to a claimant, in other words an assertion of a privileged legal identity that overrides substantive law.

The article has four parts. Part 2 introduces the discussion, offering a concise overview of Australia's constitutional framework in relation to critical constitutionalism. Part 3 then offers a view of sovereign citizenship, centred on that phenomenon in Australia but contextualising it through brief reference to the phenomenon and scholarship overseas. Part 4 discusses sovereign citizenship as a matter of language, invocation of authority, and mis/readings of history. The discussion argues that sovereign citizenship as a practice embodies a belief by adherents that linguistic mechanisms provide an 'abracadabra' that will override Australia's constitutional framework or otherwise free the adherents from obligations, such as compliance with road rules and commercial contracts, that are personally inconvenient. The article's final part offers concluding comments.

artifacts/1528674/alternative-platforms-and-alternative-recommendation-systems/2218389/. Accessed 16 March 2023; *State of New South Wales v Hardy (Final)* [2021] NSWSC 900.

[20] See Bernhard Ripperger, 'The Use of Terrorism Risk Assessment Tools in Australia to Manage Residual Risk' in Raymond Corrado, Gunda Wössner, and Ariel Merari (eds), *Terrorism Risk Assessment Instruments* (IOS Press 2021) 165; Daniel Baldino and Kosta Lucas, 'Anti-government Rage: Understanding, Identifying and Responding to the Sovereign Citizen Movement in Australia' (2019) 14(3) *Journal of Policing, Intelligence and Counter Terrorism* 245.

[21] It is important to note that sovereign citizenship and domestic terrorism are not synonymous. As points of entry to the literature, see Charles E Loeser, 'From Paper Terrorists to Cop Killers: The Sovereign Citizen Threat' (2015) 93(4) *North Carolina Law Review* 1106; Robin Maria Valeri, 'The Sovereign Citizens Movement' in Robin Maria Valeri and Kevin Borgeson (eds), *Terrorism in America* (Routledge 2018) 118.

[22] Gregory Leyh, 'Toward a Constitutional Hermeneutics' (1988) 32(2) *American Journal of Political Science* 369; Hans Lindahl, 'Constituent Power and Reflexive Identity: Towards an Ontology of Collective Selfhood' in Martin Loughlin and Neil Walker (eds), *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford University Press 2008) 9; Francis J Mootz, III, 'The Ontological Basis of Legal Hermeneutics: A Proposed Model of Inquiry Based on the Work of Gadamer, Habermas and Ricoeur' (1988) 68(3) *Boston University Law Review* 523.

[23] Arnold, *The Law of Identity* (n 7).

2 Constitutionalisms and comprehensions

Constitutions are protean and thus deserving of analyses through a critical constitutionalism that considers how they are read by people and more broadly how they derive legitimacy.[24] Their operation is as much a matter of social belonging (or alienation and erasure) as it is of justiciable rights regarding disputes between citizens and the state or disputes that do not directly involve the state. They may have an extra-legal significance as part of a nation's history and embodiment of a people's values. They may enshrine freedoms and responsibilities of everyone within a specific jurisdiction. They may provide a basis for the determination of citizenship, a legal status with rights and responsibilities.[25] They may more directly underpin and provide legitimacy for expressions of authority, including the existence of courts and operation of legislatures. Their interpretation might be contested in courts and other fora. The individuals whose encounters with the Australian justice system are discussed in this article can most succinctly be understood as people who selectively reject the authority of the constitution and deny the reality of the legal framework founded on that constitution in instances where denial is personally convenient.

To make sense of that claim, it is useful to provide a brief overview of the origins and shape of the framework. A sense of origins is relevant because the sovereign citizens discussed below often buttress their assertion of an autonomous legal identity (in other words one selectively not subject to contemporary Australian law) by indicating that in the past there has been a constitutional 'rupture' that invalidates the public administration or commercial rules being contested by the citizen.[26] A recurrent claim, for example, is that Australia's national government and constitution ceased to have effect because the nation became a 'Delaware corporation'.[27] A similar claim of 'rupture' was evident in *Milton Jones (a pseudonym) v DPP*, where the Court noted:

[24] See Judith N Shklar, *Legalism: Law, Morals, and Political Trials* (1st edn, Harvard University Press 1964); Joel Bakan, *Just Words: Constitutional Rights and Social Wrongs* (University of Toronto Press 1997); Tom R Tyler, *Why People Obey The Law* (Princeton University Press 1990).

[25] See Alastair Davidson, *From Subject to Citizen: Australian Citizenship in the Twentieth Century* (Cambridge University Press 1997); Jeremy Waldron, 'Citizenship and Dignity' (2013) New York University School of Law Public Law & Legal Theory Research Paper Series Working Paper No. 12–74. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2196079. Accessed 16 March 2023; Christian Joppke, 'Transformation of Citizenship: Status, Rights, Identity' (2007) 11(1) *Citizenship Studies* 37. For a critique, see Amy L Brandzel, *Against Citizenship: The Violence of the Normative* (University of Illinois Press 2016); Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press 2009); Andrew Linklater, *Critical Theory and World Politics: Citizenship, Sovereignty and Humanity* (Routledge 2007).

[26] For perspectives on the notion of constitutional 'rupture'—typically involving a radical political change—see Nathan J Brown and Julian G Waller, 'Constitutional Courts and Political Uncertainty: Constitutional Ruptures and the Rule of Judges' (2016) 14(4) *International Journal of Constitutional Law* 817; Aziz Rana, 'Freedom Struggles and the Limits of Constitutional Continuity' (2012) 71 *Maryland Law Review* 1015; Emmanuel De Groof and Micha Wiebusch, 'The Features of Transitional Governance' in Emmanuel De Groof and Micha Wiebusch (eds), *International Law and Transitional Governance: Critical Perspectives* (Routledge 2020) 6.

[27] See, for instance, *Hedley v Spivey* [2011] WASC 325 [4].

> orders sought by the applicant on this appeal included, but were not limited to, that the position of Queen of Australia is invalid, that no bill of the Victorian Parliament has been made law since 1919, that the current Victorian Parliament be dismissed, and that the Court appoint the applicant as 'the autocratic Head of Government of the State of Victoria to establish the rule of law and a constitution with a majority decision of the Sovereignty of the People of Victoria'.[28]

That application misunderstood changes to the constitution, the Treaty of Versailles, the inherent powers of the Victorian Supreme Court, and the Court's status under the constitution. The failure of claims of a 'rupture' have been recurrently highlighted, notably by Hayne J in the High Court in 1998.[29]

It is a common understanding that Australia is a settler state,[30] initially a set of British colonies that relied on a mix of imperial and local law alongside a historical consciousness that featured references to often-misunderstood (and, on occasion, mythologised) premodern documents such as the Magna Carta and the 1689 Bill of Rights.[31] Federation at the turn of the last century saw most of those colonies become states (i.e., provincial governments) with a range of law-making powers and responsibilities for public administration. Several have discrete state constitutions.[32] Other colonies became territories. The new national polity—the Commonwealth of Australia—gained autonomy. Its powers were expressed in a national constitution that established the national legislature and originated as an enactment of the British Parliament, signed by Queen Victoria. The constitution has been amended by a succession of national referenda. It does not enshrine a Bill of Rights[33] and at the national level there is no direct counterpart of, for example, the Canadian Charter of Rights and Freedoms.[34]

[28] *Milton Jones (a pseudonym) v DPP* [2015] VSCA 272 [4].

[29] *Joosse v ASIC* (1998) 159 ALR 260 [11], [19]. See also *Chia Gee v Martin* [1905] HCA 70, (1906) 3 CLR 649.

[30] See Sarah Maddison and Morgan Brigg (eds), *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance* (The Federation Press 2011). This article does not address statements by Australia's Indigenous people that their sovereignty has never been surrendered or extinguished.

