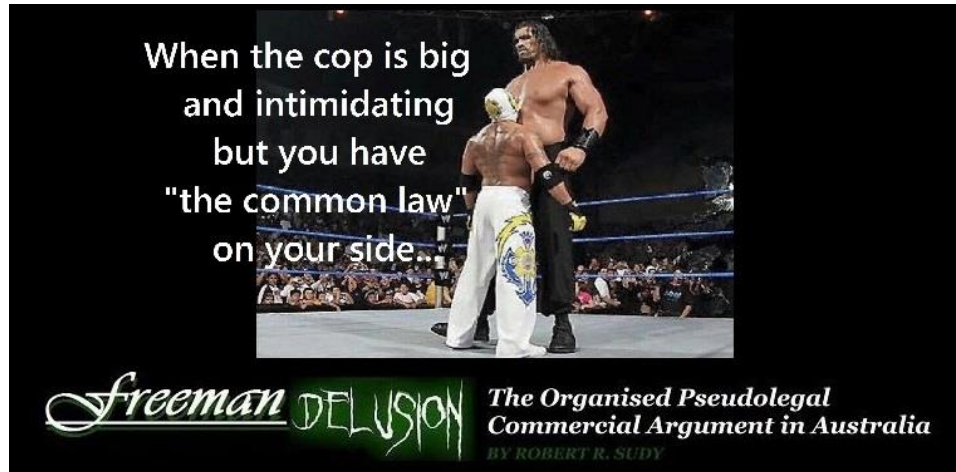


The legal and lawful conundrum



OPCA theorists insist that the term "*legal*" describes legislation, (though it is something that is unenforceable except by individual ["consent"](#) via contract, otherwise known as "joinder") whereas "*lawful*" denotes the "real law", which the theorist holds as "*the common law*".

The theory is that "*lawful*" protects one's fundamental rights whereas "*legal*" attempts to "contract away" those fundamental rights through "joinder". This simplistic interpretation causes much confusion in understanding charges, and makes trying to stay out of trouble very difficult in general.

"Yeah it's legal alright, but it's not lawful..."

Having understood the information in other chapters, regarding [the supremacy of parliament](#), "kings law" or legislation, and the [interpretary role of the courts](#), it is clear the particular "*common law*" OPCA adherents hold sacred, does not even exist, and so it follows, neither does this associated explanation of "*lawful*" and "*legal*".

By definition, the term "*lawful*" describes conduct that is permitted by law without sanction, and "*legal*" describes the process of study and reasoning. "*Unlawful*" means something that is not permitted by the court (E.g. an assault of a person without a lawful reason is unlawful) and "*illegal*" means something that cannot be supported by the courts (E.g. an illegal contract)

The existence of a court presupposes the rule of law and therefore precludes the court from entertaining any proposition incompatible with the rule of law. The existence of a constitution presupposes the rule of law and therefore renders unconstitutional any attempt to subvert the rule of law. Parliament cannot suspend the rule of law, because the legislative power is limited to the making of law, which by definition must be consistent with the rule of law. We are under a "government of laws", not a "government of men".

The constitution is the highest form of law in Australia, and all rights and duties that exist are provisions of, and within the limitations of, that body of law. Therefore the term lawful is more accurately described as what is "*constitutional*". If something is found to be "*unconstitutional*" by the High Court, it is deemed

to be "unlawful". If the legislation in question is created within constitutional guidelines, by legislative powers granted by the constitution, it cannot be "unlawful".

As stated in [**Durham Holdings Pty Ltd v New South Wales \(2001\) HCA 7:**](#)

"...the duty [of a court] of obedience to a law made by a Parliament of a State derives from the observance of parliamentary procedures and the conformity of the resulting law with the State and federal Constitutions. It does not rest upon judicial pronouncements to accord, or withhold, recognition of the law in question by reference to the judge's own notions of fundamental rights, apart from those constitutionally established."

"...subject to any constitutional invalidity, the judge has no authority to ignore or frustrate the commands of the lawmaker. To do so would be to abuse judicial power, not to exercise it."

The "Australian legal system" isn't called the "Australian lawful system", because to call it such is basically just crap use of the English language. It's a distortion of terms based on a huge misconception regarding the hierarchy of sources of law, as explored in the chapter "[**The Supremacy of Parliament**](#)".

So if you claim a certain law is "unlawful", do you have a constitutional argument?



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