The question of Jurisdiction

OPCA adherents generally believe that it is through a "contract" that authorities gain jurisdiction to enforce statute law, and they cannot have that jurisdiction without that joinder. It follows that the effect of this supposed contract would necessarily mean different criminal sanctions applying to different persons for the same conduct. This is contrary to equality before the law, one of the most fundamental cornerstones of the rule of law. As stated by the High Court in ***Walker v New South Wales [1994] HCA 64*** (at 5):

> *"The proposition must be rejected. It is a basic principle that all people should stand equal before the law. A construction which results in different criminal sanctions applying to different persons for the same conduct offends that basic principle (See Racial Discrimination Act 1975 (Cth), s.10). The general rule is that an enactment applies to all persons and matters within the territory to which it extends, but not to any other persons and matters (Bennion, Statutory Interpretation, 2nd ed. (1992) at 255). The rule extends not only to all persons ordinarily resident within the country, but also to foreigners temporarily visiting (Re Sawers; ex parte Blain (1879) 12 Ch D 522 at 526; Gold Star Publications Ltd. v. Director of Public Prosecutions (1981) 1 WLR 732 at 734). And just as all persons in the country enjoy the benefits of domestic laws from which they are not expressly excluded, so also must they accept the burdens those laws impose (Bennion, op. cit. at 260). The presumption applies with added force in the case of the criminal law, which is inherently universal in its operation, and whose aims would otherwise be frustrated."*

The High Court found that: (1) The Parliament of New South Wales has legislative competence to regulate or affect the rights of Aboriginal people. (2) The application of laws made by that Parliament to Aboriginal people is not subject to their acceptance, adoption, request or consent. (3) As Aboriginal people enjoy the benefits of domestic laws, they must also accept the burdens those laws impose.

> *"The legislature of New South Wales has power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever (See s.5 Constitution Act 1902 (N.S.W.). The proposition that those laws could not apply to particular inhabitants or particular conduct occurring within the State must be rejected. As Gibbs J (with whom Aickin J agreed) said in Coe v. The Commonwealth of Australia (1979) 53 ALJR 403 at 408; 24 ALR 118 at 129): "The aboriginal people are subject to the laws of the Commonwealth and of the States or Territories in which they respectively reside." …. There is nothing in the recent decision in Mabo v. Queensland (No.2) (4 (1992) 175 CLR 1) to support the notion that the Parliaments of the Commonwealth and New South Wales lack legislative competence to regulate or affect the rights of Aboriginal people, or the notion that the application of Commonwealth or State laws to Aboriginal people is in any way subject to their acceptance, adoption, request or consent."*

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Some cases citing this decision

You will note that the principle raised in ***Walker v New South Wales [1994] HCA 64*** has often been cited in cases as a judgment authority where it applied to non-Aboriginal people in the same manner. As was said in ***Brisbane City Council v Curr [2014] QMC 28:***

"It could be argued that the principle set out by Mason CJ [citing Walker] above is not offended by what has been done here. The defendant is a non Aboriginal person. It could be argued that the law equally applies to him as it does to an Aboriginal person as long as he is doing for Aboriginal purposes and for no other purpose. In my view, because of what follows, the fact that he is a non Aboriginal person acting on the instruction of or at the request of an Aboriginal elder doesn't assist the defendant's argument."

Further:

"Section 2 of the Constitution Act 1867 (Qld) similarly provides that the legislative assembly can advise and consent to the Queen making laws for the peace, welfare and good government of the colony in all cases whatsoever and through the Land Act, the Local Government Act and the City of Brisbane Act the Brisbane City Council is empowered to make these by-laws which it is alleged the defendant has offended. As Mason CJ said as quoted above, [Walker v NSW] the proposition that these laws could not apply to particular inhabitants or particular conduct occurring within the State must be rejected."

Deputy Commissioner of Taxation v Aitken [2015] WADC 18:

(At 44) "The suggestion that laws do not apply to the defendant because he is a UK citizen, even if it was established that he was a UK citizen, is absurd. All persons in the country enjoy the benefits of domestic laws from which they are not expressly excluded. So also must they accept the burden those laws impose: Walker v New South Wales (1994) 182 CLR 45."

Anderson v Kerslake [2013] QDC 262:

(At 31) "The learned acting Magistrate considered the appellant did not seek to challenge she did not have such an excuse, but based on her 25 page submission, her defence to the charge was, she is not subject to the laws of Australia or Queensland and those laws were invalid. He observed he had already dealt with this argument in deciding the jurisdictional issue. The written submissions of the prosecutor were accepted. His Honour considered himself bound by the authorities mentioned in the submission, and in particular Coe v Commonwealth of Australia; Walker v New South Wales; The Australian Workers' Union of Employees of Queensland v State of Queensland; State of Queensland v Together Queensland, Industrial Union of Employees & Anor; Mabo v Queensland (No 2)."