[31] See Peter Linebaugh, *The Magna Carta Manifesto: Liberties and Commons for All* (University of California Press 2009); David Clark, 'The Icon of Liberty: The Status and Role of *Magna Carta* in Australian and New Zealand Law' (2000) 24(3) *Melbourne University Law Review* 866; Judi Atkins, '(Re)imagining Magna Carta: Myth, Metaphor and the Rhetoric of Britishness' (2016) 69(3) *Parliamentary Affairs* 603; Peter Coss, 'Presentism and the "Myth" of Magna Carta' (2017) 234(1) *Past and Present* 227; Zachary Elkins, Tom Ginsburg, and James Melton, 'On the Influence of *Magna Carta* and Other Cultural Relics' (2016) 47 *International Review of Law and Economics* 3.

[32] See, for instance, Anne Twomey, *The Constitution of New South Wales* (The Federation Press 2004); Bradley Selway, *The Constitution of South Australia* (The Federation Press 1997); Greg Taylor, *The Constitution of Victoria* (The Federation Press 2006); David Mossop, *The Constitution of the Australian Capital Territory* (The Federation Press 2021); Gerard Carney, *The Constitutional Systems of the Australian States and Territories* (Cambridge University Press 2006).

[33] See Andrew Byrnes, Hilary Charlesworth, and Gabrielle McKinnon, *Bills of Rights in Australia: History, Politics and Law* (University of New South Wales Press 2009).

[34] See Cheryl Saunders and Adrienne Stone (eds), *The Oxford Handbook of the Australian Constitution* (Oxford University Press 2018); Nicholas Aroney, *The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution* (Cambridge University Press 2009). For comparisons,

The national constitution does not envisage and authorise secession by one of the Australian polities, for example, the state of Tasmania.[35] The individuals discussed in this article are not considered in international or domestic law to be a people or an ethno-religious minority that might achieve internationally-recognised statehood. The constitution does not provide for citizens (and, more broadly, residents) being able to unilaterally choose whether law applies to them. Those people are subjects of the law rather than individuals who have a sovereign status and can thus opt in/out of law at will. On a day by day basis, the legal framework within Australia often involves coverage by national law (and corresponding public agencies) and state/territory law (with their public agencies). That mix of legal systems potentially results in confusion rather than merely efforts to engage in regulatory arbitrage.

Through a lens of critical constitutionalism (and the common law constitutionalism of courts interpreting statutes and historic common law in addressing constitutional claims), there is value in considering how people, particularly those from marginalised communities, 'read' relevant national or provincial constitutions. By extension, there is value in considering reading of the broader legal framework governing public administration and private life in a pluralist society. Reference here to 'the' constitution rather than 'their' constitution is deliberate, given that some members of a polity may regard the constitution as invalid, rather than one they 'own' and should accordingly adhere to. Reference to 'read' relates to how people make sense of foundational statements of the hegemonic legal framework that affects them.

Within Australia, some individuals and groups have divergent readings of the constitutional framework. It is, in essence, a belief that they have an authority that overrides that of law founded on the constitution and that although they might enjoy the benefits of membership of the Australian community, they are not obliged to comply with particular laws. Some of the individuals discussed in the following paragraphs thus reject the formal constitutions in their jurisdictions and deny the authority of associated law and administrative bodies. That denial is in contrast to peers who might seek to modify a constitution through, for example, a referendum[36] or change law through a plebiscite[37] but do not question the validity of the overall legal system and have internalised assent to a constitution with which they are not especially

see Sophie Boyron, *The Constitution of France: A Contextual Analysis* (Hart Publishing 2012); Mahendra P Singh and Surya Deva, 'The Constitution of India: Symbol of Unity in Diversity' (2005) 53 *Jahrbuch des Öffentlichen Rechts der Gegenwart* 649; Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury 2017); Peter W Hogg, *Constitutional Law of Canada* (5th edn, Thomson Carswell 2007); Kevin YL Tan, *The Constitution of Singapore: A Contextual Analysis* (Hart Publishing 2015); Nicholas William Barber, *The United Kingdom Constitution: An Introduction* (Oxford University Press 2021).

[35] See Susanna Mancini, 'Rethinking the Boundaries of Democratic Secession: Liberalism, Nationalism, and the Right of Minorities to Self-determination' (2008) 6(3–4) *International Journal of Constitutional Law* 553.

[36] As an example, see discussion of the unsuccessful 1999 referendum regarding establishment of a republic in Helen Irving, 'The Republic Referendum of 6 November 1999' (2000) 35(1) *Australian Journal of Political Science* 111.

[37] See Bede Harris, 'Human Rights and the Same-sex Marriage Debate in Australia' (2017) 10(4) *Journal of Politics & Law* 60.

familiar.[38] Others rely on an alternate understanding—potentially a matter of magical thinking rather than a conventional interpretation of legal syntax and vocabulary.

One type of rejection is that of individuals who assert that they are heads of state or have an equivalent ecclesiastical status, irrespective of not meeting tests in international law regarding statehood (for example, control over a specific geographical location and a discrete population). The assertion often relies on a fanciful adoption of signifiers of status (for example, claiming to be a king or prince) and authority (for example, flags and crests). It may be a matter of fantasy or fraud, as illustrated by some recent Australian instances.

John Rudge, for example, appointed himself Grand Duke of Avram, Marquis of Mathra, Earl of Enoch, Viscount Ulom, Lord Rama, Knight of Bountiful Endeavours, Knight of Sword, Knight of Merit, Cardinal, and Archbishop of the Royal See of the Continent of Australia. His assertion of authority failed to gain recognition by domestic courts and the United Nations, ultimately signalled by bankruptcy.[39] David Siminton, in the course of corporate law offences, identified himself as the Governor of the State of Sherwood, claimed that his Principality of Camside was the only legal government of Australia, and declared that he now controlled Australia by default because the national government did not respond to turn up to battle.[40] The self-declared Prince Neal Lyster (Prince Palatine of the Kingdom of Heaven and Earth, Bishop of St David's Diocese and governor of the Principality of Caledonia Australis), was similarly unsuccessful in Australian courts, with Goldberg J commenting:

> Mr Lyster is labouring under a delusion that he is the head of a non-existent state and that his conduct is beyond the reach of the laws of Australia. Mr Lyster should realise he is quite wrong in this respect.[41]

The second type of rejection is a more pervasive phenomenon that has been dubbed sovereign citizenship. The terminology is loose. There is no specific definition in Australian statute law and courts have on occasion referred to sovereign citizens as litigants using a commercial straw man (OPCA). Courts in Australia and New Zealand, like those in the United Kingdom, have also noted similarity with Freemen on the Land claims in Canada and the United States.[42] The indeterminacy of the terminology is unsurprising, given many OPCA claims in Australian courts are con-

[38] The national constitution is not, for example, taught in detail in Australian primary or secondary schools and there is no social expectation that it will be memorised by citizens or candidates for naturalisation. Few nonspecialists appear to be aware that there are state constitutions alongside the national constitution. See Paul Kildea and Rodney Smith, 'The Challenge of Informed Voting at Constitutional Referendums' (2016) 39(1) *University of New South Wales Law Journal* 368; Lael K Weis, 'Does Australia Need a Popular Constitutional Culture?' in Ron Levy, Molly O'Brien, Simon Rice, Pauline Ridge, and Margaret Thornton (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press 2017) 377.

[39] *Avram v Official Trustee in Bankruptcy* [2001] FCA 1480.

[40] *Australian Prudential Regulation Authority v Siminton (No 6)* [2007] FCA 1608.

[41] *Australian Competition and Consumer Commission v Purple Harmony Plates Pty Ltd (No 3)* [2002] FCA 1487 [31].

