



English Speaking Union of the United States

Indiana, Indianapolis

Monday 21 October 2002, 5.30pm

The Hon Paul de Jersey AC Chief Justice of Queensland

The vibrancy of the English Speaking Union worldwide – or where English is spoken, and that's worldwide, bears witness to the universality of the language, its potential power, and its actual influence. In my travels to Europe especially, I am somewhat daunted by those who, to do business effectively, need to be multi-lingual: but the need is most often not there, because of the pervasiveness of the English language. Coming from an island continent, I luxuriate in never really having had to take the trouble to develop fluency in a tongue other than English.

I am pleased by the way to be delivering this address in the English language in the United States of America. A little distance to the north, and I would be obliged to interrupt regularly and stumble through a few sentences of inadequate French. You are spared that embarrassment – or perhaps it would be a diversion!

But of course it is not just the language on which the English Speaking Union focuses. Your abiding interest embraces the philosophies, the ideals and the institutions spawned by those who have worked, work from an English base: as to ideals, those indeed which we see so eloquently embodied in the Constitution of the United States of America, the backbone of the Republic: as to institutions, the legislatures, the executive governments and the courts of law built on philosophies underpinned by the principles of representative democracy, the separation of powers and the rule of law.



**English Speaking Union of the United States
Indiana, Indianapolis
Monday 21 October 2002, 5.30pm**

**The Hon Paul de Jersey AC
Chief Justice of Queensland**

These are grandly significant concepts, enduring critical institutions. Our challenge is to ensure they survive erosion from the sceptical challenge which increasingly characterizes contemporary society. I commend your organization, and the English Speaking Union internationally, for efforts in that regard.

Though the reach of the English Speaking Union is, in that important sense, broad, its activities do inevitably betray a large degree of interest in the land and culture to which this language is natively tied. Having split so decisively from Britain in 1776 the people of what in 1789 became the United States of America have maturely chosen not to disavow those enduring features of British culture which have the potential to stabilize and enrich English-based societies elsewhere.

I think it interesting to note the intense cooperation between President George W Bush and Prime Minister Tony Blair in relation to current world threats. On a lighter note, I read before leaving Australia of a suggestion that your President is the 17th cousin by marriage, through the Diana Spencer family, of Prince William: fanciful or not, that the claim is aired is itself some indication of warm relationships and mutual respect.

On 3rd September in my own country, we annually celebrate National Flag Day. The Australian flag was first raised on 3rd September 1901, so is comparatively young – by contrast, the Stars and Stripes dating from 1777 and the Union Jack from 1606. But the Australian flag focuses national pride as if with the clarity of centuries. I mention it today because of its inclusion, in the upper quarter of the hoist, of a Union Jack.



**English Speaking Union of the United States
Indiana, Indianapolis
Monday 21 October 2002, 5.30pm**

**The Hon Paul de Jersey AC
Chief Justice of Queensland**

The flag also includes, I should say, a large white “Federation Star” with seven points representing the six Australian States and the Territories; and elsewhere, five stars representing the constellation of the Southern Cross. Through that design, geography and history were interwoven to call the fledgling Australian nation to independence.

I return to the presence of the Union Jack. There is, as you may know, a republican movement current within the constitutional monarchy which is Australia. By the most recent referendum, the Australian people signified relative satisfaction with the current structure. But there is nevertheless persisting substantial interest in securing, for Australia, an Australian head of state, not the Queen of England albeit she is also designated the Queen of Australia. In that context, there have been enthusiastic suggestions from time to time that Australians should adopt a fresh flag design, omitting, in particular, the Union Jack.

The current flag was adopted following a public design competition which attracted entries from as many as 10% of the young nation’s then overall population. A design competition, in conjunction with the rising republicanism of the 1980’s, attracted entries from less than .2% of the then population. I infer that most Australians think it worthwhile to acknowledge, through the flag, this historical link with Britain, from whom – like you – we drew stipulations precious to our way of life: parliamentary democracy, the rule of law, freedom of speech. Incidentally, alone in the world, the Australian flag flies over an entire continent.



**English Speaking Union of the United States
Indiana, Indianapolis
Monday 21 October 2002, 5.30pm**

**The Hon Paul de Jersey AC
Chief Justice of Queensland**

I suppose it is additionally significant, with my being here with you today, that I come from the Australian State called "Queensland". The name aside, we do speak English, although with a drawl unlike your twang. My State has the benefit of size – its length north to south is a distance comparable to San Francisco to Dallas, Tokyo to Taipei. The State is equivalent in magnitude to the whole of the British Isles and Western Europe taken together: 5 times the area of Japan, 5 times Texas, 40 times Indiana! On the other hand, by your terms, my State's population – about 4 million people – is comparatively small. Queensland boasts attractions with which you would be familiar, especially the Great Barrier Reef, not to mention our citizen probably better known here than in Queensland, the "Crocodile Man" Steve Irwin. Popular culture aside, you would expect me to say something of Australian law.