Fyffe v State of Victoria [1999] VSCA 196:

(At 22) "The Victorian Parliament has, of course, power to legislate "in and for Victoria in all cases whatsoever"; see s.16 of the Constitution Act 1975. Mr Fyffe resides in Victoria and we can take judicial notice that the relevant land is situated within the State. Mr Fyffe is accordingly subject to the laws of Victoria. The submissions bearing on secession should in our view be rejected as an abuse of process. See also Coe v Commonwealth (1979) 24 A.L.R. 118 per Gibbs, C.J. at 128-129; Coe v Commonwealth (No. 2) (1993) 118 A.L.R. 193 at 199; Walker v New South Wales (1994) 182 C.L.R. 45 per Mason, C.J. at 49-50."

https://freemandelusion.com/wp-content/uploads/2019/06/walker-v-new-south-wales-1994-hca-64.pdf

As also held in *Walker*, jurisdiction comes from being physically present within the geographical territory of a sovereign state, which has plenary power to make laws that apply to every subject matter and person inside their territory. As stated:

> *"The rule extends not only to all persons ordinarily resident within the country, but also to foreigners temporarily visiting (Re Sawers; ex parte Blain (1879) 12 Ch D 522 at 526; Gold Star Publications Ltd. v. Director of Public Prosecutions (1981) 1 WLR 732 at 734). And just as all persons in the country enjoy the benefits of domestic laws from which they are not expressly excluded, so also must they accept the burdens those laws impose (Bennion, op. cit. at 260)."*

This has been a principle of law that has existed as far back as 1690, when John Locke wrote "***Two Treatises of Government***" which became the basis for the US notion of the consent of the governed. He stated in Chapter VIII; Sections 119 – 120:

> *"...that every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, cloth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government."*

It was a point recognised in Vattel's "***Law of Nations***" in 1760, which became the basis of international law, regarding the sovereignty of a nation state. §1, and in §2 is regarding the authority of the body politic over the members, and that by association each citizen subjects himself to the authority of the entire body, and that the authority of all over each member, therefore, essentially belongs to the body politic, or state.

> *§ 1. Of the state, and of sovereignty: A nation or a state is, as has been said at the beginning of this work, a body politic, or a society of men united together for the purpose of promoting their mutual safety and advantage by their combined strength. From the very design that induces a number of men to form a society which has its common interests, and which is to act in concert, it is necessary that there should be established a Public Authority, to order and direct what is to be done by each in relation to the end of the association. This political authority is the Sovereignty; and he or they who are invested with it are the Sovereign.*
>
> *§ 2. Authority of the body politic over the members: It is evident, that, by the very act of the civil or political association, each citizen subjects himself to the authority of the entire body, in every thing that relates to the common welfare. The authority of all over each member, therefore, essentially belongs to the body politic, or state; but the exercise of that authority may be placed in different hands, according as the society may have ordained."*

In *Walker*, it was argued that Aboriginal customary law survived the assertion of sovereignty by the British, and continued until extinguished by clear and unambiguous legislation. It was claimed that general laws failed to extinguish Indigenous laws in that way. Chief Justice Mason, and Judges Ashley, Neave and Redlich, unanimously rejected the notion that a system of law could operate along side the Australian legal system.

https://freemandelusion.com/wp-content/uploads/2019/06/walker-v-new-south-wales-1994-hca-64.pdf

The effect of R v Murrell and Bummaree (1836) 1 Legge 72; [1836] NSWSupC 35:

R v Murrell in 1836 is a landmark case in Australia in two main points. It settled both the question of jurisdiction over the Aboriginal people, and declared that Aboriginal people were British Subjects.

https://freemandelusion.com/wp-content/uploads/2022/04/R-v-Murrell-and-Bummaree-1836-1-Legge-72-1836-NSWSupC-35-Macquarie-Law-School.pdf

As cited recently by Glen Cash QC in ***R v Sweet [2021] QDC 216*** in relation to the challenge to jurisdiction contended by the Strawman premise, (at 6):

> *"In Australia, a human being is also a legal person. An adult human being with full capacity can sue and be sued. They are subject to the criminal laws of this state. Support for the proposition that the criminal law applies to a person regardless of their status in law may be found in R v Murrell and Bummaree (1836) 1 Legge 72 (the case of 'Jack Congo Murrell'). There it was held that the law applied to an Aboriginal man who, at the time, would have had no other legal rights."*

https://freemandelusion.com/wp-content/uploads/2022/03/R-v-Sweet-2021-QDC-216.pdf

The following extract is from: *Recognition Of Aboriginal Customary Laws (Australian Law Reform Committee Report 31) / 4. Aboriginal Customary Laws And Anglo-Australian Law After 1788 /* ***"Australian Law As Applied To Aborigines"***:

The application of English law to Aborigines was in practice less certain, especially for offences (especially killings) committed by one Aborigine against another. For some time the practice was to apply English law at least to offences committed by colonists against Aborigines and by Aborigines against colonists, so as to provide a measure of protection for each group against the other. Although these figures are unrepresentative of the actual number of killings during this period, from 1788-1855, 68 whites were committed and 59 tried for murder of Aborigines; 44 Aborigines were committed and 29 tried for murder of whites or other Aborigines. (See B Bridges, 'The Aborigines and the Law: New South Wales 1788-1855' (1970) Teaching History 40, 47.)