[42] See, for instance, *R v Stoneman* [2013] QCA 209; *Martin v Chief Executive of the Department of Corrections* [2016] NZHC 2811 [5]; *Foster v McPeake & Ors* [2015] NIMaster 14 [24].

cerned with criminal offences rather than commercial disputes and that similar arguments are being used in a range of circumstances. That diversity reflects propagation through commercial advocates and social media.[43]

3 Selfhood, citizenship, and contestation

Sovereign citizenship represents a conceptually incoherent engagement with law and authority rather than a discrete political movement, in particular one with a discernible leadership, organisational structure, and formal recognition as a political party or civil society body.[44] It is a manifestation of magical thinking, in essence faith that ritualised invocation of personhood and reference to rights in a common law constitution is sufficient to invalidate any law with which the particular individual disagrees and by extension deny the legitimacy of entities such as courts, legislatures, public revenue or police agencies, and commercial corporations such as banks.[45] Its appearance in courts, tribunals, and social media tells us something significant about the symbolic value of constitutions and about how they are fundamentally misread by communities whose rejection of authority is ostensibly legitimised through reference to past legal worlds that were largely fictive.

As foreshadowed above, sovereign citizenship centres on a constitutional rhetoric in which adherents assert rights but disclaim responsibilities and deny obedience to national, provincial, or municipal/rural governments when obedience would be personally inconvenient.[46] The article argues that the individual 'sovereigns' in Australia have a misplaced understanding of the modern legal order and the functioning of constitutions in contemporary liberal democratic states. Although their understanding is incoherent and administratively unpersuasive (and fostered by commercial providers

[43] See, for instance, unsuccessful advocacy by sovereign citizenship exponents such as Glenn Floyd in *Ward v Judicial Registrar Cho* [2021] FCA 1661; *Mistie Sibraa v Government of New South Wales in the Service of the Crown* [2022] FWC 1454; *Mark Attard v Jetstar Airways Pty Ltd* [2022] FWC 2267; *Anthony Girod v Swan Transit* [2022] FWC 1489; *Murdock v Virgin Australia Airlines Pty Ltd* [2022] FCA 1074. Other advocacy has involved Derek Balogh, David-Wynn Miller, Stephen-Mark Lymbery, and Tane Rakau (aka Shane Wenzel). See, for instance, *Victorian Legal Services Board v Jensen* [2022] VSC 603; *Ms May-Ring Chen v Woodside Energy Ltd* [2022] FWC 3216; *Peter Cole v The Commissioner for Public Employment, Office Commission Public Employment* [2023] FWCFB 35; *Westpac Banking Corporation v Glynn* [2022] NSWSC 1770; *Cromie v Health Secretary in respect of the Illawarra Shoalhaven Local Health District* [2022] NSWIRComm 1064; *Lorraine Fitzjohn* [2022] FWC 2557; *Wollongong City Council v Dr Masood Falamaki* [2010] NSWLEC 66. An example of an advocate site is https://educateforprotection.website. Accessed 20 March 2023.

[44] Thomas R Rochon, 'Political Movements and State Authority in Liberal Democracies' (1990) 42(2) *World Politics* 299. Rochon discusses the features of political movements that might include people who embrace sovereign citizenship values and understandings but movements do not specifically further claims regarding sovereign citizenship *per se*. Agitation in Australian social media and in face to face protests regarding COVID-related public health measures appears to bring together a range of actors (including neo-nazis and adherents of various sovereign citizen arguments) with differing commitments and often no discernable hierarchy or other structure. See also Daniel Baldino and Mark Balnaves, 'Sticky Ideologies and Non-Violent Heterodox Politics' in Elisa Orofino and William Allchorn (eds), *Routledge Handbook of Non-Violent Extremism: Groups, Perspectives and New Debates* (Routledge 2023) 15.

[45] Sarteschi, *Sovereign Citizens* (n 18).

[46] See, for instance, *Warahi v Chief Executive of the Department of Corrections* (n 15).

of litigation templates),[47] it is not necessarily self-interested. Instead, it derives from a belief in a past without the ills of the nation state, a world of self-reliant agrarian 'freemen' and small communities whose legal order was fit for purpose because it was local, trusted, not bureaucratised, and predominantly oral. That past was fictive: law in the mediaeval and pre-mediaeval England to which some sovereign citizens refer did not provide suffrage to everyone (notably women) and much justice was not egalitarian. In contrast to the pseudo-monarchs noted above, sovereign citizens do not award themselves royal titles, design flags, and other regalia modelled on that in media such as *Game of Thrones* or grant honorifics to any followers.

Sovereign citizens conceptualise constitutions as a matter of rights, conditional adherence, and linguistic techniques to overcome state power founded on a constitution whose facticity they often deny. They implicitly embrace and rely on an alternate, unsuccessful reading of Australian law, pseudo-agrarian rather than pseudo-aristocratic or faux ecclesiastical. It is a reading that privileges the oral—communication between the like-minded—rather than forensic examination of constitutions and their interpretation by courts.

Sovereign citizens first attracted scholarly attention in Canada[48] but precursors are evident in the United States, often associated with an agrarian and racist rhetoric that features a Jeffersonian hostility to urbanism and valorisation of life on a colonising frontier without interference from a central government.[49] Daniel Baldino comments:

> Sovereign Citizens (SC) and equivalent variations are a paradigm example of movements whose language is moving into popular culture. These actors do not believe they are subject to law or that they are subject to federal, state, or local law and any partnered regulations only as they interpret it. Further, despite its racist anti-Semitic origins, the modern-day SCM does not have a cohesive shared values base, cuts across demographic clusters, and can be drawn into a wide variety of convenient ideologies to rationalise anti-government hostility or suspicion.
>
> This fluid SCM ideology, and changing notions of citizenship, is not a phenomenon isolated only to the US. The growth of such belief systems has steadily emerged in other democratic locations like Australia (Freemen on the Land), Germany (Reichsbürgers), and the United Kingdom (Lawful Rebellion). Other current protests such as the Ottawa truck blockade in Canada are strongly characterised by a co-opting of extremist SC language and tactics. …
>
> [T]he SCM, while not necessarily coherent in the conventional way of thinking about political groups and systems, should also be seen as embedded with a wide mixture of conspiracy theories, alternative versions of history, constitutional re-interpretations, and binary "black and white" world views. …

[47] See, for instance, *Nigel Stock v Rocla Ltd* [2022] FWC 2597.

[48] Netolitzky, 'The History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada' (n 4).

[49] See John L Smith, *Saints, Sinners, and Sovereign Citizens: The Endless War Over the West's Public Lands* (University of Nevada Press 2021); Loeser, 'From Paper Terrorists to Cop Killers' (n 21); Valeri, 'The Sovereign Citizens Movement' (n 21); Evelyn A Schlatter, *Aryan Cowboys: White Supremacists and the Search for a New Frontier, 1970–2000* (University of Texas Press 2006).

> [T]hese anti-government groupings tend to consolidate around alternative practices of self-empowerment beyond or outside the existing institutional (political and economic) structures. So, while the modern-day international SCM broadly aims to change society or politics at large, its actions do tend to manifest in several different sets of more locally based behaviours, both violent and non-violent. All are grounded to the principle that government is illegitimate and laws can be disobeyed.[50]

In Australia, sovereign citizens have featured in a succession of judgments, sometimes unreported, over the past two decades. Much of the language used by the Australian litigants has been based on material in circulation in North America, often in online fora.[51] That language is also appearing in New Zealand and United Kingdom courts and tribunals,[52] where there is increasing reference to what Netolitzky characterises as OPCA.[53] That argument is being used in criminal rather than merely civil proceedings and some claims by sovereign citizens are being assimilated by Indigenous individuals.[54]

It may be tempting to dismiss the phenomenon as a matter of illness[55] or the manifestation of resentment in the face of economic uncertainty and status decline elsewhere expressed as Poujadism.[56] It is something attributable to the inadequacy of

[50] Daniel Baldino, 'The International Blueprint for Anti-Government Extremism and the Rise of the Sovereign Citizen Movements' (Australian Institute of International Affairs, 18 February 2022). https://www.internationalaffairs.org.au/australianoutlook/the-international-blueprint-for-anti-government-extremism-and-the-rise-of-the-sovereign-citizen-movements/. Accessed 17 March 2023.