Australian law is historically rooted in the law of England. The British common law arrived in Australia with the new entrants to Sydney Cove in 1788. The British then deemed Australia *terra nullius* – a land uninhabited, and therefore capable under international law of being settled rather than ceded or conquered. Accordingly, all the English laws then in being were immediately in force.

The independent development of Australian law thereafter was curbed by limitations placed on legislative councils during the early 19th century, stipulating their enactments must not be "repugnant" to the laws of England. Apparently in response to the efforts of one particularly Anglophilic Judge, who invalidated very many pieces of South Australian legislation on the basis of repugnancy, an independent investigatory committee was established leading to an imperial government's *Colonial Laws Validity Act* of 1865. That provided no colonial law was to be invalidated on the ground of repugnancy unless inconsistent with



**English Speaking Union of the United States
Indiana, Indianapolis
Monday 21 October 2002, 5.30pm**

**The Hon Paul de Jersey AC
Chief Justice of Queensland**

British legislation specifically directed at the colony. And so the Australian legislatures were being urged not to replicate English law premised on English society in Australia, but instead, to utilize British notions of justice with a view to developing innovative bodies of law responsive to the unique needs of Australian society.

Australia's path to legal autonomy was legislatively enshrined with the passing of the Australian and British *Australia Acts* 1986. They provided that no Act of the parliament of the United Kingdom was thereafter to extend to the Commonwealth of Australia or any State. They also abolished appeals from Australian courts to the Judicial Committee of the Privy Council in London. And so at last, Australia had secured its own true legal independence.

Generally, the formulation in Australia of most legislative provisions, and the development of its own common law, nevertheless fairly closely followed the English path, with discernable divergence really only emerging over the last 2 or 3 decades, and that has been hardly surprising with the crystallization of Australian identity and the greater alliance between British law and European law. Australian courts will look, have looked, increasingly to common law jurisdictions other than England for comparative law precedent.

For all that, the laws of Australia are couched in the English language, and reflect English philosophies and concepts: they have influenced, are influenced by, legal developments in other English based jurisdictions. As globalisation proceeds apace, the influence of English based legal systems will extend yet further.



**English Speaking Union of the United States
Indiana, Indianapolis
Monday 21 October 2002, 5.30pm**

**The Hon Paul de Jersey AC
Chief Justice of Queensland**

That increasing international focus will certainly intensify with the information technology revolution and the lowering of international trade barriers. Legal systems are becoming more interdependent, more susceptible to influences inter se.

There is no doubt that lawyers from English based systems are increasingly important agents for national and international development. For example, lawyers from the United States have been instrumental in facilitating the production of constitutions and legal codes in areas of the now fragmented Union of Soviet Socialist Republics. Australian lawyers have done great work to help establish a worthwhile new legal system in the liberated East Timor. One may reasonably surmise that the influence of stably based regimes shone through those recastings.

Modern courts see the regular passage through their chambers of visitors from overseas jurisdictions, ever interested in coming to some understanding of the tenets if not detail of our systems. Japanese Judges in particular have been regularly visiting the Supreme Court of Queensland, in recent years, as part of that nation's consideration of the possible rejuvenation of Japan's jury system, quiescent since World War II.

Through language, through philosophy, through institutions, the English influence is pervasive and increasing. Your short form mission statement is the uplifting goal of "creating global understanding through English". The English Speaking Union of the United States operates, I understand, via a network of as many as 77 branches throughout the States, sharing its mission with about 50 international ESU's. Now more than 80 years old, your ESU has done much to



**English Speaking Union of the United States
Indiana, Indianapolis
Monday 21 October 2002, 5.30pm**

**The Hon Paul de Jersey AC
Chief Justice of Queensland**

further friendship and understanding among English speaking peoples around the world. The founder, Sir Evelyn Wrench, and his 15 colleagues, as you know, believed that given the opportunity to know one another personally, people who shared a common language would soon discover that they also shared similar values, whatever their differences in nationality or background.

I have this evening endeavoured to highlight some of those values, as directly relevant to my own home country, and by merely stating them, one may at once grasp the many fundamentally important bases of civil society we hold in common. The efforts of organizations like yours help ensure those important values migrate to those other parts of the world where they are desperately needed: a migration for which the English language more often than not provides the conduit.

A language so often spoken, may be taken for granted. Worse, exclusivity may spawn disapproval of its influence. You rightly perceive the potential: the pervasiveness of this language could mean it works universal good. It is not "Esperanto": it is reality. Not only does this language in fact bind disparate cultures, it also at least provokes interest in historically related concepts and institutions. All this is admirable, and I commend you for your enthusiasm.