However the amenability of Aborigines to English law presented many problems, whether the victims were colonists or other Aborigines. The Colonial Office condemned the military execution of two Aborigines in South Australia for the murder of certain whites, as itself murder, because it lacked due process of law. But the judge of the Supreme Court had declared himself without jurisdiction to try the Aborigines. (See SD Lendrum, 'The Coorong Massacre: Martial Law and the Aborigines at First Settlement' (1977) 6 Adel L Rev 26; K Hassell, The Relations Between the Settlers and Aborigines in South Australia, 1836-1860, Libraries Board of South Australia, Adelaide, 1966, 52-72.)

In 1829 the New South Wales Supreme Court advised the Attorney-General that it would be unjust to apply English law to the killing of an Aborigine by members of another tribe. (See B Bridges, 'The Extension of English Law to the Aborigines for Offences Committed Inter Se, 1829-1842' (1973) 59 JRAHS 264, 264.) Similar doubts were entertained in South Australia (See Lendrum; Castles (1982) 524-6.) and in Melbourne. (R v Bon Jon (1841); see para 41.)

In Jack Congo Murrell's Case, that the Aborigines were British subjects seemed to have been conclusively settled, so far as colonial courts were concerned, by the various proclamations and statutes establishing the Australian colonies, but the implications of this status for the application of English law took surprisingly long to establish. The Proclamation of Governor Hindmarsh (28 December 1836) extending *'the same protection to the native population as to the rest of His Majesty's subjects'* (See JM Bennett & AC Castles, A Source Book of Australian Legal History, Law Book Co, Sydney, 1979, 258.) Similarly the official proclamation of Western Australia conferred the protection of the law on Aborigines as equals of *'other of His Majesty's subjects'* (See R Cranston, 'The Aborigines and the Law: An Overview' (1973) 8 U Queens LJ 60, 61 citing H Schapper, Aboriginal Advancement to Integration: Conditions and Plans for Western Australia (1970) 11. also Australian Courts Act 1829 (9 Geo IV c 83) s 3, 24.)

The decisive case was ***R v Jack Congo Murrell (1836) 1 Legge 72***, in which the Full Court of the New South Wales Supreme Court held unanimously that it had jurisdiction to try one Aborigine for the murder of another. The Full Court had to deal with two distinct cases. In Murrell's case, the defendant alleged that he was so drunk he could not help killing. In the other case, the defendant relied on Aboriginal customary laws. His victim was, apparently, a member of the group which had killed his brother: *'this was clearly a case of obedience to the native custom of revenge killing'*. (See Bridges (1973) 264.) The argument for the defence was lucidly put by Alfred Stephen:

"This country was not originally desert, or peopled from the mother country, having had a population far more numerous than those that have since arrived from the mother country. Neither can it be called a conquered country as Great Britain was never at war with the natives, not a ceded country either, it, in fact, comes within neither of these, but was a country having a population which had manners and customs of their own, and we have come to reside among them: therefore in point of strictness and analogy 'to our law, we are bound to obey their laws, not they to obey ours. The reason why subjects of Great Britain are bound by the laws of their own country is, that they are protected by them; the natives are not protected by those laws, they are not admitted as witnesses in Courts of Justice, they cannot claim any civil rights, they cannot obtain recovery of, or compensation for, those lands which have been torn from them, and which they have probably held for centuries. They are not therefore bound by laws which afford them no protection."

Although not reported in Legge, apparently Stephen also argued from the fact of double jeopardy: *'even if acquitted, a native would have to face another trial in the bush according to native law'* (See Bridges (1973) 265.) In response, the Court simply denied that the binding quality of the laws was contingent upon their effectiveness as 'protection': *"If the offence had been committed on a white, he would be answerable, was acknowledged on all hands, but the Court could see no distinction between that case and where the offence had been committed upon one of his own tribe. Serious cases might arise if these people were allowed to murder one another with impunity, our laws would be no sanctuary to them. For these reasons the Court had jurisdiction."* (See Bridges (1973) 265-6.)

Despite the reality of the coexistence of two laws for Aborigines, the case came to be regarded as having settled the question of jurisdiction for Australian law. It has since been reaffirmed on numerous occasions, ***Tuckiar v R (1934) 52 CLR 335***; ***Milirrpum v Nabalco Pty Ltd (1971) 17 FLR 141***, 261-2 (Blackburn J); ***R v Wedge [1976] 1 NSWLR 581***. In the latter case, ***Rath J concluded*** at p. 587 that *`all the reasons of the court in R v Murrell are as valid today as they were when judgment in that case was given'.*

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