[51] *State of New South Wales v Hardy (Final)* (n 19). See also https://educateforprotection.website. Accessed 20 March 2023.

[52] See, for instance, *Salmon v Leeds Crown Court* [2021] EWHC 1076 (Admin); *The Man Known as Anthony Parker v The Man Known as Ian McKenna And The Enforcement of Judgments Office* (n 8); *Loftus v Auckland Council* [2020] NZHC 416; *Niwa v Commissioner of Inland Revenue* [2019] NZHC 853; *Smith v Chief Executive of the Department of Corrections* (n 14); *Loftus v Rewi* [2020] NZCA 297.

[53] Donald J Netolitzky, 'Organized Pseudolegal Commercial Arguments in Canadian Inter-Partner Family Law Court Disputes' (2017) 54(4) *Alberta Law Review* 955; Donald J Netolitzky, 'After the Hammer: Six Years of *Meads v. Meads*' (2019) 56(4) *Alberta Law Review* 1167. Among other jurisdictions, see Sammon, '"Organised Pseudo-Legal Commercial Argument" Litigation' (n 4); Ligon, 'The Sovereign Citizen Movement' (n 5).

[54] This article differentiates sovereign citizenship from assertion of sovereignty by First Nations in Australia and elsewhere. It also differentiates sovereign citizenship from purported microstates, addressed in, for example, *Australian Competition and Consumer Commission v Purple Harmony Plates Pty Ltd (No 3)* (n 41); *Australian Prudential Regulation Authority v Siminton (No 6)* (n 40); *Casley v Commissioner of Taxation* [2007] HCATrans 590; *Deputy Commissioner of Taxation v Casley* [2017] WASC 161; *Roman & Anor v Commonwealth of Australia & Ors* [2004] NTSC 9; *Williamson v Hodgson* [2010] WASC 95; *Maxwell (also known as Harley Robert Williamson) v Bruse* [2012] WASC 12.

[55] See Pytyck and Chaimowitz, 'The Sovereign Citizen Movement and Fitness to Stand Trial' (n 18); George F Parker, 'Competence to Stand Trial Evaluations of Sovereign Citizens: A Case Series and Primer of Odd Political and Legal Beliefs' (2014) 42(3) *Journal of the American Academy of Psychiatry and the Law* 338.

[56] See Howard Rosenthal, 'Poujadism: The Political Economy of a Flash Party' (1985) 1(4) *European Journal of Political Economy* 509; James G Shields, 'The Poujadist Movement: a Faux "Fascism"' (2000) 8(1) *Modern & Contemporary France* 19; Gabrielle Chan, *Rusted Off: Why Country Australia Is Fed Up* (Penguin Australia 2018).

civics education, an outcome of filter bubbles on social media,[57] or simply to the willingness of people to make sense of the world by believing in what their peers consider to be atavistic nonsense. The persistence of some sovereign citizen litigants in Australia suggests that their beliefs—characterisable as an ideology[58]—are deeply held. Those beliefs regarding the constitution and other law like those of some religious belief systems,[59] are reinforced by recurrent rejection. They are therefore both persistent and important for how the sovereign individuals see themselves and others, what psychologists characterise as self-concept.[60] The persistence is evident in identification of some sovereign citizens as vexatious litigants.

As judgments noted later in this article indicate, on occasion an individual's belief appears to be associated with psychiatric problems that have resulted in preventive detention.[61] Belief also appears on occasion to be associated with heterodox views regarding vaccination, quarantines, and other aspects of public health—a heterodoxy regrettably reinforced by extreme right/left political actors on an opportunistic or merely wrong-headed basis.[62] In recent years, academic study has been complemented by official concern regarding the sovereign citizen belief system as a base for radicalisation that might lead to acts of violence by single-actor terrorists (aka lone wolf terrorists)[63] or law breaking by collectives such as rural white supremacists in the north-west United States.[64] The number of believers within Australia is unknown and typically only becomes publicly evident when an adherent attracts official notice, and thence media coverage, through a dispute regarding taxation, local government

[57] See Eli Pariser, *The Filter Bubble: What the Internet is Hiding from You* (Penguin UK 2011); Dominic Spohr, 'Fake News and Ideological Polarization: Filter Bubbles and Selective Exposure on Social Media' (2017) 34(3) *Business Information Review* 150.

[58] See, for instance, *State of New South Wales v Gavin* (n 3); *State of New South Wales v Hardy (Final)* (n 19).

[59] As points of entry to the literature, see Leon Festinger, Henry W Riecken, and Stanley Schachter, *When Prophecy Fails: A Social and Psychological Study of a Modern Group that Predicted the Destruction of the World* (Harper & Row 1956); Jon R Stone (ed), *Expecting Armageddon: Essential Readings in Failed Prophecy* (1st edn, Routledge 2013); Diana Tumminia, 'How Prophecy Never Fails: Interpretive Reason in a Flying-saucer Group' (1998) 59(2) *Sociology of Religion* 157.

[60] See Daphna Oyserman, Kristen Elmore, and George Smith, 'Self, Self-concept, and Identity' in Mark R Leary and June Price Tangney (eds), *Handbook of Self and Identity* (2nd edn, The Guilford Press 2012) 69.

[61] See, for instance, *State of New South Wales v Hardy (Final)* (n 19); *State of New South Wales v Kiskonen (Preliminary)* [2021] NSWSC 915; *State of New South Wales v Gavin* (n 3). See, more broadly, Sarteschi, *Sovereign Citizens* (n 18).

[62] See Kristy Campion, Jamie Ferrill, and Kristy Milligan, 'Extremist Exploitation of the Context Created by COVID-19 and the Implications for Australian Security' (2021) 15(6) *Perspectives on Terrorism* 23; Greg Martin, 'Resisting Rules, Challenging Cops: Dilemmas of Pandemic Policing in a State of Emergency' in J Michael Ryan (ed), *COVID-19: Cultural Change and Institutional Adaptations* (Routledge 2022) 175.

[63] See, for instance, Mark S Hamm and Ramón Spaaij, *The Age of Lone Wolf Terrorism* (Columbia University Press 2017); Bart Schuurman, Lasse Lindekilde, Stefan Malthaner, Francis O'Connor, Paul Gill, and Noémie Bouhana, 'End of the Lone Wolf: The Typology that Should not have Been' (2019) 42(8) *Studies in Conflict & Terrorism* 771; Lars Erik Berntzen and Sveinung Sandberg, 'The Collective Nature of Lone Wolf Terrorism: Anders Behring Breivik and the Anti-Islamic Social Movement' (2014) 26(5) *Terrorism and Political Violence* 759.

[64] Valeri, 'The Sovereign Citizens Movement' (n 21).

charges, traffic rules,[65] child support, bankruptcy,[66] environment protection, or a claim that a dog is a sovereign citizen.[67]

Australian and overseas sovereign citizens have been understood as curiosities, as exponents of pseudolegal nonsense that wastes judicial time, or as potential dangerous criminals and as people whose actions require preventive detention. They can, however, be understood as practitioners of law as a form of magic, a legal 'abracadabra' whose incantation both reflects incomprehension about the contemporary justice system and an unsuccessful attempt at time travel to an imagined past. If law is a matter of spells, ritual and spectacle, the spells used by sovereign citizens are distinctly ineffective.

Their rhetoric generally involves claims that constitutions since the mediaeval period are invalid, with individuals being free of state or corporate authority unless each person chooses to assent. The point at which the supposed invalidity occurs varies, with some exponents claiming 1297,[68] 1920s,[69] 1953,[70] or 1970s,[71] and others apparently regarding failure as a given without any need to engage in detailed historicist forensics. The rhetoric seeks to characterise each individual as a sovereign, a self-possessed individual with a legal status equivalent to a state, and lawfully ignoring obligations such as taxation, traffic rules, child support, firearms restriction, and environmental protection.

That supposed lawfulness might be attributed to the illegitimacy of the state, legislatures, and courts. It might instead be attributed to a form of self-possession too, with litigants in civil or criminal proceedings for example asserting that prosecution is invalid because the individual has not entered into a contract with the state,[72] that the state has failed to respond to a demand to end prosecution (and must thus pay the litigant several million dollars in silver or face action in a judicially unrecognised forum such as the 'Moot Court of Terra Australis Incognito').[73] In *Reiman v Commissioner of Police*, for example, the appellant claimed:

1. "I, Yvette Terese, the affiant, am not a Legal Fiction Person nor a Corporate Entity or some kind of Partnership, BUT INSTEAD am a living breathing, sovereign, flesh and blood Human Being with a living soul, with a distinct Mind is capable of possessing Knowledge";
2. "I am a woman, a living woman. I am not dead or lost at sea. I stand under the jurisdiction of my flag";
3. The appellant had renounced any "contract" or "agreement" with any government agency or entity;

[65] *Bradley v The Crown* (n 13); *Reiman v Commissioner of Police* [2021] QDC 242.

[66] *Meenken v Family Court at Masterton* [2017] NZHC 2103.

[67] *James v District Court at Whanganui* [2022] NZHC 2196.

[68] *Commonwealth Bank of Australia v Gargan* [2004] FCA 707 [16–17].

[69] See, for instance, *Milton Jones (a pseudonym) v DPP* (n 28); *Schafer v Bacon* [2022] QDC 60.

[70] See, for instance, *Michelle Jenkins v Home@Scope Pty Ltd* [2022] FWCFB 207 [19].

[71] See, for instance, *Attorney-General for the State of Victoria v Shaw* [2012] VSC 334.

[72] *Reiman v Commissioner of Police* (n 65).

[73] *Ms Julia Elana Miroch v Powercor Australia Ltd* [2022] FWC 1880.

4. "slavery and peonage are immoral and fraud, misrepresentation, nondisclosure, intimidation, deceit, concealment of material fact, lying, and treachery are morally wrong";
5. The appellant had "absolutely no desire whatsoever to be a "client" (slave) of any governmental agency, state or federal";
6. The appellant had "unalienable/inalienable indefeasible rights to life, liberty, freedom and property".[74]

The Court notes that Reiman indicated:

1. She did not recognise Queensland as a jurisdiction of the Commonwealth of Australia and she is not subject to the statutory laws and jurisdiction of the State of Queensland, because laws were created by God, in the Bible, upheld by the Magna Carta and reflected in the constitution, and because of the operation of s 109 of the *Commonwealth Act 1901*;
2. The police acted without lawful authority;
3. The Magistrates Court and District Court are unlawful and have no jurisdiction over her;
4. Persons interacting with her must produce evidence of their lawful authority and pay a fee of "four-hundred-thousand dollars credit in gold or silver";
5. She was travelling under her "inalienable right" under the Magna Carta and ss 51 and 92 of the Commonwealth Constitution;
6. The police were committing "war crimes" under the Geneva Convention;
7. When arrested she was "kidnapped" and falsely imprisoned.[75]

As illustrated in that example, Australian sovereign citizenship often features assertions that obligations are voided through language about an individual's name or supposed rights to settle disputes through ad hoc 'juries' that erase the authority of legislatures, statutes, and formally appointed embodiments of state authority such as judges, police, welfare, and public revenue officials. It is unclear whether any 'moot courts', 'peoples juries', or 'sovereign citizen courts' have been established. They have no legal standing.

The rhetoric also selectively denies the authority of private sector entities such as banks, with sovereign citizens frequently claiming that debts to corporations are not enforceable, although apparently willing to borrow from lenders.[76] In the face of supposed constitutional failure, the sovereigns apparently consider that they are entitled to enjoy the same benefits as their non-sovereign citizens, for example suffrage, certainty of contract, use of public facilities such as roads and schools, and access to the national welfare system. As noted above, they assert rights, often claimed to be expressed in the Magna Carta[77] and 'the Nuremberg Code' or even Anglo-Saxon law

[74] *Reiman v Commissioner of Police* (n 65) [17].

[75] Ibid. [19].

[76] See, for instance, *Westpac Banking Corporation v Glynn* (n 43). For an overseas example, see *Royal Bank of Canada v Anderson* 2022 ABQB 525.

[77] See Linebaugh, *The Magna Carta Manifesto* (n 31); Clark, 'The Icon of Liberty' (n 31).

predating the Norman Conquest.[78] That assertion is unsuccessful:[79] the Magna Carta, for example, did not provide exhaustive rights for everyone and is not a constitution overriding constitutional frameworks in India, Canada, New Zealand, and Australia. Its durability as a talisman of rights is a reflection of constitutional illiteracy and a populist invention of tradition.

The sovereign citizenship understanding is incoherent. In essence, sovereign citizens think of law as a sort of smorgasbord: take what you like, reject what you do not like. They are conscious that the state has a constitution, one given effect by law enforcement and other government bodies alongside acceptance—typically an unquestioning acceptance—by the community as a whole. The citizens, however, consider that it is not their constitution: the judges, banks, environment protection officials, and police who take the constitution as a given are wrong. More importantly, the conceptual error and agency of the misguided individuals and institutions can be overcome through magic, expression that will command the obedience of judicial institutions and public/private decision-makers.

As subsequent paragraphs illustrate, trust by sovereign citizens in the efficacy of magic as a mechanism to overcome the constitution and give effect to fictive past legal regimes has never worked. However, litigation in Australia and elsewhere indicates that belief by sovereign citizens in the moral and ontological validity of their claims is often unresponsive to failure in disputes, with individuals relying on demonstrably ineffective claims in a succession of disputes and the same claims being embraced by peers who then experience the same failure. One conclusion is that among some adherents, the understanding is deeply held rather than self-interested (i.e., not what a desperate individual considers to be an implausible excuse or justification) or seen by the adherents as a joke. It resembles social phenomena such as millenarianism, where the faith of 'true believers' is strengthened rather than eroded through disappointment when successive announcements about the end of the world are not substantiated.[80]

[78] See *Michelle Jenkins v Home@Scope Pty Ltd* (n 70); *Evangeline Liakos v Regain Occupational Therapy Pty Ltd T/A Cloud Nine Paediatric Therapy Services* [2022] FWC 1463; *Commonwealth Bank of Australia v Gargan* (n 68).

[79] *Jackson v Western Australia Police* [2014] WASC 72; *Skyring v Australia & New Zealand Banking Group Ltd* [1994] QCA 143; *Stearman v Taylor* [2014] WASC 247; *Re Patrick Leo Cusack v Australian Electoral Commissioner* [1984] FCA 328 [7]; *Carnes v Essenberg & Ors* [1999] QCA 339; *Nibbs v Devonport City Council* [2015] TASSC 34 [10]; *Lohe v Gunter* [2003] QSC 150; *Re Christopher Robin Fisher and Fay Annette Fisher v Westpac Banking Corporation* [1992] FCA 390 [14]; *Chia Gee v Martin* (n 29); *Shaw & Ors v The State of Western Australia Attorney General Mr Jim McGinty & Anor* [2004] WASC 144 [18–19]; *Baker v NSW Police Force* [2014] NSWSC 907 [3]; *Kobylski v Queensland Police Service* [2007] QCA 50; *Daniels v Deputy Commissioner of Taxation* [2007] SASC 114 [15].

[80] As points of entry to the literature, see Festinger, Riecken, and Schachter, *When Prophecy Fails* (n 59); Stone (ed), *Expecting Armageddon* (n 59); Tumminia, 'How Prophecy Never Fails' (n 59); Paul Boyer, *When Time Shall be no More: Prophecy Belief in Modern American Culture* (1st edn, Harvard University Press 1994); Norman Cohn, *The Pursuit of the Millennium: Revolutionary Millenarians and Mystical Anarchists of the Middle Ages* (Random House 2011).

4 Constitutional magic

Scholars from E E Evans-Pritchard[81] and Marcel Mauss[82] to J L Austin[83] have noted that law is a matter of doing things with words. Words affirm and condemn. Words bring some things into being, end others, modify relationships, or ameliorate harms. They manifest power and a dominant understanding. On occasion, they are misunderstood. Sometimes their ineffectiveness, and the derision of bystanders about an 'abracadabra', reinforces a user's belief in their legitimacy and an understanding that is at odds with hegemonic practice such as the Australian, United States, and Canadian justice systems.

Sovereign citizens in those jurisdictions can be understood as deluded, constitutionally illiterate, or the victims of individuals selling sovereign citizen litigation templates and workshops.[84] They can, however, also be considered as practitioners of constitutional magic, in other words, understanding law as something that can be commanded by utterance in a specific form without regard to the meaning of the utterance. Sovereign citizens, whether opportunistically or as part of a mistaken but genuinely-held understanding, are engaging in a form of legal magic. Their practice centres on incantations in judicial fora, with those incantations having a power analogous to pre-modern magic that was thought—if the spells were correct—to have power over the natural world. It is quixotic because it takes place in and supposedly determines the outcome of fora whose formal existence (and legal authority) is axiomatically denied by the individual uttering the incantation.

Within contemporary Australia as a pluralist but predominantly secular state, magic has come to be considered as an entertainment: a matter of performers pulling rabbits out of hats, sawing people in half on television variety shows, or individuals relying on the tarot for advice about fashion, personal relationships, and investment decisions. It has, more bleakly, been understood as the subject of egregious exploitation by figures such as black magic practitioner and scammer Man Haron Monis,[85] subsequently notorious for mass murder at the Lindt Café.[86] If we look at the interaction of sovereign citizens with contemporary justice systems, we can discern two facets of magic practice relevant to constitutional law.

[81] E E Evans-Pritchard, *Witchcraft, Oracles and Magic Among the Azande* (Clarendon Press 1937).

[82] Marcel Mauss, *A General Theory of Magic*, trans. Robert Brain (Routledge 2001).

[83] J L Austin, *How To Do Things With Words* (Oxford University Press 1962). See also Richard Mohr, 'Authorised Performances: The Procedural Sources of Judicial Authority' (2000) 4(1) *Flinders Journal of Law Reform* 63; Marianne Constable, 'Law as Language' (2014) 1(1) *Critical Analysis of Law* 63.

[84] See, for instance, *Royal Bank of Canada v Anderson* (n 8). Anderson has been criticised in a succession of judgments for providing training to OPCA claimants on a commercial basis.

[85] Monis, aka Mohammad Hassan Manteghi, faced charges of sexual assault over activity after promoting himself as a provider of 'astrology, numerology, meditation and black magic' services. Australian Broadcasting Corporation, '"Spiritual Healer" Refused Bail over Alleged 2002 Sexual Assaults at Wentworthville in Sydney's West' (*ABC News*, 14 April 2014). https://www.abc.net.au/news/2014-04-14/spiritual-healer-arrested-for-sexual-assault/5388332. Accessed 26 March 2023; *Golossian v R* [2013] NSWCCA 311.

[86] State Coroner of New South Wales, *Inquest into the Deaths Arising from the Lindt Café Siege: Findings and Recommendations* (May 2017). https://www.lindtinquest.justice.nsw.gov.au. Accessed 26 March 2023.

The first is what Malinowski in 1935 characterised as the confidence theory of magic.[87] The practitioner of magic, through, for example, utterance of specific words or phrases that have no meaning in themselves, gains a sense that he or she is mastering nature and is therefore able to take on tasks or responsibilities that would otherwise be impossible or simply daunting. That theorisation might account for why sovereign citizens engage in claims that their non-sovereign peers such as judges would regard as nonsensical. For many people, appearance in the theatre of justice is daunting. Litigation in many jurisdictions is adversarial and even experienced practitioners may be anxious about procedure in court. Having confidence that possession of the magic words may overcome a more powerful and legally-skilled opponent may therefore encourage sovereign citizen litigants, who are typically self-represented rather than relying exclusively on legal practitioners who have a standard understanding of the relevant constitution.

What is that magic? Religion typically assumes a powerful supernatural entity whose aid can be invoked through prayer or signs of obedience through sacrifices, human or otherwise. We ask the deity to be merciful. We ask the deity to smite our enemies, engage in genocide of the heathen, or merely inflict boils and infertility on those individuals who have wronged us. Magic is different. It is independent of religion. It is predicated on the idea that nature can be compelled to obey the magician if commanded in the right way. Your enemy will drop dead or lose her hair or otherwise have a miserable time if you or a contractor—a magician for hire—use the correct rituals, write, or speak the correct words. Magic is about exercising power, rather than begging the almighty for mercy or support.

The second facet is, therefore, that irrespective of the conventional meaning of words, the oral or written utterance of particular signifiers or phrases will necessarily have a material effect on the entity (such as a judge or a taxation office) that the sovereign citizen wishes to command and by extension override or simply replace the constitution that inconveniences the sovereign citizen.[88] There is no need of herbs or black cockerels or summoning a demon; adherents assume it is sufficient to use particular language. That language comes from a contemporary invented tradition, conceptualised by Eric Hobsbawm as:

> a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behavior by repetition, which automatically implies continuity with [a suitable historic] past.[89]

[87] Bronislaw Malinowski, *Crime and Custom in Savage Society* (Routledge and Kegan Paul 1926).

[88] Shenberg thus refers to words, some of which may not make sense, as 'uttered in the attempt to create a tangible change in the material world. This may include raising the dead, facilitating birth, getting rid of crickets in your house, removing worms from a fruit tree, catching fish in a net, and many more challenging situations'. Galia Shenberg 'Abracadabra and Hocus Pocus: Words of Magic and Their Transformation in Hebrew Children's Literature' (2016) 140. https://www.gordon.ac.il/sites/gordon/UserContent/files/shenberg.pdf. Accessed 17 March 2023.

[89] Eric Hobsbawm, 'Introduction: Inventing Traditions' in Eric Hobsbawm and Terence Ranger (eds), *The Invention of Tradition* (Cambridge University Press 1983) 1.

So, what does the spell making look like? We can see a couple of things. One is the argument that a sovereign citizen has two simultaneous existences, sometimes characterised as the straw man argument.[90] Existence Number 1 is their 'living body', the thing you see face to face and indeed might be incarcerated. That person has free will and independence, based on a religious text or a fantasy about the Magna Carta or some other superseded law. Existence Number 2—a supposedly discrete other existence—is their legal personality, an identity that might be signified by, for example, a customer number or tax file number or welfare system identifier. You can think of identity as resembling a set of clothes: put them on, take them off, throw them away. The different existences can supposedly be given effect through reference to living bodies,[91] individuals being 'of a house' in expressing their surname,[92] representing their names in capital letters or a particular font and colour, or purportedly invalidating the authority of a decisionmaker by asserting a 'rupture' in constitutional legitimacy (such as conversion of the Commonwealth of Australia to a corporation registered in Delaware).[93]

Sovereign citizens accordingly argue that when they choose, they can simply disregard any obligations that involve that legal personality. The living body is, in principle, not liable for anything that the legal body does unless the natural body agrees to it and the living body can retrospectively walk away from past agreements. On occasion, some sovereigns attribute the authority to a deity, for example:

> The Creator created the universe, the earth and life. Humans, as a creation of The Creator are inherently equal and have inherent rights. These rights, bestowed by The Creator, cannot be compromised or undone by any other, but The Creator. That being said, the state or government was created by humans and is thereby subservient to humans. The creators of Canada acknowledge these inherent rights cannot be violated and have stated the Charter and Constitution only applies to the government, see Appendix A. I, Geofrey J Schneider, am the living man. As such, I am not, at any time performing on behalf of, or contracting with the government. I am always in the Private unless I issue a statement otherwise. Therefore, all government statutes, acts and codes do not apply to me. As a man of The Creator I follow inherent jurisdiction which states that I am free to do whatever I see fit as long as I DO NO HARM.[94]

A corollary is that law—whether overall or in relation to specific obligations, such as repaying a loan or wearing a seatbelt—can be magicked away if people characterise themselves in ways that signal they are living bodies rather than legal bodies. How would you do that signalling? You might rely on expressing your name in all upper

[90] See *R v Sweet* [2021] QDC 216.

[91] See *Reiman v Commissioner of Police* (n 65) [17].

[92] See *Ms Julia Elana Miroch v Powercor Australia Ltd* (n 73) [3]; *Evangeline Liakos v Regain Occupational Therapy Pty Ltd T/A Cloud Nine Paediatric Therapy Services* (n 78).

[93] See *Hedley v Spivey* (n 27).

[94] *Schneider v Colhoun* (n 11) [42].

case.[95] You might hyphenate your given name and surnames and even add terms such as living body to your name. One litigant accordingly explained:

> My BRADLEY person (conjoined with the BRADLEY 'spiritual' family body-politic) is my own "body politic" by succession, at Law. It is my natural body incorporated at the supreme Christian Law and is my own jurisdiction.[96]

Preceding paragraphs have referred to convenience, given that sovereign citizens apparently do not use that 'abracadabra' in ordinary documents. They leave it for when they are heading into court, contesting an administrative decision, disregarding road rules,[97] or disclaiming liability in pre-emptively writing to a revenue agency.[98] There is considerable uncertainty about this and it is unclear whether banks, insurers, government agencies, and others are systematically using filters, for example, rejecting a credit application where the potential borrower identifies herself as a 'living person'.

Sovereign citizen claims in court feature what one Northern Ireland Court characterised as:

> a kaleidoscope of pseudo legalistic jargon, alien to law, practice and the administration of justice in any modern common law jurisdiction and in short is largely nonsense.[99]

A recurrent unsuccessful claim in Australia by people driving unregistered vehicles without a driver licence has been that their action is legal because they are 'travelling' rather than driving and are somehow not in control of or responsible for the vehicle.[100] Such semantic legerdemain is often apparent in documentation supplied by sovereign citizens and by advocates on their behalf during judicial proceedings. It is often prolix and stated by courts to be irrelevant, factually correct, and contemptuous. In one of many judgments regarding vexatious litigant Wayne Glew, the Western Australian Supreme Court accordingly noted:

[95] See, for instance, *Royal Bank of Canada v Anderson* (n 8) [3].

[96] *Bradley v The Crown* (n 13).

[97] See, for instance, *Bradley v The Queen* (n 8); *Bradley v The Crown* (n 13).

[98] Comments provided by Commonwealth and NSW officials in discussion with Dr Arnold during 2022. There is no Australian scholarly literature on such preemptive claims but they are consistent with sovereign citizen notions that law is invalid unless the individual subject to that law has agreed. A corollary is claims that noncompliance with the citizen's demands unilaterally obliges a government, bank, or other entity to pay 'fines' imposed by that citizen, notably in silver. See, for instance, *Ms Julia Elana Miroch v Powercor Australia Ltd* (n 73); *Royal Bank of Canada v Anderson* (n 76).

[99] *The Man known as Anthony Parker v The Man known as Master Ellison and the Man known as Donnell Justin Patrick Deeny* (Unreported, 16 April 2014) as noted in *The Man Known as Anthony Parker v The Man Known as Ian McKenna And The Enforcement of Judgments Office* (n 8) [53].

[100] See William Summers, '"Travellers" Driving in Wrong Lane with Belief in Legal Exemption' (*AAP Factcheck*, 12 October 2022). https://www.aap.com.au/factcheck/travellers-driving-in-wrong-lane-with-belief-in-legal-exemption/. Accessed 17 March 2023.

> The appellant's written outline of submissions did not advance the matter. It consisted, without any explanation as to their relevance, of the reproduction of a number of provisions of the Crimes Act 1914 (Cth), Criminal Code Act 1995 (Cth), Crimes Act 1958, Judiciary Act 1903 (Cth), Commonwealth of Australia Constitution Act (Cth), and miscellaneous other legislation, extracts from Black's Law Dictionary and, from The Bible, extracts from the books of Exodus and Zechariah, the second epistle of Paul to the Corinthians, the epistle of James and the gospel according to St Matthew.[101]

Viewed through the lens of comparative constitutional law, that inadequacy might be perceived as a matter of constitutional illiteracy, an outcome of disadvantaged people in conflict with the state (or with other people), and needing support to navigate a legal system and administrative process that is daunting because of insufficient experience and education. A civics program and mechanisms such as assistance from an amicus curiae might accordingly be useful, alongside determination of whether an individual is fit to plead. This positive view is instrumental and at odds with understanding sovereign citizenship as a matter of people believing that their (fictive and egregiously simplistic) constitution is the legitimate source of law in the relevant liberal democratic state, that citizen courts and tribunals established under that constitution are legally valid, and that nonrecognition or other decision-making by conventional courts can be overcome through magical formulae that have no semantic content.

The scholarly literature on sovereign citizenship has centred on the OPCA noted above. A somewhat different perspective is that sovereign citizen arguments in Canadian, British, New Zealand, and other courts often have a commercial focus but in fact are repetitive rather than 'organised'. Conceptually, they are incoherent. Although they sometimes feature citation of judgments or archaic texts, those citations are rarely relevant. The arguments do not point to a foundational exposition of principles and do not expressly draw on libertarian or other theorists such as Robert Nozick.[102] In part, that appears to be a function of resentment of metropolitan elites, in particular professionals such as lawyers and health practitioners who have 'taken the law' out of the hands of 'the people'. In part, it is a matter of sovereign citizen understanding of the world, or rather of social norms and dispute resolution at a local level: an understanding in which a village focus does not accommodate the realities of globalised commerce, social mobility, and multiculturalism. That is one reason why some sovereign citizen advocacy in the United States is merging with far-right calls for a separatist 'Aryan' libertarian state in a 'frontier' location such as Montana.[103]

The frustration experienced by sovereign citizens in giving effect to their needs or values through conventional courts operating under national and provincial constitu-

[101] *Glew v The Governor of Western Australia* [2009] WASCA 123 [20].

[102] Robert Nozick, *Anarchy, State, and Utopia* (Basic Books 1974). See also Barbara H Fried, 'Begging the Question with Style: *Anarchy, State, and Utopia* at Thirty Years' (2005) 22(1) *Social Philosophy and Policy* 221.

[103] See Schlatter, *Aryan Cowboys* (n 49); Smith, *Saints, Sinners, and Sovereign Citizens* (n 49).

tions (in Australia, no sovereign citizen claim has been successful) is reflected in purported establishment of sovereign citizen courts that claim domestic or international authority.

In 2021, for example, an Australian 'Sovereign People's Common Law Court' was reported on social media to have found the Prime Minister, Premiers of all Australian states, and all Chief Health Officers guilty of "Violating the Nuremberg Code!". It accordingly sentenced those people—who did not appear in the 'court'—to 120 years imprisonment.[104] A year later, a litigant relied on a 'Galactic Emissary' supposedly authorised by the 'Moot Court of Terra Australis Incognito'.[105] The theatrics were ineffective. There are no indications that such unrecognised courts are actively addressing neighbourhood disputes as a sort of low-cost, lawyer-free alternate dispute resolution.

5 Conclusion

Australia has not seen the emergence of a sovereign citizen political party or association. That is perhaps unsurprising, given the emphasis of sovereign citizens on individuality and hostility to organisations. There has not been a widely-accepted Sovereign Citizen Charter or overarching communique. It is unlikely that one will develop for critique as a replacement of or alternate reading of the national constitution. Assessing Australian sovereign citizenship as a matter of rights, freedoms, duties, democracy, government, and the state is a challenge given the incoherence of its expression and its refraction through the judgments of courts, tribunals, and bodies such as the Fair Work Commission.

One conclusion is that the sovereign citizens whose interaction with the law has provided citations in this article emphasise personal rights rather than responsibilities, rights apparently to be enjoyed by the citizens in circumstances where there is a conflict with the rights of individuals who are not 'sovereign' and the broader community. The freedoms asserted in courts range from an immunity from compliance with traffic, firearms, and environmental protection law, through to a privileged status in contractual relationships with banks, insurers, telecommunication service providers, and other businesses. Through the lens of the jurisprudence, it is unclear how the sovereign citizens demarcate duties. Some appear to be in receipt of state-provided welfare support, use public roads, and access services such as water and electricity rather than living a very isolated life 'off grid'. It is unclear whether disregard for the state means that they choose not to use Australia's state-provided public health and education system or instead resort to a mix of home-schooling and communitarian private welfare mechanisms in instances of need. The rhetoric suggests that they are biased towards a minimalist state that embodies libertarian values and encourages self-sufficiency, with a plebiscitary democracy functioning through small-scale

[104] Vaxatious Litigant, https://twitter.com/ExposingNV/status/1599167346345902080 (*Twitter*, 4 December 2022). Accessed 17 March 2023.

[105] *Ms Julia Elana Miroch v Powercor Australia Ltd* (n 73) [3].

polities. Readers might draw other conclusions relevant to critiques of constitutional thinking.

Weber commented that modern states reserve to themselves a monopoly of legitimate violence,[106] reflected in the construction of two positive legal identities (police and armed forces) and a negative identity (the criminal). In thinking about the sovereign citizen phenomenon, we might conclude that liberal democratic states—recognised as members of the international community—reserve to themselves a monopoly on the legitimate use of magic in relation to the constitutions applicable to their citizens.

Constitutional scholars are perhaps inclined to take for granted an understanding of the vocabulary and grammar of constitutions, an understanding that is not shared by most people and in practice is not necessary for the legitimacy noted above. Courts have grappled with practitioner use of language, with, for example, statements such as:

> 'Mutual trust and confidence', 'good faith', and 'fair dealing' have become terms to conjure with in employment litigation. They are the 'abracadabra' of the plaintiff lawyer, sprinkled liberally over statements of claim, in the hope of summoning up some exceptional damages award from a mundane termination of employment claim. Sometimes, apparently miraculously, they work. Most times it seems the plaintiff is disappointed. This note on the *Russell* litigation dissects one of the failed cases, to shed some light on when the magic will work, and when it simply won't.[107]

Lord Neuberger cautions that in dealing with 'abracadabra law', judges look to 'the realities not formulae'.[108] Much of the ritual evident in judicial proceedings, signifying the significance of administrative protocols and law to practitioners and non-specialists alike, is unintelligible to many people and perhaps powerful because that unintelligibility takes it outside normal discourse.

Another conclusion is that the expression of sovereign citizenship features spells that are cast by believers in domains where they cannot work and that disadvantage the magicians. This article has noted the irony of sovereign citizen litigants relying in judicial proceedings on arguments that the specific courts have no authority *per se*, administrative bodies are invalidly constituted and litigants are free to graze at a legal smorgasbord. Sovereign citizens may derive comfort from assertions on social media that authority figures are subject to and have been condemned by a sovereign citizen 'common law court' (such as that condemning all Australian senior politicians and health officials to death or 120 years imprisonment), but that is a matter of failed rhetoric—ineffective persuasion—that resembles the assertion of sovereignty by

[106] Max Weber, 'Politics as a Vocation' in Hans H Gerth and C Wright Mills (eds), *From Max Weber: Essays in Sociology*, trans. Hans H Gerth and C Wright Mills (2nd edn, Routledge 1991) 77, 78.

[107] Joellen Riley, 'The Boundaries of Mutual Trust and Good Faith' (2009) 22(1) *Australian Journal of Labour Law* 73, 73.

[108] Lord Neuberger of Abbotsbury, 'The Stuffing of Minerva's Owl? Taxonomy and Taxidermy in Equity' (2009) 68(3) *The Cambridge Law Journal* 537, 541

the self-appointed kings, emperors, dukes, princes, and other 'rulers' of the cosplay pseudo-states.

A final conclusion is that magic that does not work, as with the practice of sovereign citizens, may have three outcomes. The first, most positively, is that sovereign citizens abandon the belief system in favour of conventional understanding of the constitution and of legal practice. The second is that 'true believers' are likely to persist in what courts consider to be nonsensical, time-wasting, and otherwise abusive claims, and are accordingly deemed to be vexatious litigants.[109] In discussing Glew's status as a vexatious litigant, the WA Supreme Court unsurprisingly commented that his arguments:

> In substance, ... simply repeat the same contentions, or variations of the same contentions, which the appellant has advanced over and over again, and which this court, among others, has rejected over and over again. They do not improve by repetition; they remain as devoid of legal merit as they were at the outset. None has the remotest prospect of success.
> The point has long since been passed where the appellant's persistence in advancing these contentions could be put down to a lack of understanding of their absence of legal merit. It can now be attributed only to an obduracy which is impervious to reason and which is unlikely to diminish. The fact that in an appeal against the finding that he was a vexatious litigant the appellant has advanced the same sort of fallacious contentions which caused that finding to be made in the first place bears that out.[110]

The third, most worryingly, is that the frustration experienced by practitioners of the magic may make those people more receptive to other heterodox belief systems, for example claims that COVID pandemics are being engineered by elites as part of a New World Order,[111] and accordingly resort to violence. That agency is unlikely to result in armies of disaffected sovereign citizens. It may, however, result in what is conventionally dubbed lone wolf terrorism,[112] action directed against symbols of authority and the contested constitutional regime such as talismanic buildings housing legislatures and constitutional courts such as the United States Supreme Court and Australian High Court.

[109] See, for instance, *Bradley v The Queen* (n 8); *Landry (Re)* 2021 ABQB 390. In *R v Ayyazi* 2022 ABQB 412 [12], the Court states 'the Strawman duality applied in Mr Ayyazi's materials is so thoroughly rejected, and is so notoriously false, that, in law, anyone who employs Strawman Theory is presumed to do so in bad faith, and for abusive, ulterior purposes'.

[110] *Glew v Attorney General (WA)* (n 8) [12–13].

[111] See John Bodner et al., *COVID-19 Conspiracy Theories: QAnon, 5G, the New World Order and Other Viral Ideas* (McFarland 2020).

[112] See Hofmann, 'Breaking Free' (n 3); Geoff Dean, Peter Bell, and Zarina Vakhitova, 'Right-wing Extremism in Australia: The Rise of the New Radical Right' (2016) 11(2) *Journal of Policing, Intelligence and Counter Terrorism* 121; Stephen A Kent, 'Freemen, Sovereign Citizens, and the Challenge to Public Order in British Heritage Countries' (2015) 6 *International Journal of Cultic Studies* 1; Valeri, 'The Sovereign Citizens Movement' (n 21).

Critical constitutionalism potentially offers a basis for substantive law reform that provides a legal framework that is more just and administratively effective, thereby gaining the support of both constitutional scholars and people who are directly affected by that framework. The range of legal understandings characterised as 'sovereign citizenship' are an unconventional and unpersuasive critical constitutionalism. They are noteworthy as illustrations of how individuals read/misread law, rights, responsibilities, and constitutions. They are also noteworthy as manifestations of anxieties, resentment, or other discontent. They do not, however, embody a viable programme of constitutional law reform and in practice will continue to be unsuccessful when voiced by adherents in judicial fora.

Declarations

Conflict of Interest The authors have no conflicts of interest to declare that are relevant to the content of this article.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

Authors and Affiliations

Bruce Baer Arnold[1] · Erina Mikus Fletcher[1]

✉ Bruce Baer Arnold
bruce.arnold@canberra.edu.au

Erina Mikus Fletcher
erina.fletcher@canberra.edu.au

[1] University of Canberra, Canberra, Australia